

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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ORDER

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Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Independent School District No.
2174 of Pine River, Minnesota,

Defendant and Third-
Party Plaintiff,

vs.

Education Minnesota and Pine River-
Backus Educational Association,

Third-Party
Defendant.

Civ. No. 04-4087(RHK/RLE)

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Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Independent School District No.
75 of St. Clair, Minnesota,

Defendant and Third-
Party Plaintiff,

vs.

Education Minnesota and Education
Minnesota-St. Clair a/k/a St. Clair
Educational Association,

Third-Party
Defendant.

Civ. No. 04-4088 (RHK/RLE)

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Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Independent School District No.
271 of Bloomington, Minnesota,

Defendant and Third-
Party Plaintiff,

vs.

Education Minnesota and Bloomington
Federation of Teachers,

Third-Party
Defendant.

Civ. No. 04-4090(RHK/RLE)

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Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Independent School District No.
756 of Blooming Prairie, Minnesota,

Defendant and Third-
Party Plaintiff,

vs.

Education Minnesota and Blooming
Prairie Teacher's Association,

Third-Party
Defendant.

Civ. No. 04-4091 (RHK/RLE)

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Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Independent School District No.
761 of Owatonna, Minnesota,

Defendant and Third-
Party Plaintiff,

vs.

Education Minnesota and Owatonna
Education Association,

Third-Party
Defendant.

Civ. No. 04-4092 (RHK/RLE)

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Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Independent School District No.
857 of Lewiston, Minnesota,

Defendant and Third-
Party Plaintiff,

vs.

Education Minnesota and Education
Minnesota of Lewiston-Altura,

Third-Party
Defendant.

Civ. No. 04-4093(RHK/RLE)

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I. Introduction

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(A), upon the Plaintiff's, and Third-Party Defendants', Motions for a Protective Order, and the Defendants', and Third-Party Plaintiffs', Motion to Continue the Hearings on the Plaintiff's and Third-Party Defendants' Dispositive Motions. The Plaintiff appeared by Laurie A. Vasichack, EEOC Senior Trial Attorney; the Defendants/Third-Party Plaintiffs appeared by Mark R. Azman, Esq.; and the Third-Party Defendants appeared by Harley M. Ogata, Esq.

For the reasons expressed at the close of the Hearing, and briefly reiterated below, the Plaintiff's and Third-Party Defendants' Motions for a Protective Order which stays discovery are granted, and the Defendants'/Third-Party Plaintiffs' Motion for a Continuance is denied.

II. Factual Background

The EEOC has commenced suits against ten individual school districts, which are located within the District of Minnesota, alleging violations of the Age Discrimination in Employment Act ("ADEA"), based upon early retirement incentive plans contained within those School Districts' collective bargaining agreements. The six captioned cases have been determined to be "related" for Pretrial purposes.

In response to the EEOC's suits, the six Defendant school districts filed Third-Party Complaints against Education Minnesota, as well as the local Education Associations for each of the individual school districts. The Third-Party Complaints contend that the Third-Party Defendants, as negotiators of the collective bargaining agreements at issue, must indemnify the Defendants/Third-Party Plaintiffs in the event that such agreements are found to violate the ADEA.

All three parties have filed dispositive Motions in the case. The Defendants/Third-Party Plaintiffs have filed a Motion for Summary Judgment, in which they

challenge the constitutionality of the ADEA. In addition, the Defendants/Third-Party Plaintiffs have asserted a defense of equitable estoppel, urging that the Plaintiff made previous representations concerning its prosecution of the alleged ADEA violation, and a defense of fundamental fairness, in which they assert that the Plaintiff's failure to bring its action in a timely manner also precludes liability.

Following the Defendants'/Third-Party Plaintiffs' Motion, the Plaintiff and the Defendants/Third-Party Plaintiffs agreed to stay discovery pending its outcome, since both agreed that discovery would not be necessary to determine the constitutionality of the ADEA. Subsequently, the Plaintiff filed a Motion for Partial Summary Judgment, in which it contends that the Defendants'/Third-Party Plaintiffs' asserted defenses of equitable estoppel, and fundamental fairness, fail as a matter of law.¹

In response to that Motion, the Defendants/Third-Party Plaintiffs noticed a Rule 30(b)(6) deposition of the Plaintiff for February 10, 2005, in which they sought to depose someone knowledgeable as to the following matters:

¹While the Plaintiff has denominated its Motion as one for Summary Judgment, it has represented that the Motion is based entirely on the Pleadings, and assumes that all of the alleged facts, which are contained in the Defendants'/Third-Party Plaintiffs' pleadings, that relate to its defenses of equitable estoppel and fundamental fairness, are true.

(1) The Plaintiff's investigation of the above-named School Districts regarding the Districts' alleged violations of the Age Discrimination in Employment Act (ADEA) regarding early retirement incentives including, but not limited to, cash benefits payments and medical bridge payments.

(2) Any and all communications, including but not limited to negotiations, between Plaintiff EEOC and the above named School Districts regarding the Districts' alleged violations of the ADEA regarding early retirement incentives including, but not limited to, cash benefit payments and Medicare bridge payments.

(3) Any and all communications, including but not limited to negotiations, between Plaintiff EEOC and Education Minnesota regarding the above named School Districts' alleged violations of the ADEA regarding early retirement incentives including, but not limited to cash benefit payments and medical bridge payments.

(4) Any and all communications, including but not limited to negotiations, between Plaintiff EEOC and Third-Party Defendants Pine River-Backus Education Association, Education Minnesota-St. Clair a/k/a St. Clair Education Association, Bloomington Federation of Teachers, Blooming Prairie Teachers' Association, Education Minnesota Lewiston-Altura, and/or Owatonna Education Association regarding the Districts' alleged violations of the ADEA regarding early retirement incentives including, but not limited to, cash benefit payments and Medicare bridge payments.

(5) Any and all communications between the Plaintiff EEOC and any person or entity regarding the subject matter of the Plaintiff's Complaint.

Declaration of Laurie Vasichcek, Exh. 1.

The Defendants/Third-Party Plaintiffs have also informed the Plaintiff that they intend to serve written discovery requests involving the same subject matter. Id., at ¶2.

On January 21, 2005, the Third-Party Defendants also filed a Motion to Dismiss,² in which they contend that the Defendants/Third-Party Plaintiffs have failed to state a claim that would entitle them to indemnification or contribution from the Third-Party Defendants. In anticipation of that Motion, the Third-Party Plaintiffs transmitted an informal Motion to the District Court, on January 13, 2005, in which they requested a continuance of their own Motion for Summary Judgment, as well as an indefinite postponement of the Third-Party Defendants' Motion to Dismiss, pending the outcome of their own Motion for Summary Judgment. The Defendants'/Third-Party Plaintiffs' requests were based on their assertion that a response to the Third-Party Defendants' Motion would "require substantial discovery regarding the

²While the Third-Party Defendants' Motion was brought as a Motion to Dismiss, it includes references to both Rule 12, and Rule 56, Federal Rules of Civil Procedure. Nevertheless, the Third-Party Defendants have represented that their Motion solely relates to the Third-Party Complaint, and assumes that all of the factual allegations contained therein are true.

Districts' equitable estoppel position, including written discovery to the EEOC and Union defendants and numerous depositions of EEOC and Union personnel, as well as the production and analysis of agreements sent to Unions by the EEOC which may impact on the issues before the Court, which the Unions may have signed." Docket No. 35.³ They further contended that, since the Third-Party Defendants' Motion would be mooted by the success of the Defendants/Third-Party Plaintiffs' Motion for Summary Judgment, judicial economy would necessitate a postponement of the Third-Party Defendants' Motion. The District Court, the Honorable Richard H. Kyle presiding, disagreed, and, on the following day, issued an Order that denied the Defendants'/Third-Party Plaintiffs' requested continuance and postponement of the Third-Party Defendants' Motion.

The Defendants/Third-Party Plaintiffs have since served Rule 30(b)(6) deposition notices on the Third-Party Defendant, Education Minnesota, as well as the individual unions for the named school districts. The notices seek substantially the same information as the notice served upon the Plaintiff.

³The Docket Number referenced appears in the case EEOC v. Independent School District 2174 of Pine River, Minnesota, Civ. File No. 04-4087.

Both the Plaintiff and the Third-Party Defendants now seek Protective Orders that would stay discovery pending the outcome of all three dispositive Motions. The Defendants/Third-Party Plaintiffs have also filed a Motion, in which they seek to suspend the briefing, and Hearing deadlines, for both the Plaintiff's Motion for Partial Summary Judgment, and the Third-Party Defendants' Motion to Dismiss, for 90 days. The purpose of the requested continuance is to allow for discovery as to their defenses of equitable estoppel and fundamental fairness, in order that they may appropriately respond to the Plaintiff's and Third-Party Defendants' Motions.

III. Discussion

A. Standard of Review. The critical issue raised by each of the parties' Motions concerns the propriety of the Defendant/Third-Party Plaintiffs' discovery requests in the face of the impending dispositive Motions. The Plaintiff and Third-Party Defendants' have both urged us to stay all discovery pursuant to Rule 26(c), Federal Rule of Civil Procedure, under which a Protective Order should be granted when the moving party establishes "good cause" for the Order, and "justice requires [a Protective Order] to shield a party, or person, from annoyance, embarrassment, oppression, or undue burden or expense."

“A Protective Order under Rule 26(c) to stay discovery pending determination of a dispositive motion is an appropriate exercise of the court’s discretion.” Tilley v. United States, 270 F. Supp.2d 731, 734 (M.D. N.C. 2003). “In considering whether a stay of all discovery pending the outcome of a dispositive motion is warranted, a case-by-case analysis is required, since such an inquiry is necessarily fact-specific and depends on the particular circumstances and posture of each case.” Hachette Distribution v. Hudson County News Co., 136 F.R.D. 356, 358 (E.D. N.Y. 1991); see also, Skellerup Ind. Ltd. v. City of Los Angeles, 163 F.R.D. 598, 601 (C.D. Cal. 1995). “[T]he Court inevitably must balance the harm produced by a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery.” Feldman v. Flood, 176 F.R.D. 651, 652 (M.D. Fla. 1997); Simpson v. Specialty Retail Concepts, Inc., 121 F.R.D. 261, 263 (M.D. N.C. 1988); see 19th Street Baptist Church v. St. Peter’s Episcopal Church, 190 F.R.D. 345, 349 (E.D. Pa. 2000)(“While the court should not automatically stay discovery because a motion to dismiss has been filed, ‘a stay is proper where the likelihood that such motion may result in a narrowing or outright elimination of discovery outweighs the likely harm to be produced by the delay.’”). “[A] Court should not, however, stay

discovery which is necessary to gather facts in defense of the motion.” Tilley v. United States, supra at 734.

B. Legal Analysis. The Defendants/Third-Party Plaintiffs do not seem to contest that a general stay in discovery is warranted, but instead, they argue that their requested discovery is necessary in order for them to defend against the other parties’ dispositive Motions. Notably, the primary basis upon which the Defendants/Third-Party Plaintiffs assert that discovery is warranted is Rule 56(f), Federal Rules of Civil Procedure,⁴ which provides as follows:

Should it appear from the affidavits of the party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party’s opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

The Defendants/Third-Party Plaintiffs argue that the subject matter of the Plaintiff’s Motion for Summary Judgment, and the Third-Party Defendants’ Motion to Dismiss, require resolution of the viability of its equitable estoppel and fundamental fairness

⁴The Defendants/Third-Party Plaintiffs also invoke the Court’s authority to provide them with relief under Rule 1, and Rule 26, Federal Rules of Civil Procedure, as well as Local Rule 7.1. However, their primary contention is that discovery is necessary in order for them to adequately respond to the Plaintiff’s and Third-Party Defendants’ dispositive Motions, which falls squarely within the purview of Rule 56(f).

defenses which, they assert, are fact-laden questions. Referencing the Plaintiff's Motion for Summary Judgment and Third-Party Defendants' Motions to Dismiss, counsel for the Defendants/Third-Party Plaintiffs asserts as follows:

These Motions require the School Districts' [sic] to assert in its Responses to these Motions its defense positions involving issues of fundamental fairness and equitable estoppel. As such, in order for the School Districts' [sic] to present a substantive and meaningful response to the these Motions, the School Districts' [sic] must conduct discovery on these issues. The discovery involves deposition and written discovery. Deposition discovery will include deposing numerous EEOC representatives in this Region and, most likely in Washington D.C., and many Union representatives across Minnesota. We also expect opposing counsel will want to depose School District representatives.

Affidavit of Mark R. Azman, at ¶7.

Counsel further asserts that a continuance is necessary in order to allow it to conduct such discovery prior the due date for its responses to the Plaintiff's and Third-Party Defendant's Motions. Id., at ¶8.

Both the Plaintiff and the Third-Party Defendants have represented that their Motions only challenge the sufficiency of the pleadings and, as a result, Rule 56(f) is inapposite. See, Casazza v. Kiser, 313 F.3d 414, 420 (8th Cir. 2002) ("In light of our decision affirming the District Court's decision to dismiss * * * we need not reach the discovery issues raised in [the appellant's] Rule 56(f) petition."), citing Silver v. H&R

Block, Inc., 105 F.3d 394, 397 (8th Cir. 1997). Specifically, the Plaintiff represents that its Motion for Summary Judgment challenges the viability of the equitable estoppel, and fundamental fairness defenses, as a matter of law, and therefore, assumes that the facts alleged in Defendants'/Third-Party Plaintiffs' pleadings, that relate to such defenses, are true. Similarly, the Third-Party Defendants have asserted that the Third-Party Complaints, as they are pled, fail to state causes of action against them.

The Third-Party Defendants' further urge that the Defendants'/Third-Party Plaintiffs' Motion is essentially an attempt take a second bite out of the proverbial apple, in that the District Court has already denied the Defendants/Third-Party Plaintiffs' request to postpone the Hearing on the Third-Party Defendants' Motion to Dismiss. Notably, the arguments advanced by Defendant/Third-Party Defendants in seeking a continuance before the District Court are of the same nature as those that are advanced in the Defendants'/Third-Party Plaintiffs' current Motion for a Continuance. Those arguments include: 1) that extensive discovery into their defenses of fundamental fairness and equitable estoppel would be required in order

to defend against the Third-Party Defendants' Motion;⁵ and 2) that judicial economy favors a continuance, since success on its Motion for Summary Judgment will render the Third-Party Defendants' Motion moot.

Based on the Record presented, a stay of discovery is warranted, pending the outcome of the parties' dispositive Motions. As our Court of Appeals has explained:

Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith by affirmatively demonstrating why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and how postponement of a ruling in the motion will enable him, by discovery or other means, to rebut the movant's showing of a genuine issue of fact. Where a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.

Duffy v. Wolle, 123 F.3d 1026 (8th Cir. 1997), cert. denied, 523 U.S. 1127 (1998), quoting United States v. Light, 766 F.2d 394, 397-398 (8th Cir. 1985); see Willis v. Centennial & Mortgage & Funding, Inc., 2004 WL 229076 at *10 (D. Minn., February 2, 2004).

Here, the Defendants/Third-Party Plaintiffs have failed to meet that burden, since they have failed to establish that the requested discovery is necessary for them to defend against the other parties' Motions. The Defendants/Third-Party Plaintiffs' have not

⁵At the time of the Defendants'/Third-Party Plaintiffs' Informal Motion to the District Court, the Third Party Defendants' Motion had not been filed, but a Hearing date had been scheduled, and the Motion to Dismiss was anticipated.

communicated what information they would hope to acquire through the requested discovery, nor have they suggested a nexus between that information and the creation of a genuine issue of material fact. Further weighing against discovery are the representations made by the Plaintiff and Third-Party Defendants, which we accept at face value, that their dispositive Motions are limited to the sufficiency of the Defendants'/Third-Party Plaintiffs' claims, and defenses, as they appear on the face of their pleadings. Therefore, assuming that the Defendants/Third-Party Plaintiffs have pled viable defenses to the Plaintiff's claim, and a viable indemnification claim against the Third-Party Defendants, they will not be significantly prejudiced by staying discovery. Accordingly, since discovery is not appropriate to cure deficient pleadings, the Plaintiff's and Third-Party Defendants' Motions for Protective Orders staying discovery are granted, and the Defendants'/Third-Party Plaintiffs' Motion for a Continuance is denied.

NOW, THEREFORE, It is –

ORDERED:

1. That the Plaintiff's Motions for a Protective Order [04-4087, Docket No. 50; 04-4088, Docket No. 22; 04-4090, Docket No. 19; 04-4091, Docket No. 21; 04-4092, Docket No. 27; 04-4093, Docket No. 21] are GRANTED.

2. That the Defendants'/Third-Party Plaintiffs' Motions for a Continuance [04-4087, Docket No. 55; 04-4088, Docket No. 27; 04-4090, Docket No. 24; 04-4091, Docket No. 26; 04-4092, Docket No. 32; 04-4093, Docket No. 26] are DENIED.

3 That the Third-Party Defendants' Motions for a Protective Order [04-4087, Docket No. 59; 04-4088, Docket No. 31; 04-4090, Docket No. 28; 04-4091, Docket No. 30; 04-4092, Docket No. 36; 04-4093, Docket No. 30] are GRANTED.

4. That all discovery is stayed pending resolution of the parties' dispositive Motions.

BY THE COURT:

Dated: March 11, 2005

s/Raymond L. Erickson
Raymond L. Erickson
UNITED STATES MAGISTRATE JUDGE