

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

Equal Employment Opportunity  
Commission and Paul B. Hummel,

Civil No. 99-1477 (DWF/AJB)

Plaintiffs,

**ORDER ON MOTION TO COMPEL  
DISCOVERY RESPONSES AND  
FOR RULE 37 SANCTIONS**

v.

Federal Express Corporation,

Defendant.

This matter is before the Court on plaintiff EEOC's motion to compel discovery and for sanctions. Hearing was held on June 14, 2000, at the U.S. Courthouse, 316 No. Robert St., St. Paul, MN 55101. Dennis R. McBride, Esq., appeared on behalf of plaintiff EEOC, and Joni M. Thome, Esq., appeared on behalf of plaintiff intervenor Paul Hummel. Michael J. Vint, Esq., and David Jordan-Huffman, Esq., appeared on behalf of the defendant.

Plaintiff EEOC moves to compel responses to document production requests, admissions requests, and deposition questions. Plaintiff also seeks designation of a proper Rule 30(b)(6) deposition witness, permission for an expert's entry onto property, and sanctions. Defendant contends that it has sufficiently complied with initial disclosure requirements, certain requested documents are privileged or protected by the work-product doctrine, its responses to admission requests have been proper, and the motion regarding entry upon land is premature.

Based upon the file in this matter, along with memorandums, affidavits, arguments of counsel, and review of *in camera* submissions, **IT IS HEREBY ORDERED THAT:**

**JUL 26 2000**  
FILED \_\_\_\_\_  
FRANCIS E. DOSAL CLERK  
JUDGMENT ENTD \_\_\_\_\_  
DEPUTY CLERK \_\_\_\_\_

1. Plaintiff EEOC's motion to compel discovery responses and for Rule 37 sanctions is **granted in part and denied in part** [Docket No. 35]. Required responses shall be provided within fourteen days of the date of this order.

2. Plaintiff's motion for Rule 37 sanctions is denied.

3. Plaintiff's request for an order allowing entry upon land is moot.

4. Plaintiff's motion for an order requiring defendant to provide addresses and telephone numbers for persons identified pursuant to Fed. R. Civ. P. 26(a)(1)(A) is granted. Plaintiff's motion for supplementation of its Rule 26(a)(1)(A) list is denied. The information at issue is already available to plaintiff. It is further **Ordered** that plaintiff's demand for additional description of each individual's area and extent of knowledge is denied.

**Document Production**

5. Plaintiff's motion for disclosure of documents pursuant to Fed. R. Civ. P. 26(a)(1)(B) is granted in part and denied in part. Plaintiff seeks discovery of undisclosed documents listed on defendant's amended privilege log, asserting that defendant has waived attorney-client and work product protections. The materials have been submitted to the Court for *in camera* review.

Plaintiff's claim of waiver is based upon defendant's assertion of particular affirmative defenses, defendant's designation of in-house counsel as a Rule 30(b)(6) deposition witness, and previous production of other documents and testimony involving communications with defendant's counsel. Plaintiff further contends that the work-product designation does not apply to investigative materials. Defendant argues that the materials at issue are privileged and not subject to any general waiver. Defendant also asserts that documents now under

consideration were prepared in anticipation of litigation and are protected work-product.

Attorney-client privilege may be waived where the subject of the communication is raised by the client, typically in the context of a defense based upon advice of counsel. Baker v. General Motors Corp., 209 F.3d 1051, 1055 (8<sup>th</sup> Cir. 2000). Work-product is material that is prepared in anticipation of litigation and may be either ordinary work-product, consisting largely of raw information, or opinion work-product, which includes the mental impressions and opinions of counsel. Id. at 1054. Opinion work-product is almost absolutely immune from discovery. Id. Defendant does not argue that the mere designation of particular documents as being pertinent to this case is a manifestation of work-product. Shelton v. American Motors Corp., 805 F.2d 1323 (8<sup>th</sup> Cir. 1986).

Defendant's have submitted a ream of materials to the Court for *in camera* review. The pages are Bates stamped and individual documents are itemized and roughly described in an extensive privilege log. Though attorney-client privilege and the work-product doctrine have been generally asserted as the basis for protecting documents from disclosure requirements, defendants have not stated the specific protection asserted for particular documents and have not asserted document specific arguments in support of non-disclosure. Upon conducting *in camera* review of defendant's undisclosed submissions, the it is the Court's determination that the materials submitted for review, with specified exceptions, should be disclosed. Defendant is not required to disclose draft correspondence items, Bates No. 096, a draft letter to Ms. Ruby Jones; Nos. 211-12, a draft letter to Ms. Darlene Porter; Nos. 221-22, a draft letter to Ms. Ruby Jones; Nos. 243-45, a draft letter to Ms. Joni Thome; and No. 247, a draft letter to Paul Hummel. All other *in camera* materials should be disclosed. Disclosure of

the indicated draft correspondence items is based largely upon the presumption the drafts contain deletions, additions, and handwritten notations which represent the mental impressions and opinions of an attorney reviewing the materials in the course of preparing final letters, and therefore contain work-product.

6. Plaintiff's motion for disclosure of investigation reports and documents pursuant to **Document Request No. 1** is granted, with the exception of privileged or work-product materials as determined on *in camera* examination.

7. Plaintiff's motion for disclosure of communications pursuant to **Document Request No. 12** is granted.

8. Plaintiff's motion for production of the personnel file of Mary C. O'Brien pursuant to **Document Request No. 2** is granted. The requirement of production is conditioned upon plaintiff's execution of a protective order.

9. Plaintiff's motion for production of documents evidencing knowledge of matters relating to this case by numerous listed individuals, pursuant to **Document Request No. 3**, is granted, with the exception of privileged or work-product materials as determined on *in camera* examination.

10. Plaintiff's motion for production of documents relating to his return to work pursuant to **Document Request No. 4** is granted, with the exception of privileged or work-product materials as determined on *in camera* examination.

11. Plaintiff's motion for production of medical or back-to-work releases pursuant to **Document Request No. 5** is granted, with the exception of privileged or work-product materials as determined on *in camera* examination.

12. Plaintiff's motion for production of disability discrimination claims from 1995 to the present, pursuant to **Document Request No. 6**, is granted.

13. Plaintiff's motion for production of documents relating to job accommodation pursuant to **Document Request No. 7** is granted, with the exception of privileged or work-product materials as determined on *in camera* examination.

14. Plaintiff's motion for production of termination documents pursuant to **Document Request No. 8** is granted, with the exception of privileged or work-product materials as determined on *in camera* examination.

15. Plaintiff's motion for production of a list of vacant positions and job descriptions pursuant to **Document Request No. 9** is denied. Defendant is not required to create the requested list of job vacancies.

16. Plaintiff's motion for production of a list of vacant positions and job descriptions relating to positions which were filled, pursuant to **Document Request No. 10**, is denied. Defendant is not required to create the requested list of filled jobs and descriptions.

17. Plaintiff's motion for production of all documents relating to employee transfer requests within the United States pursuant to **Document Request No. 11** is denied.

18. Plaintiff's motion for production of documents pertaining to equal employment opportunity training and workshops pursuant to **Document Request No. 14** is granted in part and denied in part. Defendant shall produce responsive materials relating to ADA training that has taken place in the Minneapolis, Minnesota, area since 1994.

19. Plaintiff's motion for production of manuals and employee handbooks pursuant to **Document Request No. 15** denied. The Court finds that defendant's production has

been sufficient.

20. Plaintiff's motion for production of supervisor or management manuals pursuant to **Document Request No. 16** is granted to the extent that plaintiff seeks production of the PEOPLE manual. Defendant's production offer is sufficient in other respects.

21. Plaintiff's motion for production of employment or personnel manuals pursuant to **Document Request No. 17** is moot. Defendant agrees to produce the complete PEOPLE manual which is sufficiently responsive to the request.

22. Plaintiff's motion for production of complete tax returns from 1995 to the present, pursuant to **Document Request No. 18**, is denied. However, defendant shall produce its 1999 annual report in accordance with its agreement to supplement responses.

23. Plaintiff's motion for production of personnel files for terminated employees pursuant to **Document Request No. 19** is denied. The request is overbroad, burdensome, and invasive, and it not appropriately tailored towards the ultimate objective of discovering evidence relevant to this case.

24. Plaintiff's motion for production of documents relating to assertions contained in the Answer pursuant to **Document Request No. 20** is granted, with the exception of privileged or work-product materials as determined on *in camera* examination.

**Requests for Admissions**

25. Plaintiff's motion for an appropriate response to **Admission Request No. 43** is denied. Defendant has responded.

26. Plaintiff's motion for a response to **Admission Request No. 48** is granted. Defendant shall provide a response to the request.

27. Plaintiff's motion for an appropriate response to **Admission Request No. 49** is denied. Defendant has responded.

28. Plaintiff's motion for an appropriate response to **Admission Request No. 51** is denied. Defendant has responded.

29. Plaintiff's motion for an appropriate response to **Admission Request No. 56** is denied. Defendant has responded.

30. Plaintiff's motion for an appropriate response to **Admission Request No. 60** is moot. Defendant has admitted.

31. Plaintiff's motion for an appropriate response to **Admission Request No. 65** is moot. Defendant has admitted.

32. Plaintiff's motion for an appropriate response to **Admission Request No. 71** is denied. Defendant has responded.

33. Plaintiff's motion for an appropriate response to **Admission Request No. 75** is denied. Defendant has responded.

34. Plaintiff's motion for an appropriate response to **Admission Request No. 80** is moot. Defendant has admitted.

35. Plaintiff's motion for an appropriate response to **Admission Request No. 82** is moot. Defendant has admitted.

36. Plaintiff's motion for an appropriate response to **Admission Request No. 85** is denied. Defendant has responded.

37. Plaintiff's motion for an appropriate response to **Admission Request No. 87** is denied. Defendant has responded.

38. Plaintiff's motion for an appropriate response to **Admission Request No. 93** is granted. Defendant shall respond.

**Deposition Questions**

39. Plaintiff's request that the Court overrule an objection to a question posed in the deposition of Mary O'Brien at pp. 88-89, regarding the content of a conversation, is granted. The deponent is required to answer the question presented regarding the general subject matter of the conversation, and inquiry with respect to the subject of accommodation is permissible.

40. Plaintiff's request that the Court overrule an objection to questioning posed in the deposition of Beatrice Moore at page 63, regarding advice received from counsel concerning preparation of a letter to plaintiff, is granted. The area of questioning relates to accommodation, a matter at issue in the case.

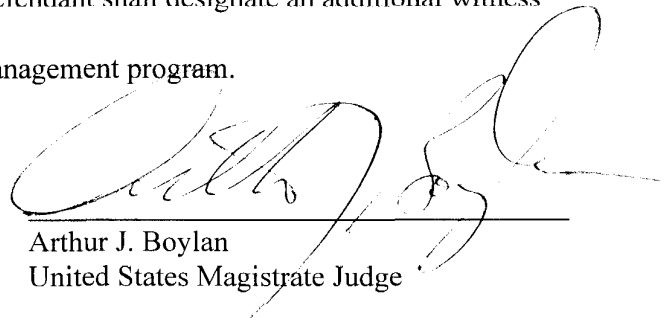
41. Plaintiff's request that the Court overrule an objection to questioning posed in the deposition of Virginia Connors at pp. 37-38, regarding medical releases provided to defendant by the plaintiff, is granted. The area of questioning relates to accommodation, a matter at issue in the case.

**Rule 30(b)(6) Deponent**

42. Plaintiff's motion for designation of an additional corporate deponent pursuant to Fed. R. Civ. P. 30(b)(6) is granted. Defendant shall designate an additional witness who is knowledgeable about the human capital management program.

Dated: \_\_\_\_\_

7/26/00

  
\_\_\_\_\_  
Arthur J. Boylan  
United States Magistrate Judge