

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

POWER & TELEPHONE SUPPLY)	
COMPANY, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 03-CV-2217 Ml/V
)	
SUNTRUST BANKS, INC., SUNTRUST)	
BANK, SUNTRUST BANK - ATLANTA,)	
SUNTRUST BANK - NASHVILLE,)	
N.A., SUNTRUST EQUITABLE)	
SECURITIES CORPORATION, and)	
SUNTRUST CAPITAL MARKETS, INC.,)	
)	
Defendants.)	

ORDER GRANTING IN PART AND DENYING IN PARTS PLAINTIFF'S MOTION TO
RECONVENE DEPOSITIONS, TO COMPEL PRODUCTION OF ADDITIONAL
TRAINING DOCUMENTS, AND FOR SANCTIONS

Before the court is the October 15, 2004 motion of the plaintiff, Power & Telephone Supply Company ("P&T"), requesting that the court enter an order compelling the defendants (hereinafter collectively referred to as "SunTrust") to 1) produce a 30(b)(6) representative concerning "Richardson" training materials; 2) produce Renee Drake for an additional three hours of deposition concerning extensive training she received during SunTrust's Corporate Finance I-III training programs from 1997 through 1999; 3) produce a witness concerning the purpose, background, development, and implementation of Corporate Finance I-

III; 4) permit plaintiff to take the deposition of Francois Mallette; 5) produce all training documents relating to the sale, marketing, and education of SunTrust personnel regarding financial advisors, corporate finance, the sale/marketing of bank products including derivatives, swaps, and caps, and the analysis of customer appropriateness for the years 1996 through 2002 found in the files of Bob Marcus, John Geigerich, Carol Yochem, Hank Miles, Allen Oakley, Sam Franklin, and Chris Kornatowski as well as the Study Guides associated with Corporate Finance I and III. P&T also requests that SunTrust be sanctioned for obstruction of discovery in the form of expenses related to additional depositions and preparation of this motion. This motion was referred to the United States Magistrate Judge for determination. P&T's requests for a 30(b)6 representative concerning the "Richardson" materials and for the Study Guides have now been withdrawn. (Reply Mem. in Supp. of Pl.'s Mot. at 2.) For the following reasons, the motion is granted in part and denied in part as to the remaining requests.

As stated in previous orders, this litigation arises out of several contracts that P&T entered into with SunTrust Bank or its subsidiary between 1998 and 2000 - namely loan agreements for a \$75 million syndicated line of credit with a variable interest rate and two interest rate "SWAP agreements.". P&T has alleged various causes of actions against SunTrust including breach of fiduciary

duty, breach of contract, violation of the Tennessee Consumer Protection Act, breach of agency relationship, common law negligence, common law misrepresentation, common law suitability, and violation of the Bank Holding Act. By order dated December 27, 2004, United States District Judge Jon P. McCalla granted SunTrust's motion to dismiss P&T's claims of breach of contract, misrepresentation, violation of the Tennessee Consumer Protection Act, common law suitability, and tying in violation of the Bank Holding Act. The court denied SunTrust's motion to dismiss P&T's claims of negligence, breach of fiduciary duty and agency.

Rule 30 limits a party to ten depositions lasting no more than one day of seven hours as did the scheduling order in this case. To determine if additional depositions should be permitted, the court is to apply the "proportionality" considerations enunciated in Rule 26(b)(2). See 8A Wright & Miller, § 2164. According to Rule 26(b)(2), the number of depositions should not be extended if the court determines that (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 its likely benefit, taking into account the needs of the case, the amount in

controversy, the parties' resources, the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues. FED. R. CIV. P. 26(b)(2).

The court is satisfied that P&T's request for an additional three hours of deposition of Renee Drake is warranted under the considerations set forth in Rule 26(b)(2). On July 19, six months after the deposition of Drake, SunTrust produced 6000 additional pages of training materials which P&T claims were responsive to prior discovery requests. According to P&T, these additional documents revealed an extensive, multi-year training program on how to be a successful financial advisor. Included in these documents was Drake's personal file which contained a copy of "Corporate Finance II Study Guide." This Guide refers to relationship managers as "financial advisors." In her deposition, Drake denied that she ever acted as a financial advisor. P&T now contends that with the discovery of these new documents, it should have the opportunity to examine Drake on the discrepancy between her testimony and the training materials in her personal files that were produced after her deposition. The court agrees that P&T should be allowed an additional three hours to depose Drake regarding the documents that allegedly provide evidence that she was trained to be and was acting as a financial advisor.

P&T also requests the deposition of Francois Mallette

concerning the history and purpose of the SunTrust Corporate Finance training program. Mallette is a LEK Alcar employee who had the responsibility of compiling a portion of the training materials produced by SunTrust on July 19, 2004 and was also responsible for training SunTrust relationship managers in regard to the sale and marketing of "Swaps". P&T claims that Mallette had the primary responsibility of compiling the training information; thus, they should have the opportunity to depose him. SunTrust contends that this deposition is unnecessary because P&T's own expert witness, Dr. John Hund, performed SunTrust's training with Mallette, and, therefore, P&T should be able to obtain all relevant information from Hund.

While some of the information possessed by Mallette may be cumulative to the information provided by P&T's own expert, the court cannot say that it would be unreasonably duplicative. It is undisputed that Dr. Hund worked for LEK Alcar as an independent contractor and drafted a small portion of the training materials at issue, but Mallette had the primary responsibility for designing the program and creating the training materials. Given the likelihood that Mallette has considerably more insight in regard to SunTrust's training programs as compared to Hund, the court agrees that P&T should be allowed to depose Mallette, albeit at its own expense.

In connection with the deposition of Mallette, P&T also requests that it be allowed to depose the corporate representative who instructed Mallette to develop the Corporate Finance I, II, and III training programs in regard to the purpose, background, development, and implementation of the training program. SunTrust contends that its Training Program Manager, Elizabeth Buyarski, has already testified to both the development and the purpose behind the training courses. To confirm this contention, SunTrust offers portions of Buyarski's deposition that show that Buyarski indeed testified to the purpose and development of the training program.

Despite Buyarski's testimony, P&T requests the deposition of the executive who made the strategic decision to implement the training courses. P&T is not able to name that executive. The court therefore orders SunTrust to identify by name the executive who made the strategic decision to implement the training courses within ten (10) days from the date of this order. If this person is someone other than Elizabeth Buyarski, then P&T is allowed to depose that person on issues concerning the implementation of the training courses.

P&T also asks the court to compel discovery of training materials of several other SunTrust employees. P&T claims that the training of these individuals is relevant to the main issues in this case. SunTrust contends that it has provided P&T with the

complete library of Corporate Financing Training materials and that the materials that have been requested come from individuals, with the exception of Chris Kornatowski, who were not directly involved with the Swaps that are at issue in this case.

Rule 26 of the Federal Rules of Civil Procedure states that “[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party” Fed. R. Civ. P. 26(b)(1). Relevancy for discovery purposes is extremely broad. The information sought need not be admissible in court in order to be relevant. Rather, the relevancy burden is met if the party can show that the information sought “appears reasonably calculated to lead to the discovery of admissible evidence.” FED. R. CIV. P. 26(b)(1). Nevertheless, discovery does have “ultimate and necessary boundaries,” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)), and “it is well established that the scope of discovery is within the sound discretion of the trial court.” *Coleman v. American Red Cross*, 23 F.3d 1091, 1096 (6th Cir. 1994) (quoting *United States v. Guy*, 978 F.2d 934, 938 (6th Cir. 1992)).

Here, P&T does not demonstrate how these additional training documents are relevant to its case. They merely state that they are relevant. According to SunTrust, the persons whose personal

training files have been requested had no connection with the Swaps at issue in this case, aside from Chris Kornatowksi. Accordingly, the motion to compel the personal training materials of Bob Marcus, John Geigerich, Carol Yochem, Hank Miles, Allen Oakley, and Sam Franklin is denied. It appears to the court, however, that the training files of Chris Kornatowski are relevant as he had direct involvement with the Swaps at issue; therefore, his training materials must be produced within ten (10) days from the date of this order.

Finally, P&T seeks monetary sanctions against SunTrust pursuant to Rules 37(d) and 37(a)(4)(A) for incomplete and evasive discovery responses in the form of expenses associated with the preparation of this motion to compel and the additional depositions. Sanctions are denied in regard to the preparation of the motion to compel as the court because the motion was granted in party only. Sanctions in the form of expenses for additional depositions which have resulted from alleged evasive discovery are also denied. As SunTrust alluded to in its response, P&T deposed Renee Drake for the full seven hours permitted before any production of training materials was due in response to P&T's specific document request for training materials. Although SunTrust's allegedly late production of training materials has led to the court granting an additional three hours of deposition of

Drake, P&T should have known that additional depositions of Drake might be necessary after the production of training materials, yet they used all its permitted time deposing Drake before discovery was due. Finally, in regard to the deposition of Francois Mallette and the unidentified corporate representative, the motion for sanctions is denied. Following the same reasoning set forth in the previous paragraph, P&T chose to depose its ten witnesses prior to the production of the training materials. P&T had the option of delaying its depositions until discovery was complete, yet it chose to proceed. SunTrust should not have to bear the expense of P&T's additional depositions.

Accordingly, the motion to reconvene depositions of Renee Drake is granted; the motion for additional depositions of Francois Mallette and an unknown executive who will presumably be identified within ten (10) days of this order is granted; and the motion to compel discovery of personal training files of certain named SunTrust employees is denied. The additional depositions shall be scheduled at a mutually convenient date and time on or before Friday, January 14, 2004. Sanctions are denied.

IT IS SO ORDERED this 30th day of December, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE