

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LARRY R. ORKUS and	:	
JUDITH O. ORKUS, H/W	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	
	:	No. 00-CV-5835
MERCEDES-BENZ, U.S.A., LLC, et. al.,	:	
Defendants.	:	

MEMORANDUM

GREEN, S.J.

October , 2001

Presently before the Court is Plaintiff Larry Orkus' Motion for a Protective Order and the Response thereto. For the reasons set forth below, Plaintiff's Motion for a Protective Order will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

This product liability action stems from the deployment of the air-bag in Plaintiffs' Mercedes ML 320 model motor vehicle, which allegedly caused significant hearing loss in Plaintiff Larry Orkus' left ear. (Pl. Motion ¶ 1.) Plaintiff Judith O. Orkus claims the loss of society, services, companionship and consortium of her husband. (Pl. Cmplt. ¶ 44.)

In November 2000, Plaintiff filed the instant action in this Court, citing this court's Diversity Jurisdiction under 28 U.S.C.A. § 1332. (See Pl. Cmplt. ¶ 6.) Jurisdiction is proper because the Plaintiff is a resident of Pennsylvania and the Defendant is a Delaware corporation with headquarters in Michigan and the amount in controversy is greater than \$75,000. (See Pl. Cmplt. ¶ 6.)

Plaintiff Larry R. Orkus filed this motion for a protective order to prevent Defendant, Mercedes-Benz, U.S.A., LLC ("Mercedes"), from engaging in an allegedly intentional, "annoying, embarrassing and oppressive" investigation. (Pl. Motion ¶ 1.) Mercedes admits that

it retained a private investigator to call the employees of the Reading Eagle, Plaintiff's place of employment, in search of helpful evidence or testimony. (Def. Reply ¶ 1.) Upon learning of this investigation, Plaintiff's counsel requested, via telephone and letter, that Mercedes cease and desist the investigation. (See Pl. Motion ¶ 4; Pl. Motion Ex. A.) Mercedes complied with the request and temporarily stopped the investigation. (Pl. Motion ¶ 6.)

On or about August 10, 2001, the parties submitted to private mediation through ADR Options, Inc., with mediator Perry Bechtle. This mediation failed to resolve this matter. (Pl. Motion ¶ 8.) Shortly thereafter, Mercedes sent a letter to the Plaintiffs announcing its intention to resume its private investigation.

Plaintiff contends that Mercedes' investigation will interfere with the contract negotiations and relations of the Reading Eagle Company and has already interfered with the normal business operations at his place of employment. (See Pl. Motion ¶ 14, 18.) Mercedes claims that the Reading Eagle employees were willing participants in the phone conversations and that no coercion or intimidation was present. Further, Mercedes claims that the Plaintiff has produced no evidence to support the allegation that the telephone calls have interfered with the contractual relations of the company. (Def. Reply ¶ 18.)

II. Discussion

The Federal Rules of Civil Procedure provide for liberal discovery. See Pacitti v. Macy's, 193 F.3d 766, 777 (3d Cir. 1999); Fed.R.Civ.P.26(b)(1). Generally,

[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed.R.Civ.P. 26(b)(1). However, there are limitations on discovery of relevant, non-

privileged material. Under Fed. R. Civ. P. 26(c) a party may apply to the Court for "any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." This discretionary power serves to prohibit the disclosure of information when such disclosure would result in injury, harassment or abuse of the judicial process.

To obtain a protective order, the Third Circuit requires the party seeking the order to "show good cause by demonstrating a particular need for protection." See Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986). Good cause is established with a showing that disclosure will work a "clearly defined and serious injury to the party seeking closure." See Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984). The alleged injury must be shown with specificity because "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning," do not support a showing of "good cause." See Cipollone, 785 F.2d at 1121.

In considering whether "good cause" exists for a protective order, the district court must balance the requesting party's need for information against the injury that might result if uncontrolled disclosure is compelled. See Pansy v. Borough of Stroudsburg, 23 F.3d 772, 787 (1994). In Pansy, the Third Circuit identified a number of factors to be considered by the district court when it conducts its balancing test, including:

- (1) the privacy interests of the party seeking protection;
- (2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- (3) whether a party benefitting from the order of confidentiality is a private litigant or a public entity or official;
- (4) whether the case involves issues important to the public;
- (5) whether confidentiality is being sought over information important to public health and safety; and

- (6) whether the sharing of information among litigants would promote fairness and efficiency.

See Pansy, 23 F.3d at 787. In the present matter, Plaintiff argues that there is nothing that will come out of Mercedes' investigation that will outweigh the harm caused by the interference with the Reading Eagle's business operations. (See Pl. Motion ¶ 18.) However, without evidence of the specific harm caused to the business, Plaintiff's argument is unpersuasive. Mercedes correctly states that it has the right to contact potential witnesses. (Def. Reply ¶ 24.) These individuals have interacted with the Plaintiff on a daily basis and may have first hand knowledge relevant to this action.

Additionally, absent an intent to annoy or harass the Plaintiff, Mercedes' investigation is not prohibited by the Federal Rules of Civil Procedure. The Plaintiff shows no reason which would warrant a special expectation of privacy on this issue and cites no case law in support of their position. The information being sought may be connected to the legitimate purpose of preparing a thorough defense. Therefore, weighing the interests of fairness and efficiency in regard to the parties and the public, I conclude that the relevant factors favor denying the protective order.

An appropriate Order follows.

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ORDER

AND NOW, this day of September, 2001, upon consideration of the Plaintiff
Larry R. Orkus' Motion for a Protective Order and the Defendant Mercedes Benz, USA,
LLC's Response, **IT IS HEREBY ORDERED** that the Plaintiff's Motion is **DENIED**.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.