

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

PATRICK R. DALKA and)
JASON SZYDLEK,)
)
Plaintiffs,)
)
vs.)
)
MAURICE C. SUBLETT, individually)
and as an employee or agent of)
TransCor America, Inc., and/or)
Correctional Corporation of)
America; TRANSCOR AMERICA, INC.,)
and CORRECTIONAL CORPORATION)
OF AMERICA d/b/a/ CCA)
)
Defendants.)

No. 01-2485V

ORDER DENYING PLAINTIFF DALKA'S MOTION TO COMPEL DISCOVERY
AND FOR SANCTIONS AGAINST DEFENDANT MAURICE SUBLETT

Before the court is the April 3, 2000 motion of the plaintiff Patrick R. Dalka to compel the defendant Maurice Sublett to provide more full and complete responses to Interrogatory No. 12 and Requests Nos. 4, 14, and 15 of the Plaintiff's First Set of Interrogatories and Requests for Production of Documents. Plaintiff Dalka maintains that Sublett's responses to these discovery requests were evasive and incomplete. Dalka also seeks sanctions against Sublett, in the nature of fees and expenses, for failure to serve complete responses to his discovery.

This lawsuit arises out of an auto accident on July 13, 2000.

On that date, the plaintiffs, both state prisoners, were being transported to correctional facilities by the defendant TransCor in a van driven by Sublett. Both plaintiffs allege that they were handcuffed and shackled, along with other prisoners, in the rear of the van while seated on long, narrow benches with no seat belts or other safety features. As a result of a rear-end collision by the van, the plaintiffs claim they were thrown about the van and seriously injured. They have sued TransCor, Sublett, and Correctional Corporation of America for negligence and for violation of their civil rights under 42 U.S.C. § 1983. They claim that in addition to being injured in the auto accident, they were deprived of three meals a day, adequate fluids, and restroom breaks during their transportation.

In general, Dalka contends that all objections interposed by Sublett to the discovery requests are waived as untimely because Sublett did not lodge his objections within the original thirty-day period provided under the rules prior to the date his answers were submitted. The court disagrees. Sublett timely sought and was granted two extensions of time to respond to Dalka's written discovery up to and including March 15, 2002. The extensions encompassed both answers and objections, and Sublett submitted written answers and objections on March 14, 2002. Thus, his objections are timely.

Interrogatory No. 12 asks Sublett to detail in narrative fashion his activities for the seven days preceding the automobile accident, including the total number of miles driven and all meal stops, rest stops, and overnight stays. Sublett responded with a half-page paragraph describing his activities, providing dates, times, and locations. He did not lodge any objections to the interrogatory. Dalka complains that Sublett's response is incomplete because it fails to break down the number of miles driven by each driver and fails to pinpoint the exact location of each meal stop and rest stop. Sublett submits that he answered the interrogatory to the best of his memory and that more detailed information would be maintained by TransCor or Anderson, the officer-in-charge.

After careful review of Interrogatory No. 12 and Sublett's answer, the court finds the answer to be directly responsive to the question and complete. Accordingly, Dalka's motion to compel is denied as to this interrogatory. Dalka's request for additional sanctions in the form of a special jury instruction in connection with this interrogatory is specifically denied.

Request No. 4 asks Sublett to produce police reports, traffic citations, and records obtained by him relating the incident which is the subject of the lawsuit. Sublett responded to the request for the most part, but he objected to the request as being

overbroad and irrelevant to this lawsuit to the extent it requested records pertaining to persons other than Dalka. Although Dalka acknowledges that settlement material and information itself would not be admissible, he insists nevertheless that medical records of the other occupants of the TransCor van and documents relating to settlement of other claims are relevant to liability, damages and prejudgment interest. Dalka argues that settlement information could lead to discovery of potential witnesses and also show bias for impeachment purposes.

Although the names, addresses, and phone numbers of the other occupants in the van are clearly relevant as persons with knowledge of facts related to the claims of the plaintiffs, the court fails to see how the medical records of the other occupants are relevant to prove the injuries to the plaintiffs. Likewise, the court fails to see how information concerning any settlement between the other occupants of the van and the defendants herein would be relevant to the liability of the defendants and the injuries suffered by the plaintiffs in this case. If, however, Sublett has acquired the names, addresses, and phone numbers of the other occupants of the van and has not yet provided them, he is instructed to do so. Otherwise, Dalka's motion to compel is denied as to this request.

Request No. 14 asks Sublett to produce his entire worker's compensation file, including all medical records, all documents

filed with the Department of Labor, and all statements. Sublett similarly objected to this request as being overbroad and not relevant to the issues in this lawsuit. Dalka insists that Sublett's worker's compensation file might contain information, among other things, about fault concerning maintenance of the van, whether Sublett was in the course and scope of his employment, and whether Sublett was drinking or under the influence of drugs.

TransCor has admitted in its answer that Sublett was acting in the course and scope of its employment and therefore it is not necessary to engage in discovery on this issue. In addition, there are no allegations in the complaint that Sublett was under the influence of any intoxicants at the time of the accident, and discovery is not "to be used to develop new claims or defenses not already pleaded." Fed. R. Civ. P. 26(b)(1), Advisory Committee Note to the 2000 Amendment. Dalka's other arguments are similarly unfounded. Accordingly, the motion to compel is denied as to this request.

Finally, Request No. 15 asks Sublett for copies of his driver's logs, receipts for fuel, food, and lodging, weigh station receipts and tickets, and repair and maintenance receipts. Sublett responded that he had none of these in his possession. He explained that Anderson would have had this information, that Anderson supposedly mailed the receipts to TransCor, and that

TransCor, after diligent search, has been unable to locate the records.

It appears from the record in this matter that Sublett does not have copies of the requested documents in his possession. The court cannot compel a party to produce that which does not exist. Accordingly, Dalka's motion to compel is denied as to this request as well.

Based on the foregoing, Dalka's motion to compel is denied in its entirety. Dalka is not entitled to an award of sanctions.

IT IS SO ORDERED April 30, 2002.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE