

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Peter Wenk, et al., :
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 Plaintiffs, :
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 v. : Case No. 2:12-cv-474
 :
 Edward O'Reilly, et al., : JUDGE ALGENON L. MARBLEY
 : Magistrate Judge Kemp
 Defendants. :

ORDER

In an Opinion and Order filed on March 20, 2014, the Court set forth some general principles concerning the discovery of expert witness marginal notations, and directed Defendants to submit the documents which were the subject of that Order to the Court, along with all draft and final reports from Defendants' expert witness, Dr. Ronald C. Hughes. The Order also gave Defendants the chance to submit any additional argument they wished to make.

On March 27, Defendants filed a notice of compliance with the Court's order, and also delivered, for *in camera* review, a revised privilege log and a number of documents. The documents do not appear to the Court to include either the final report from Dr. Hughes nor any close-to-final drafts, nor has the Court received any additional written arguments from Defendants. Given that the record on this issue was to be supplemented no later than March 27, 2014, the Court will proceed to make its determination about the discoverability of these documents on the basis of the current record.

Most of the submitted documents are either deposition pages or other documents not prepared by Dr. Hughes and on which he made notes. The notes are short, for the most part, and, while they may in some instances shed some light on his thought processes, none of them can be legitimately called draft reports.

There are also some emails, primarily about literature in the field, which also do not appear to be draft reports. The Court finds the bulk of these materials to be subject to discovery or disclosure.

The only exceptions to this ruling fall into two categories. The documents numbered 1, 468 and 469 do seem to be drafts of at least a portion of a report. Those need not be produced. Additionally, a number of the emails are either communications with counsel or show that certain other emails were forwarded to counsel. The ones which are direct communications with counsel need not be produced; the others may be redacted (if they have not already been produced in redacted form) to delete any evidence that they were forwarded to counsel.

Defendants shall provide the documents they produced to the Court, subject to the qualifications in the preceding paragraph, within seven days.

Any party may, within fourteen days after this Order is filed, file and serve on the opposing party a motion for reconsideration by a District Judge. 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P.; Eastern Division Order No. 14-01, pt. IV(C)(3)(a). The motion must specifically designate the order or part in question and the basis for any objection. Responses to objections are due fourteen days after objections are filed and replies by the objecting party are due seven days thereafter. The District Judge, upon consideration of the motion, shall set aside any part of this Order found to be clearly erroneous or contrary to law.

This order is in full force and effect even if a motion for reconsideration has been filed unless it is stayed by either the Magistrate Judge or District Judge. S.D. Ohio L.R. 72.4.

/s/ Terence P. Kemp

United States Magistrate Judge