

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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SO. DIST. OF GA.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

GULFSTREAM AEROSPACE
CORPORATION,

Defendant.

Case No. CV402-243

ORDER

Plaintiff and defendant have both filed motions to quash subpoenas issued by a nonparty to this suit, Noritoshi Itoi. Docs. 18, 19. Counsel for Mr. Itoi has responded to the motions to quash. Doc. 26. Based upon the following, plaintiff and defendant's motions to quash are GRANTED.

I. BACKGROUND

Mr. Itoi is a beneficiary of a proposed consent decree entered into by plaintiff and defendant concerning alleged violations of the ADEA in a reduction in force by defendant. Doc. 4. A fairness hearing on the terms of

the decree is scheduled for April 28, 2003. Id. Mr. Itoi has objected to the fairness of the decree and seeks information to support his objections through the subpoenas he has issued. Docs. 11, 13.

The four subpoenas are addressed to Wade Herring, a Savannah attorney who represents defendant in this suit; Harlan S. Miller, an attorney in Atlanta; Lee Parks, an attorney in Atlanta; and Steve Tapper, an attorney for the Equal Employment Opportunity Commission (EEOC) who represents plaintiff in the instant suit. Mr. Herring, Mr. Miller, and Mr. Parks all had involvement in previous suits in this district against defendant. As noted above, Mr. Herring is currently serving as counsel for defendant, and Mr. Miller and Mr. Parks have served as counsel for plaintiffs suing defendant in the past. See Cosper v. Gulfstream Aerospace Corp., CV402-13 (S.D. Ga.); Podger v. Gulfstream Aerospace Corp., CV401-277 (S.D. Ga.). From Mr. Herring, Mr. Miller, and Mr. Parks, Mr. Itoi seeks production of any and all documents concerning the two previous cases and the instant suit by the EEOC. From Mr. Tapper, Mr. Itoi seeks production of any and all documents concerning the instant suit brought by the EEOC against defendant.

Plaintiff and defendant have both objected to the subpoenas on several grounds, including the overbreadth of the requests, improper service of the subpoenas, and issuance from the wrong court.¹ In response, Mr. Itoi purports now to have properly served the subpoenas and used the proper subpoena form.² In response to objections as to the breadth of the requests, Mr. Itoi has also offered to narrow the scope of his requests and now seeks:

(1) information provided by plaintiff to defendant or defendant to plaintiff for use in negotiating the consent decree;

(2) documents not subject to attorney-client privilege that are relevant to the declaration in the consent decree that plaintiff and defendant performed “investigation, information gathering, interviews, research, statistical reviews and analysis sufficient to permit them to assess the desirability” of entering a consent decree;

(3) the settlement agreement in Cosper; and

(4) Mr. Itoi’s EEOC file, including any correspondence between the EEOC and Mr. Itoi or his daughter, Anna Itoi.

¹The subpoenas issued to Mr. Tapper, Mr. Parks, and Mr. Miller were all from the Southern District of Georgia, but the documents requested by the subpoena were to be produced in Atlanta, which falls within the Northern District. It should be noted that Mr. Parks and Mr. Miller have not personally moved to quash the subpoenas, but defendant asserts that those subpoenas should also be quashed based on defendant’s mutual interest in the documents requested by them.

²Mr. Itoi states in his response that Mr. Tapper, Mr. Parks, and Mr. Miller have now been served with subpoenas from the Northern District and attaches copies of those subpoenas to his response.

II. ANALYSIS

Plaintiff objected to the original subpoena issued to Mr. Tapper because it was from the Southern District of Georgia, but requested documents to be produced in Atlanta, in the Northern District. This same defect was noted in the subpoenas originally issued to Mr. Miller and Mr. Parks. Under Rule 45(a)(2) of the Federal Rules of Civil Procedure, a subpoena “for production or inspection shall issue from the court of the district in which the production or inspection is to be made.” Mr. Itoi has apparently responded to that objection by issuing subpoenas from the Northern District to the three attorneys.

This deficiency renders the subpoena issued from the Southern District to Mr. Tapper invalid. See, e.g., McNerney v. Archer Daniels Midland Co., 164 F.R.D. 584, 588 (W.D.N.Y. 1995). Accordingly, plaintiff’s motion to quash is GRANTED. As for the subpoenas now issued by Mr. Itoi in the Northern District, any motion to quash those subpoenas must be presented to “the court in whose name the subpoena is issued.” See Fed. R. Civ. P. 45(c)(3)(A) advisory committee’s note (1991 Amendment). It is unclear from Mr. Itoi’s response, but if the subpoenas issued to Mr. Miller

and Mr. Parks from the Southern District are still outstanding, they would be similarly invalid.

Defendant raises several objections to the subpoena issued to Mr. Herring, arguing that (1) Mr. Itoi does not have standing to issue the subpoena; (2) the subpoena is facially deficient; (3) the subpoena requests the disclosure of privileged and otherwise protected documents; (4) the subpoena subjects defendant to undue burden and expense; and (5) the subpoena seeks information that is irrelevant to the fairness hearing. Mr. Itoi, as noted above, has attempted to address at least some of defendant's objections by narrowing the scope of his requests in the subpoena.

Rule 45(a)(3) and 26(b) contemplate discovery and issuance of subpoenas by the parties to a lawsuit. Mr. Itoi is clearly not a party to this lawsuit in the conventional sense; this action is solely one brought by the EEOC against Gulfstream Aerospace Corporation. Admittedly, Mr. Itoi does have a significant interest in this suit and its outcome, and he has an opportunity to raise his objections to the consent decree at the fairness hearing. Considering the limited nature of the fairness hearing and Mr. Itoi's questionable status as a "party," the Court is reluctant to even

concede that Mr. Itoi is permitted to conduct the extensive discovery that he requests, especially when the parties to the litigation themselves are not yet permitted to engage in formal discovery. Mr. Itoi has provided no precedent for this Court to rely on to allow him to do so. Additionally, his requests seem to have little relevance to a hearing that is intended to determine the *overall* fairness of the consent decree; the basis for his requests seem targeted more towards his own claim and his perception that his share of the settlement is wanting. However, even assuming that Mr. Itoi does have standing to issue the subpoena for the purposes of this motion, defendant's motion to quash still must be granted based on the material that Mr. Itoi requests.

Mr. Itoi's curtailed request³ now demands production of information provided by defendant to plaintiff (or vice versa) to negotiate the consent decree; documents concerning the investigation and analysis undertaken by plaintiff and defendant to assess the desirability of entering the consent

³Mr. Itoi's original request to produce asked for "any and all documents" concerning the Cosper case, the Podger case, and the current lawsuit. This request is clearly overbroad and places an undue burden and expense on defendant.

decree; and the settlement agreement in Cosper.⁴

Cosper Settlement Agreement

The settlement agreement entered into between the Cosper plaintiffs and defendant Gulfstream is confidential. Mr. Itoi argues that confidential settlement agreements are discoverable when they contain information relevant to determining the appropriateness of a remedy. Mr. Itoi asserts that information as to the settlement in Cosper will assist him in evaluating the fairness of the consent decree in this case, which he perceives to be inadequate in comparison, and “will illuminate the appropriate future course of actions.”

There is a strong policy in favor of settlement of cases, and the “confidentiality of settlement agreements is a primary inducement to parties to settle cases.” Centillion Data Sys. v. Ameritech Corp., 193 F.R.D. 550, 553 (S.D. Ind. 1999). Accordingly, the party seeking discovery must demonstrate “a strong countervailing interest to breach that confidentiality.” Id.; see also Young v. State Farm Mut. Auto Ins. Co., 169 F.R.D. 72, 76 (S.D.W. Va. 1996). Mr. Itoi has failed to show that such an

⁴Mr. Itoi’s final request is for a copy of his EEOC file, to which the Court assumes defendant would not have access.

interest exists here. Although the Cosper case involved ADEA claims against defendant as well, the reasons behind the settlement and the amount of the settlement cannot be assumed to be relevant to the fairness of the consent decree in this case.

Mr. Itoi has offered no examples of the relevance of the settlement agreement other than that the claims are similar to his (not necessarily to the group of beneficiaries of the decree) and that the settlement amount was apparently higher. His main objection seems to be that his share of the settlement is substantially smaller than he apparently anticipated. This reasoning is not sufficient to warrant disclosure of the settlement agreement's confidential terms, especially in the context of a fairness hearing. The purpose of the fairness hearing is to evaluate whether a decree is "lawful, fair, reasonable and adequate." EEOC v. Hiram Walker & Sons, Inc., 768 F.2d 884, 889 (7th Cir. 1985). "Objections based purely on individual claims of loss do not warrant disapproval of the proposed settlement." Wilkerson v. Martin Marietta Corp., 171 F.R.D. 273, 285 (D. Colo. 1997).

Information Used to Negotiate/Enter Into Consent Decree

Mr. Itoi's more specific requests made in his response to defendant's objections do not appear to remedy the objectionable nature of the requests. Mr. Itoi requests documents relevant to the "investigation, information gathering, interviews, research, statistical reviews and analysis" undertaken by defendant in assessing the settlement option. Mr. Itoi clarifies that he requests only documents not subject to attorney-client privilege. This request is still extraordinarily broad and, in addition, demands material that is protected by the work-product doctrine. Rule 26(b)(3) prevents discovery of material "prepared in anticipation of litigation," unless a party can show substantial need and hardship in otherwise obtaining the information. See also Hickman v. Taylor, 329 U.S. 495 (1947). Mr. Itoi has failed to substantiate the breadth of his request or that he has substantial need for the information in the context of a fairness hearing.

Mr. Itoi's remaining request is similarly overbroad in that he demands information provided by plaintiff to defendant or defendant to plaintiff used in negotiating the consent decree. The reduction in force at issue in this case took place in September 2000; the complaint was filed by plaintiff in

November 2002. As plaintiff describes in its response to objections to the consent decree, defendant and plaintiff engaged in protracted conciliation and negotiations prior to the filing of the complaint. Doc. 24. Mr. Itoi requests documents that could cover up to a year's worth of correspondence and accompanying material, including sensitive material, such as personnel files. The breadth and burden of this request is also unreasonable in light of the purpose for which it is requested.

III. CONCLUSION

Based upon the foregoing, plaintiff and defendant's motions to quash the subpoenas issued by Mr. Itoi are GRANTED. Docs. 18, 19.

SO ORDERED this 25th day of April, 2003.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA