IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Equal Employment Opportunity Commission,	C. A. No. 9:99-3263-08AJ
Plaintiff,	
-versus-	**ORDER**
Laboratory Corporation of America Holdings,	
Defendant,	
Christine Brooks, Stephanie Owens, and Jeneine Jenkins,	
Intervenors.	

This matter is before the court in accord with Rule 37 of the Federal Rules of Civil Procedure and Rule 37.01 of the Local Rules for the District of South Carolina, on the motion of the Intervenors Christine Brooks, Stephanie Owens, and Jeneine Jenkins (the Intervenors) for an order compelling the defendant Laboratory Corporation of America Holdings (LabCorp) to respond to the Intervenors' March 8, 2000, Interrogatories and to more fully respond to Request for Production request numbers 7 and 14.

The instant motion was filed on April 28, 2000; a reply was filed by LabCorp on May 15, 2000, including answers to the Interrogatories. Thus the motion to compel answers to Interrogatories is moot, and the motion to compel requests to admissions is ripe for review.

Request to Produce number 7 seeks production of:

> All documents concerning instances of sexual harassment, complaints and allegations thereof, verbal and written, and investigations of sexual harassment, including but not limited to the allegations in this case, from 1987 to present.

LabCorp responded as follows:

> LabCorp objects to this request on the grounds that is overly broad and would be unduly burdensome to answer and is not likely to lead to the discovery of admissible evidence. As written, this request would cover all employees throughout the United States from January 1, 1987 to the present. LabCorp has 496 locations nationwide, at which it employs 19,114 employees.
>
> LabCorp further objects to the extent that the request covers documents covered by the attorney client or work product privileges.
>
> Without waiving its objections, LabCorp states that it will produce any nonprivileged, responsive documents relating to the Beaufort, South Carolina location where the Intervenors worked that are dated between June 1, 1995 and the present, and which are in its possession, custody or control, which have not already been produced.

The Intervenors object to this response asserting that they are entitled to evidence of LabCorp's sexual harassment history from a broader prospective since it is a national company and speaks with one voice. In response and to further support the claim of burdensomeness, LabCorp submits the affidavit of Melissa Holmes, Senior EEO Consultant of its Human Resources Compliance Department, who avers that such documents could be at any one of four hundred and ninety-six local offices, forty-five human

resources branches, the corporate headquarters or at any of the respective sites storage facilities.

A district court has broad discretion in controlling discovery, Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988), and in determining whether discovery is burdensome and oppressive. Diamond State Ins. Co. v. Rebel Oil. Inc., 157 F.R.D. 691, 696 (D.Nev. 1994). The court may also fashion any order which justice requires to protect a party or person from undue burden, oppression, or expense. United States v. Columbia Broadcasting System, Inc., 666 F.2d 364, 369 (9th Cir. 1982) cert. denied, 457 U.S. 1118, 102 S.Ct. 2929, 73 L.Ed.2d 1329 (1982).

Here it appears that the burden of the proposed discovery outweighs its likely benefit. This action concerns discrete acts of sexual harassment by one harasser at one location, and the burden of the proposed discovery significantly outweighs the benefits, if any, which nationwide discovery would have in resolving the issues in this action. Further, considering the Intervenors' position that LabCorp speaks with one voice nationally, there is no reason to believe that the records produced from a wider search would be different from those produced so far. **To the extend that the Intervenors seek to compel the production of documents nationwide, the motion is denied.**

However, the answer of LabCorp does not comply with Rule 26(b)(5) of the Federal Rules of Civil Procedure which provides:

> When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

This LabCorp has not done. The proponent of a privilege has the burden of establishing a right to the protection, and here LabCorp has not presented even a *prima facie* showing of entitlement to the protection claimed. **Accordingly, to the extent that LabCorp has withheld any responsive documents relating to the Beaufort, South Carolina location where the Intervenors worked that are dated from June 1, 1995 to the present on a claim of privilege, the documents must be produced within 10 days from the date hereof.**

Request to Produce number 14 seeks production of the personnel files of Green, Alexander, Ladiser, Brooks, Owens, Jenkins, and Jeffries.

LabCorp responded as follows:

> LabCorp objects to producing the personnel files of Alexander, Ladiser and Jeffries on the grounds that they are neither alleged victims nor alleged harassers in this case: Their pay and benefit information and other confidential

> employee records are not likely to lead to the discovery of admissible evidence in this case. Without waiving its objections, LabCorp will agree to produce any materials contained within the personnel files of Alexander, Ladiset and Jeffries that pertain to any alleged sexual harassment in the Beaufort, South Carolina facility. LabCorp has already produced the personnel files of Brooks, Owens, Green and Jenkins.

The Intervenors object to this response asserting that they are entitled to the entire files because they may lead to the discovery of admissible evidence and because LabCorp should not be allowed to determine the issue of relevancy. Specifically, the Intervenors note that Ladiset was the Human Resources Manager to whom one of the Intervenors complained, Alexander was the Regional Manager to whom the complaint was reported, and Jeffries was the Human Resources Manager at the time the Intervenors were allegedly constructively discharged, and the personnel records may reflect disciplinary proceedings relevant to this action.

In response LabCorp reiterates it objections.

Rule 26(b)(1) of the Federal Rules of Civil Procedure provides:

> Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be

> admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Here LabCorp has not claimed that the personnel files are protected by any federal or state privilege, nor has it sought protection under Rule 26(c) of the Federal Rules of Civil Procedure claiming disclosure would result in any annoyance, embarrassment, oppression, or undue burden or expense. Indeed it has not even claimed that the personnel files are not relevant, but rather only that parts of the personnel files, to be determined by LabCorp, are not relevant. Such an arbitrary application of the standard is unwarranted.

The Fourth Circuit Court of Appeals has interpreted the language, "reasonably calculated to lead to the discovery of admissible evidence," liberally as a requirement merely that information sought be germane to the subject matter of the action. See, Ralston Purina Co. v. McFarland, 550 F.2d 967, 973 (4th Cir. 1977); see generally, 8 Wright & Miller, § 2008, p. 48 (1970). Here the Intervenors explanation of the relevance of the evidence, meager though it is, shows the records are germaine. This is not to say, however, that LabCorp may not move to protect confidential portions of the records for which there might be good cause to extend protection, but rather to indicate that LabCorp is not entitled to be the sole arbiter of the right to this protection or what is or is not relevant.

Accordingly, within 10 days of the date hereof, LabCorp shall produce the personnel files of Alexander, Ladisert and Jefferies witholding only so much of those records as to which it simultaneously files a Motion for a Protective Order under Rule 26(c) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

ROBERT S. CARR
UNITED STATES MAGISTRATE JUDGE

Charleston, South Carolina

May 18, 2000