

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

PLAINTIFF

V.

CIVIL ACTION NO.2:04CV278-D-A

RETZER RESOURCES,
INC., d/b/a MCDONALD'S

DEFENDANT

ORDER

This case is before the court on the plaintiff's motion entitled, "Plaintiff EEOC's motion to compel discovery" filed on March 30, 2005. At the request of the court, the defendant has filed an expedited response to the motion and the court is now ready to rule.

The plaintiff's motion to compel seeks information relating to "any statements taken, reports generated and correspondence in connection with the investigation undertaken by counsel for defendant" which were admittedly withheld from defendant's pre-discovery disclosures. According to plaintiff, this information was improperly withheld and/or should have only been withheld with the inclusion of a privilege log as the information is presumably withheld as attorney work product. The defendant responds that the information the plaintiff seeks is merely a memo to the file reflecting defense counsel's telephone calls with defendant's managerial employees. Thus, this information not only is not discoverable, as it falls clearly within the protections of the work product doctrine, but does not necessitate inclusion on a privilege log as it is not a statement, report, correspondence or other such document which would be discoverable, yet is privileged, but rather it is simply file notations made by defense counsel in

his normal course of business in the litigation of a case.

In its motion, the plaintiff seeks a court order compelling the requested information. However, in a telephone call, counsel for the plaintiff informed the court that in fact, it was the depositions scheduled for April 6, 2005, that were counsel's foremost concern and that they would like these depositions stayed until the information is produced. Counsel for the defendant has advised that due to plaintiff's failure to return HIPAA releases the depositions may not be able to go forward on the 6th. Thus, the urgency of the plaintiff's motion may well be moot. Notwithstanding, it is clear to the court that the information sought by the plaintiff is clearly not within the scope of discovery. Further, it appears that the plaintiff has been made aware on several occasions of the substance of the information it requested and despite but pressed forward seeking the information despite the fact that it is clearly within the work product doctrine. Accordingly, the court finds that the plaintiff's motion to compel should be denied.

SO ORDERED.

THIS, the 4th day of April, 2005.


UNITED STATES MAGISTRATE JUDGE