UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATED EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

MITZI B. SMITH, HOLLY DANIELS and BARBARA NEEL,

Plaintiffs/Intervenors

vs. Case No. 3:01-cv-216-J-21TEM

GEOLOGISTICS AMERICAS, INC.,

Defendant.

ORDER

This case is before the Court on Plaintiff Equal Employment Opportunity Commission's ("EEOC") Motion to Compel Defendant to Supplement Its Responses to Plaintiff's First Request for Production (Doc. #39, Motion to Compel), filed May 17, 2002. EEOC's First Request for Production ("RFP") was propounded on or about November 21, 2001. Defendant responded to the RFP on or about December 25, 2001. On or about February 25, 2002, Defendant supplemented its responses to EEOC with the production of a recently discovered internal memorandum written in April 2000 by Mr. James Barrineau, Defendant's local warehouse and branch manager during the time period involved in the instant complaint, to Mr. Ronald Caplinger, who was Mr. Barrineau's supervisor. The subject matter of the memorandum involves a plan for reduction in workforce due to revenue losses the first quarter of 2000. (*See* Doc. #39, Ex. A.) EEOC

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took the deposition of Mr. James Barrineau on February 27, 2002. Plaintiff EEOC now seeks to compel the production of Mr. Barrineau's computer hard drive on which the reduction in workforce memorandum was discovered. The Case Management and Scheduling Order (Doc. #17) specifies that discovery in this case should have been completed by May 17, 2002.

Defendant opposes Plaintiff's Motion to Compel on the basis that EEOC is attempting to circumvent the discovery deadline by misleading the Court with a request to "supplement" prior responses, when in fact the computer hard drive was not previously requested (Doc. #43). Thus, Defendant asserts that EEOC's Motion to Compel is untimely and EEOC has had a full and fair opportunity to conduct discovery regarding the document at issue. The Court is inclined to agree with Defendant on this matter.

Motions to compel discovery under Rule 37(a) are committed to the sound discretion of the trial court. *Commercial Union Insurance Co. v. Westrope*, 730 F.2d 729, 731 (11th Cir. 1984). The trial court's exercise of discretion regarding discovery orders will be sustained absent a finding of abuse of that discretion to the prejudice of a party. *Id.*

The overall purpose of discovery under the Federal Rules is to require the disclosure of all relevant information so that the ultimate resolution of disputed issues in any civil action may be based on a full and accurate understanding of the true facts, and therefore embody a fair and just result. *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 682 (1958). Discovery is intended to operate with minimal judicial supervision unless a dispute arises and one of the parties files a motion involving judicial intervention. "The rules require that discovery be accomplished voluntarily; that is, the parties should affirmatively disclose relevant information without the necessity of court orders compelling disclosure."

Bush Ranch v. E.I. DuPont Nemours and Co., 918 F. Supp. 1524, 1542 (M.D. Ga. 1995). However, the parties in the instant litigation have waged a procedural motions war throughout the pretrial proceedings and have repeatedly sought Court intervention on what should be routine discovery matters.

Rule 16(b) of the Federal Rules of Civil Procedure requires a showing of good cause to deviate from the deadlines set in the scheduling order. As previously noted, discovery in this case was scheduled for completion not later than May 17, 2002, the date of EEOC's eleventh hour Motion to Compel. In order to show good cause under Rule 16(b), the moving party must establish that scheduling deadlines could not be met despite a party's diligent efforts. *See, Thorn v. Blue Cross and Blue Shield of Florida, Inc.*, 192 F.R.D. 308, 309 (M.D. Fla. 2000) (internal citations omitted). The Court finds EEOC has not demonstrated good cause for the requested production. EEOC was aware of the subject memorandum on February 25, 2002. Mr. Barrineau was deposed concerning its contents on February 27, 2002. There was much discussion at that deposition concerning EEOC's desire for additional discovery concerning Mr. Barrineau's hard drive in general and the memorandum in issue specifically. (*See* Doc. #39, Ex. C, Transcript Excerpt of James Barrineau's Deposition.) Yet, EEOC chose not to bring its Motion to Compel on this matter until time for discovery was past. The Court does not find EEOC's delay in moving the Court constitutes "diligent efforts."

Even if the Court were to find good cause to allow this discovery beyond the scheduled deadline, it would not require the production Mr. Barrineau's hard drive because the request is overly broad and intrusive. Rule 26(b)(2) of the Federal Rules of Civil Procedure provides the court may limit discovery otherwise provided by the applicable

rules if :

> (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs the likely benefit . . . ."

FED. R. CIV. P. 26(b).

EEOC seeks to discover Mr. Barrineau's hard drive so as to "confirm the date on which [the disputed memorandum] was created" because it asserts the document is "wholly self-serving for the Defendant and, therefore, suspect in view of the timing and manner of production." (Doc. #39, pp. 3 & 7.) EEOC also claims its review of the hard drive is necessary "in order to assess whether or not there are other computerized files which are relevant and material to the instant action." (*Id.* at 8.) Defendant states it has produced all documents responsive to EEOC's request for production. (Doc. #43 at 4.) The Court will not presume bad faith on the part of one party based solely upon an unsubstantiated assertion from another party. In the instant action, the Court is confident any verifiable improprieties would be brought to the Court's attention by the "injured" party; the Court would deal sternly with any confirmed misconduct.

Plaintiff EEOC had ample time within which to bring this Motion to Compel before the discovery deadline. The Court also finds EEOC could have verified the authenticity of the document by more convenient, less intrusive and less burdensome means before filing its Motion to Compel. For example, the deposition of Mr. Ronald Caplinger was scheduled for May 2, 2002 (Doc. #32), but there is nothing in the record to suggest EEOC explored whether or not Mr. Caplinger ever received the reduction in workforce memo from Mr.

Barrineau. Nothing in the record suggests it was ever verified whether all employees named in the memo were in fact discharged in accordance with the proposed reduction in workforce plan. Further, there is no evidence in the record EEOC attempted to verify the revenue losses reported in the memorandum, the accuracy of which could either support or tend to negate the creation of the memo at the time and in the manner disclosed, as Defendant asserts. The computer files and documents stored on the subject hard drive very likely include confidential business and personal information which do not touch the subject matter of the instant action; disclosure of such information may be harmful to the involved parties. EEOC has not shown good cause to warrant such expansive discovery.

Accordingly, for the reasons discussed above, Plaintiff EEOC's Motion to Compel (Doc. #39) is hereby **DENIED**.

DONE AND ORDERED at Jacksonville, Florida this 16th day of July, 2002.

Thomas E. Morris
THOMAS E. MORRIS
United States Magistrate Judge

Copies to:
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Pro Se parties, if any

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