

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
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BY _____
DEPUTY

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, et al., §
§
Plaintiffs, §
§
v. §
§
MOORE & COWART §
CONTRACTORS, INC. §
§
Defendant. §

NO. EP-03-CA-121-KC
EP-03-CA-135-KC

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL

On this day came on for consideration the Plaintiff's Motion to Compel Defendant Moore & Cowart Contractors, Inc. to Respond to Discovery Requests and the Court, having considered same, is of the opinion that the following order should be entered.

I.
Procedural Background

On April 7, 2003, the Equal Employment Opportunity Commission (EEOC) filed its original Complaint against Moore & Cowart Contractors, Inc. (Defendant) alleging unlawful employment practices in violation of the Civil Rights Act of 1964, as amended, and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. (Dkt. 1). Manuela Anchondo, the person alleged to be the victim of the Defendant's conduct, also filed an individual cause of action in state court. On April 11, 2003, the Defendant removed to federal court the state lawsuit of Ms. Anchondo. (EP-03-CA-135, Dkt. 1). By order dated June 12, 2003,

these two lawsuits were consolidated into the instant case. (Dkt. 8).¹

II.
Factual Allegations

The EEOC claims the Defendant subjected Manuela Anchondo to a sexually hostile work environment by engaging in "... egregious sexual harassment of a verbal and physical nature, and to hazing, because of her gender." (Dkt. 1, p. 2, ¶7). Further, the EEOC alleges the Defendant committed these acts intentionally and with malice or reckless indifference to the federally protected rights of Ms. Anchondo. For this knowing conduct, the EEOC seeks punitive damages. (Dkt. 1, p. 4, sec. E).

III.
Discovery In Dispute

Presently at issue are two discovery requests seeking to learn the Defendant's net worth: Interrogatory No. 2 and Request for Production No. 2. In brief, the EEOC relies on the general principle that the net worth of a defendant is relevant when punitive damages have been properly pled. (Pl's. Motion to Compel, Dkt. 15, p. 2). The Defendant, on the other hand, asserts that since Title 42 U.S.C. §1981a "caps" noncompensatory and punitive damages in this case to \$50,000, the Defendant's net worth is irrelevant. (Def's. Response to Motion to Compel, Dkt. 19, p. 3). Contrary to the sentiment expressed during the hearing on the motion, the Court now believes this issue is neither novel nor unique. A number of courts have faced this question (more than a few involving the EEOC). Although there is some room for debate, the weight of authority is heavily on the side of disclosure.

¹Ms. Anchondo is not a participant in the discovery dispute made the basis of this Order.

IV.
Discussion

The purpose of discovery is to permit the parties "... to develop fully and crystalize concise factual issues for trial." **Burns v. Thiokol Chemical Corp.**, 483 F.2d 300, 304 (5th Cir. 1973). To accomplish this purpose, courts are encouraged to apply a liberal construction of "relevance". **Oppenheimer Fund, Inc. v. Sanders**, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389 (1978); **Wyatt v. Kaplan**, 686 F.2d 276, 284 (5th Cir. 1982). That is, discovery is permitted on any matter that bears, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case. **Oppenheimer Fund, Inc. v. Sanders**, 437 U.S. at 351, 98 S.Ct. at 2389, citing **Hickman v. Taylor**, 329 U.S. 495, 501, 67 S.Ct. 385, 388 (1947). However, consistent with the notice-pleading system, discovery is not limited to issues raised in the pleadings because it is the purpose of discovery to foster the definition and clarification of the issues. **Id.**, citing **Hickman v. Taylor**, 329 U.S. 495, 501, 67 S.Ct. 385, 388 (1947). Moreover, the party opposing discovery has the burden of proving lack of relevance. **McLeod, Alexander, Powel & Apfell, P.C. v. Quarles**, 894 F.2d 1482, 1485 (5th Cir. 1990).

With respect to a defendant's financial information, the traditional rule is that net worth is relevant when punitive damages are recoverable. **See, e.g., City of Newport v. Facts Concerts, Inc.**, 453 U.S. 247, 270, 101 S.Ct. 2748, 2761 (1981). More specifically with regard to punitive damages in a Title VII employment lawsuit initiated by the EEOC, several courts have held that net worth is relevant and subject to disclosure. **E. E. O. C. v. Staffing Network, L.L.C.**, 2002 WL 31473840, at *3-4 (N.D. Ill. 2002) (defendant's quarterly and annual financial statements and federal income tax returns were relevant to

the issue of punitive damages notwithstanding the cap of § 1981a); **E. E. O. C. v. Ian Schragger Hotels, Inc.**, 2000 WL 307470, at *4(C.D.Cal. 2000) (documents reflecting defendant's net worth are relevant where punitive damages are available); **E. E. O. C. v. Klockner H & K Machines, Inc.**, 168 F.R.D. 233, 235-36 (E.D. Wisc. 1996) (permitted discovery of net worth over defendant's objection that general rule of relevancy is inapplicable due to the cap found in § 1981a).

There are a number of other courts that have held net worth to be relevant in Title VII employment discrimination lawsuits where punitive damages are sought by the plaintiff. **Horizon Holdings, L.L.C., et al. v. Genmar Holdings, Inc., et al.**, 209 F.R.D. 208, 215-16 (D.Kan. 2002); **Clark v. Commonwealth of Pennsylvania**, 1994 WL 396478, at *2-3 (E.D. Pa., 1994), **modified on other grounds**, 1994 WL 406575 (E.D. Pa. 1994); **Lee v. Junior College District**, 1995 WL 363428, *1-2 (E.D. Missouri, 1994).²

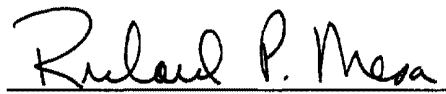
Defendant objects to Interrogatory No. 2 alleging that it seeks irrelevant information. The EEOC in the instant case has sued for punitive damages. The parties agree there is a \$50,000 limit on the nonpecuniary and punitive damages that can be assessed against the Defendant. This limitation notwithstanding, the Court finds, based on the case law set forth above, that Defendant's net worth is relevant. Moreover, the documents sought in Request for Production No. 2 are relevant and should be produced. **Cruce v.**

²There is a minority opinion which holds that net worth information is irrelevant in computing punitive damages. **Yund v. Covington Foods, Inc.**, 193 F.R.D. 582, 583-84 (S.D. Ind. 2000). The holding in **Yund** has been sufficiently called into question in a case involving almost identical facts as the instant case. **Equal Employment Opportunity Commission v. Staffing Network, L.L.C.**, 2002 WL 31473840, at *4 (N.D. Ill. 2002). Accordingly, the Court finds the reasoning of Magistrate Judge Nolan persuasive and concludes that **Yund** does not control the EEOC's discovery request. **Id.**

Schuchmann, 1993 WL 139222, at *1-2 (D. Kan. 1993).

Accordingly, it is ORDERED that Defendant respond to Interrogatory No. 2 and produce the documents requested in Request for Production No. 2 within ten days of the entry date of this order.

Signed and entered this 10TH day of MARCH, 2004.



Richard P. Mesa
United States Magistrate Judge