

Ohio Business Litigation Blog

A blog about Ohio business litigation and beyond.

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Wednesday, November 17, 2010

Eighth District Rules that Facts Supporting Affirmative Defenses are Discoverable as Long as Parties ask for "Letters, Memorandum, and Other Documents"

Scenario: Party A sues Party B alleging wrongful termination, pay discrimination, hostile work environment, unsafe work environment, and witness intimidation. Party B denies everything and asserts 27 Affirmative Defenses. Party A's lawyer is pissed. Party B is a bullshitter and playing games. They get into a "heated debate," call each other names, and make threats.

Finally, Party A files a motion to compel to get Party B to divulge the "exact factual defense[s]", of the 27, that Party B will actually prove in its case and to provide "specific reference to facts, exhibits, dates, witnesses, and transactions between parties." Party B objects and claims that the facts and materials underlying its affirmative defenses are protected under the work-product doctrine. The trial court tells Party B to put up or shut up and grants Party A's motion to compel. Party B appeals.

This is what happened in [Decuzzi v. City of Westlake, 2010 Ohio 5365, 2010 Ohio App. LEXIS 4518 \(8th Dist. Cuyahoga Co., November 4, 2010\)](#). And the 8th District Appellate Court, reversed.

The court found that the work-product doctrine applied and Party B did not have to produce any information. Under Ohio Rule of Civil Procedure 26(B)(3), (the work-product doctrine) documents and other informations prepared in anticipation of litigation or for trial by a party or its representative do not have to be produced, unless good cause is shown.



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The court found that Party A's request were too broadly worded. That its discovery requests asked Party B to divulge how it intended to defend its case and that this information was protectable work-product. The court surmised that it didn't want to "rewrite [Party A's] interrogatories for them", but suggested that a more "proper discovery requests ask for letters, memoranda, and other documents that contain facts that support the [Party B's] affirmative defenses." The court also scolded Party B stating that Party B knew "full well what type of information [was] sought and should not feign such sensitivity to opposing counsel's broad discovery."

This sounds like a scenario that happens all to often. This case provides a nice guide on what type of things its okay to request from opposing counsel to test a dubious affirmative defense, and what type of requests are over-broad.

Posted by Aaron Minc at 11:03 PM     

Labels: [Business Litigation Attorney](#), [Discovery Dispute](#), [Litigation](#), [Motion to Compel](#), [Ohio Business Litigation](#)

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Kathy Garolsky said...

Hello

Good Day, i have been exploring the internet right now trying to find a educational and informative and i found your blog and the infomation you share is very good i just wanted you to know that i really enjoyed you contents i'll be back soon for more

-Kathy

November 18, 2010 4:44 AM

Aaron Minc said...

 Thank you Kathy. I appreciate the compliment. Hopefully I can keep the quality content coming in the future.

November 18, 2010 9:44 AM

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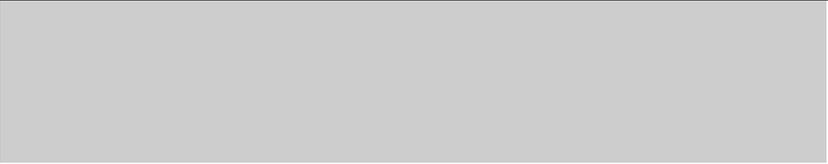
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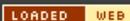
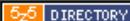
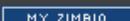
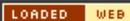
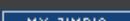
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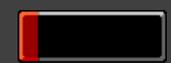
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