

United States District Court,
S.D. New York.
Stella MITCHELL, Plaintiff,
v.
METROPOLITAN LIFE INSURANCE COMPANY,
INC., Defendant.
No. 03 Civ.10294(WHP).

Nov. 2, 2004.

Marc A. Stadtmauer, Eckhaus & Olson, New York, NY,
William H. Kaiser, Kaiser Saurborn & Mair P.C., New
York, NY, for Plaintiff.

Amy B. Regan, Proskauer Rose LLP, New York, NY, for
Defendant.

ORDER

PAULEY, J.

***1** The parties present two discovery disputes for resolution. In the first one, plaintiff Stella Mitchell (“Mitchell”) seeks an order directing Defendant Metropolitan Life Insurance Company, Inc. (“Met Life”) to produce documents relied on by experts in a now closed class action titled *Mitchell v. Met Life Ins. Co., Inc.*, 01 Civ. 2112(WHP) (the “Class Action”). Mitchell opted out of the Class Action. In the second dispute, Met Life seeks an order directing that certain categories of documents produced to plaintiff remain confidential pursuant to a Protective Order issued by this Court on August 26, 2004. For the following reasons, both applications are granted in part and denied in part.

I. Documents Relied on by Experts in the Class Action

Plaintiff seeks documents relied on by two experts for plaintiffs in the Class Action: Dr. Richard Bielby and Dr. Richard Drogan. Met Life has produced copies of those experts' reports to plaintiff pursuant to an earlier Order of this Court. The Bielby report concluded that Met Life's anti-discrimination program was inadequate and counter-productive. (Pl. Letter Ex. C.) The Drogan report concluded that defendant promoted fewer women than men in its sales force and paid women less than similarly

situated male employees company-wide. (Pl. Letter Ex. D.)

Plaintiff need not prove her case at this stage of the proceedings. Plaintiff's burden is to show that the evidence sought is “relevant” or that it “may lead to the discovery of admissible evidence.” *See* Fed R. Civ. P. 26(1). The documents sought by plaintiff appear to bear on the issues of whether Met Life exercised reasonable diligence to prevent and remedy discriminatory practices and whether women were paid less than similarly situated male employees. At this juncture, they “may lead to the discovery of admissible evidence.” Fed.R.Civ.P. 26(1). Admissibility is not a prerequisite to discoverability.

While the documents underlying the experts' reports deal with company-wide patterns of discrimination, such evidence may reveal discrimination against a particular group of employees and therefore be relevant to individual disparate treatment claims. *See Hollander v. Am. Cyanamid Co.*, 895 F.2d 80, 84 (2d Cir.1990); *Scales v. J.C. Bradford & Co.*, 925 F.2d 901, 906 (6th Cir.1991) (“It is well settled that information concerning an employer's general employment practices is relevant to a Title VII individual disparate treatment claim.”); *Berk v. Bates Adver. USA, Inc.*, No. 94 Civ. 9140(CSH), 1995 WL 559397, at *2 (S.D.N.Y. Sept. 19, 1995) (same).

Met Life argues that the consent decree in the Class Action precludes production of the documents since it bars discovery of any claims that could have been asserted in that case. (*See* Def. Letter Ex. A.) That argument is unavailing because plaintiff opted out of the Class Action and is not bound by the consent decree. *See Mayfield v. Barr*, 985 F.2d 1090, 1093 (D.C. Cir.1993) (class members who opt out “escape[] the binding effect of the class settlement”); *Green v. Wolf Corp.*, 406 F.2d 291, 297-98 (2d Cir.1968) (judgment in class action not binding on class members who affirmatively opt out).

***2** Met Life asserts that thousands of documents underlie the experts' reports and that most of them bear no relation to plaintiff's individual claims of discrimination. Given the volume of documents underlying the experts' reports and the fact that those reports pertain to Met Life's company-wide sales force, this Court may place reasonable limits on the scope of defendant's document production.

Accordingly, defendant is directed to produce the

documents underlying the expert reports that pertain to the Met Life region and zone where plaintiff has been employed. That production may be limited to the time period relevant to the claimed discrimination, namely, January 1, 1996 through the date the expert reports were produced.

produced, Met Life's application to keep those redacted documents confidential is denied. (*See* Pl. Letter, Ex. D.)

II. Confidentiality of Certain Met Life Documents

Met Life seeks to maintain the confidentiality of the following categories of documents under the August 26, 2004 Protective Order: (1) personnel files of Met Life employees; (2) earnings and expense analyses for Met Life sales offices; and (3) business plans. Plaintiff opposes the application on the grounds that Met Life has not shown good cause for keeping the information confidential.

Personnel files of Met Life employees containing personal identifying information of non-parties are to remain confidential. To the extent that Met Life has not redacted those files, they contain sensitive data entitled to protection, such as social security numbers, disciplinary records and information relating to personal circumstances (e.g., disability and marital status). *See United States v. Amodeo*, 71 F.3d 1044, 1050-51 (2d Cir.1995) (stating that the “privacy interests of innocent third parties” should weigh heavily in a court's decision of whether to hold information confidential); *see also Flaherty v. Seroussi*, 209 F.R.D. 300, 304 (N.D.N.Y.2002) (protective order warranted for “medical, educational, and other inherently private information concerning individual employees of the City”).

With respect to the second category (earnings and expense analyses) and the third category (business plans), the documents also are to remain confidential. They contain internal financial analyses, business plans and other sensitive company information that Met Life is entitled to protect from competitors' view. *See Houbigant v. Dev. Specialists, Inc.*, No. 01 Civ. 7388(LTS) (GWG), 2003 WL 21688243, at *2 (S.D.N.Y. Jul. 21, 2003) (Rule 26(c) “specifically allows the issuance of a protective order to require that a trade secret or other commercial research, development, or commercial information not be revealed or be revealed only in a designated way”).

This Order applies only to documents that fit clearly into one of the three identified categories. Moreover, to the extent that Met Life has redacted personal identifying or otherwise confidential information from documents it has