

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS

FILED

SEP 04 2002

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY _____ DEPUTY

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION, ET AL.,)
)
Plaintiffs,)
v.)
)
TOUCHSTAR AMERICAS, ET AL.,)
)
Defendants.)

NO. CIV-01-0763-HE

DOCKETED

ORDER

The parties have filed motions relating to various discovery disputes. Plaintiff and intervenor's motion to take more than ten depositions and intervenor Cantu's motion to compel deposition answers from Mr. Bigger and Mr. Sprunger are awaiting responsive briefs from defendants.¹ Both parties have submitted briefs relating to defendant Touchstar's motion to compel (relating to plaintiff's medical records) and defendants' motion for protective order as to the deposition of Connie Kirkland.

The issues involved in motion to compel as to Mr. Bigger and Mr. Sprunger appear to relate to the same privilege issues raised as to Ms. Kirkland. Therefore, the Court will defer ruling on the motion for protective order as to Ms. Kirkland until briefing is complete on the Bigger/Sprunger motion.

With respect to the production of medical records,² the Court concludes plaintiff should be required to produce such records and that any physician-patient or physician-psychotherapist

¹ *By separate order entered this date, the Court has directed defendants to respond to the subject motions within ten days.*

² *Defendants seek all documents relating to plaintiff's health for the past five years, including physician's reports, insurance claim forms, and other medical records.*

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privilege otherwise applicable has been waived. In this case, plaintiff has done more than merely make a “garden variety” request for pain and suffering damages incidental to other relief sought. Rather, he has asserted a specific claim for intentional infliction of emotional distress, including allegations of both physical and mental anguish and injury. He has therefore put his medical and mental condition in issue and waived any otherwise applicable medical/mental privilege.³

Plaintiff asserts there are no medical or other records within the past five years which are relevant to the claims in this case. However, it is obviously unreasonable to allow the plaintiff to unilaterally determine what is or is not relevant to this case. Given the expansive nature of the damages sought by plaintiff and the absence of any obvious, unreasonable burden to plaintiff from complying with the requests, the Court concludes production should be ordered. To the extent plaintiff’s objection to production of the records is based on their private nature, the Court concludes such confidentiality concerns can be appropriately dealt with by making the production of medical records subject to the confidentiality order previously entered by the Court with respect to personnel and other records.⁴

The Court is reluctant to order the execution of a medical release in the present circumstances and declines to do so at this time, on the assumption that plaintiff will, in light of this order, fully cooperate with defendant Touchstar's discovery efforts on the issue.

Accordingly, defendant Touchstar’s motion to compel the production of medical records is **GRANTED** to the extent set forth above. Documents produced shall be subject to the Agreed Protective Order entered June 17, 2002. Defendant’s request for attorneys fees and costs in connection with the motion will be reserved pending decision on the other pending discovery

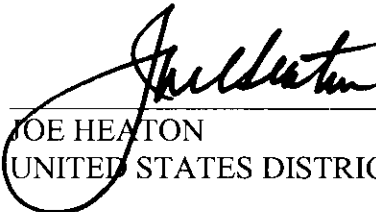
³ See, *Stevenson v. Stanley Bostitch, Inc.*, 201 F.R.D. 551 (N.D.Ga. 2001) and cases cited therein.

⁴ *Agreed Protective Order, entered June 17, 2002.*

disputes.

IT IS SO ORDERED.

Dated this 4 day of September, 2002.



JOE HEATON
UNITED STATES DISTRICT JUDGE