

an ongoing and continuous one. Movants seek to quash the subpoenas and/or for a protective order pursuant to Rules 45(c) and (d) and 26(c), respectively.

Determination on Protective Order

Fed. R. Civ. P. Rule 26(c)(1) requires a motion for protective order must include certification that Movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. Because of this failure, the Court cannot consider the Movants' requested relief for a protective order.

Determination on Motion to Quash

The Movants raise the work product doctrine in support of their Motion to Quash. This doctrine is not absolute but can be obtained upon a showing "that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means." *United States v. Nobles*, 422 U.S. 225, 238-239 (1975). While questioning the relevance to this lawsuit of any discovery from the Movants, the Court, in any event, determines that the "substantial equivalent" of the information sought from Movants can be obtained from other means, such as the discovery of Defendants and others who have knowledge of the events which underlie this Complaint.¹

¹ Movants also assert that the deliberative process privilege protects from disclosure the mental process by which official decisions of government are made, citing *United States v. Morgan*, 313 U.S. 409 (1941). Its applicability to this case is questionable, as the Sixth Circuit has not addressed whether this privilege applies to state actors or agencies. Assuming *arguendo* the privilege does apply to state actors and agencies, the Movants have not persuaded the Court at this time that the privilege applies here.

Similarly, the Motion to Quash is appropriate at this stage based on Rule 45(c)(3)(A)(iv), which states that a court must quash a subpoena that “subjects a person to undue burden.” Because the Magistrate Judge believes the information sought can be obtained through discovery of Defendants, deposing the non-party Movants does subject them to undue burden. Movants’ Motion to Quash is therefore GRANTED and the subpoenas are quashed.

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: **January 20, 2011**

ANY OBJECTIONS OR EXCEPTIONS TO THIS ORDER MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE ORDER. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.