

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

CIVIL NO. 99-1104 JP/LFG

HEALTH CENTERS OF NORTHERN NEW MEXICO,

Defendant.

**ORDER ON PLAINTIFF'S MOTION TO COMPEL**

THIS MATTER is before the Court on Plaintiff's Motion to Compel Responses to Plaintiff EEOC's First Set of Non-Uniform Interrogatories and Plaintiff EEOC's First Request for Production of Documents [Doc. 40]. In accord with the district's motion-practice rule, the motion, response and reply were simultaneously filed.

Since the service of the motion, the parties resolved their dispute as to all matters excepting Requests for Production No. 5, 17, 18, 19 and 20.<sup>1</sup>

Plaintiff contends that financial information is relevant and discoverable by virtue of the fact that it has asserted a claim for punitive damages. In Request for Production No. 5, it seeks to compel Defendant to produce "balance sheets, assets and liability reports, income and expense

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<sup>1</sup> In its response to the motion, Defendant states that with regard to Request for Production No. 3, all items would be available at defense counsel's office for Plaintiff's review. In its reply, Plaintiff states, "With regard to Request for Production No. 3, the parties resolved all issues with the exception of one of the items requested." However, Plaintiff failed to apprise the Court which item is in dispute. In the absence of that information, the Court concludes that Defendant made available all items sought by Plaintiff, and, therefore, no further order regarding Request for Production No. 3 is necessary.

reports, profit and loss statements, audited financial statements and any other documents which state total gross revenues earned by Health Centers of Northern New Mexico for each year for the years January, 1996 to present.”

In Request for Production No. 17, it seeks production of all documents discussing or describing liquid assets that would be available to Defendant in the year 2000. In Request for Production No. 18, it seeks information concerning projected earnings from business activities in the year 2000. In Request for Production No. 19, it seeks all documents which discuss or describe the estimated resale value of its business as of January 1, 2000. Finally, in Request for Production No. 20, it seeks all documents which discuss Defendant’s relationship to and financial arrangements with any other business, partner, subsidiary or agent during the period January 1996 to present.

Defendant opposes producing financial information, stating that Plaintiff has failed to make a *prima facie* showing of any entitlement to punitive damages. Oral argument is not necessary. This matter may be resolved based on the parties’ submissions.

### **Discovery of Financial Information**

There is no dispute that evidence of a party’s net worth is relevant on the issue of punitive damages. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 270, 101 S. Ct. 2748, 2761 (1981); Ramsey v. Culpepper, 738 F.2d 1092, 1099 (10th Cir. 1984).

Defendant’s argument that financial information should not be provided until a *prima facie* showing has been made finds support in both federal and state rulings. See, e.g., Chenoweth v. Schaaf, 98 F.R.D. 587 (W.D. P. 1983); John Does I-VI v. Yogi, 110 F.R.D. 629 (D.D.C. 1986); Rupe v. Fourman, 532 F. Supp. 344 (S.D. Ohio 1981).

However, a majority of federal courts that have considered this questions permit pretrial discovery of a defendant's financial condition without requiring the plaintiff to first make a *prima facie* showing of any entitlement to punitive damages. Mid Continent Cabinetry, Inc. v. George Koch Sons, Inc., 130 F.R.D. 149 (D. Kan. 1990)(eleven cases collected in support of discovery.)

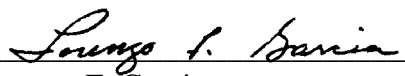
The Court agrees with the Mid Continent Cabinetry approach. However, the Court further believes that evidence of a party's net worth is the appropriate factor for the jury to consider in determining an amount of punitive damages. Woods-Drake v. Lundy, 667 F.2d 1198, 1203 n. 9 (5th Cir. 1982). A defendant's financial information or net worth from years back is not relevant; it is only defendant's present ability to respond in damages that is significant.

In Cincinnati Insurance Co. v. Clark, No. 91-0820, 1992 WL 34128, at \*2 (E.D. Pa. Feb. 19, 1992), the court was faced with a similar issue. A plaintiff sought a wide variety of financial information, including information from previous years. The court stated that the important inquiry concerned defendant's present net worth, not its financial dealings or net worth from years ago. In that case, the court required the defendant to produce financial information, but limited the request to information touching on the defendant's present net worth. Thus, information concerning balance sheets, assets and liabilities, income and expenses, profit and loss, financial statements, gross revenues, inventory sheets, land values, resale values for a period of years, and the like are not particularly helpful.

The Court determines that it is proper to order Defendant to produce a statement of its current net worth, and nothing more. Moreover, it is clear that the Court may properly limit discovery to protect a defendant from unfair disclosure and prevent a plaintiff from disseminating private information outside of this litigation. The Court believes that an order limiting the use of the

net worth statement is appropriate. Therefore, the information produced is to be used only for purposes of this litigation and for no other purpose. It may not be disseminated outside of this litigation process, and at the completion of the litigation, Plaintiff and Plaintiff's counsel are directed to return all financial information provided, together with all copies of the information. Should Plaintiff use a damage expert in the prosecution of the case and produce the Defendant's statement of present net worth to its expert, that expert, too, must comply with the terms of this order and agree to keep the information confidential, and return all copies of information provided at the completion of the litigation.

Accordingly, the Court grants in part and denies in part Plaintiff's motion to compel. The motion is granted insofar as Defendant is directed to produce a statement of its current net worth. No other financial information need be produced, and, accordingly, Plaintiff's motion for production of other financial information is denied.

  
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Lorenzo F. Garcia  
United States Magistrate Judge