

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES EQUAL)	
EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
TERRY FITZGERALD,)	
SUSAN SOLIS, and)	
ALISHA WILLIAMS,)	
)	
Plaintiff Intervenors,)	
)	
vs.)	Case No. CIV-04-1078-M
)	
WESTPHALEN INSURANCE)	
SERVICES, INC., and)	
GARY WESTPHALEN, Individually,)	
)	
Defendants.)	

ORDER

Before the Court is defendants’ Motion for Protective Order, filed August 1, 2005. On August 16, 2005, plaintiff United States Equal Employment Opportunity Commission (“EEOC”) filed its response, and on August 18, 2005, plaintiff intervenors filed their response. On August 26, 2005, defendants filed their reply. Based upon the parties’ submissions, the Court makes its determination.

On August 31, 2004, the EEOC filed the instant action against defendant Westphalen Insurance Services, Inc. (“Westphalen Insurance”), alleging that Westphalen Insurance violated Title VII of the Civil Rights Act of 1964 by subjecting Terry Fitzgerald, Susan Solis, and Alisha Williams to discrimination on the basis of their sex, by subjecting them to a sexually hostile work environment, and by retaliating against them. On October 12, 2004, the Court granted plaintiff intervenors leave to intervene in this action, and on October 12, 2004, plaintiff intervenors filed their

complaint against Westphalen Insurance and defendant Gary Westphalen (“Westphalen”), individually, alleging both federal and state law causes of action for sex discrimination, sexually hostile work environment, retaliation, assault and battery, intentional infliction of emotional distress, and negligence.

Defendants now move this Court to issue a protective order restricting the questioning of Westphalen or any other deponent to one attorney for the EEOC and plaintiff intervenors, collectively. Defendants assert that the interests of the EEOC and plaintiff intervenors are identical and that if both the EEOC and plaintiff intervenors are allowed to examine deponents, the depositions will be duplicative and oppressive and will place undue burden and expense on Westphalen and the other deponents. The EEOC and plaintiff intervenors object to defendants’ motion and assert that their interests are not identical and that they will be unfairly prejudiced if they are denied an opportunity to individually question deponents.

Protective orders are governed by Rule 26(c). That rule provides, in pertinent part:

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(2) that the disclosure or discovery may be had only on specified terms and conditions,

Fed. R. Civ. P. 26(c)(2).

The party seeking a protective order must show “good cause” for its request. *Id.*; *Am. Benefit Life Ins. Co. v. Ille*, 87 F.R.D. 540, 543 (W.D. Okla. 1978). “‘Good cause’ within the meaning of

Rule 26(c) contemplates a ‘particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.’” *Am. Benefit*, 87 F.R.D. at 543 (quoting *Gen. Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973)).

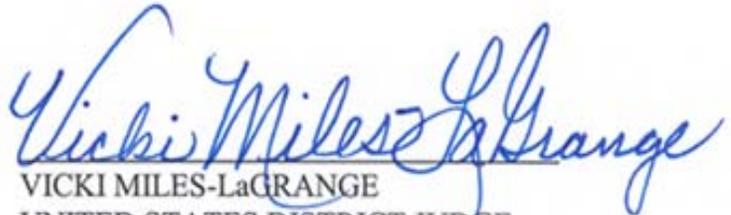
Having carefully reviewed the parties’ submissions, the Court finds that defendants have not shown good cause for their request for a protective order. Specifically, the Court finds that the interests of the EEOC and plaintiff intervenors are not identical. While the EEOC and plaintiff intervenors’ claims are based on the same set of facts, the parties have not asserted identical causes of action – the EEOC has asserted claims under Title VII; plaintiff intervenors have asserted both Title VII claims and state law causes of action. Further, the EEOC has sued only Westphalen Insurance, and plaintiff intervenors have sued both Westphalen Insurance and Westphalen. Additionally, the EEOC brings the instant action on behalf of the general public, including plaintiff intervenors, to enforce the law and to eliminate discrimination in the workplace; plaintiff intervenors bring this action to redress alleged violations of their private and personal rights.

The Court further finds that defendants have not provided a particular and specific demonstration of fact justifying the need for a protective order. While defendants have presented examples of objections and statements counsel for the EEOC made during the depositions of plaintiff intervenors, the Court finds that these examples do not provide the requisite good cause justifying a protective order in this case. Finally, the Court finds that any duplication of questions in the depositions does not rise to the level of oppression or undue burden or expense warranting a protective order.¹

¹The Court is confident that counsel for the EEOC and plaintiff intervenors, as experienced attorneys, will not ask the same questions and will limit any questioning to information that was not discovered through the other counsel’s questioning.

Accordingly, the Court DENIES defendants' Motion for Protective Order [docket no. 29].

IT IS SO ORDERED this 29th day of September, 2005.



VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE