

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

LEO “ALLEN” ZIEMBOVIC,)
)
 Plaintiff,)
)
 v.)
)
 THE GEO GROUP, INC. and)
 GEO CORRECTIONS &)
 DETENTION, LLC,)
)
 Defendants.)

Case No. CIV-15-1368-R

ORDER

Plaintiff has filed A Motion to Reopen the Deposition of Alex Londono at Defendant’s Expense and for Costs, Fees and Other Sanctions (Doc. No. 59), to which Defendants have filed a response. The Court has considered the parties’ submissions and orders as follows.

The Court first notes that in light of the history of counsel’s relationship in this case, the instant motion was not unexpected. The attorneys’ ability to work cooperatively appears stymied in this action, and the Court expects both sides will endeavor to work more cooperatively as this case moves toward trial. The Court turns now to the issues at hand.

The Court previously ordered Defendants to produce Mr. Alejandro Londono for deposition, denying their request for a protective order that would shield him from appearing. The Court informed the parties in a telephonic hearing — necessitated by Defendants’ late filing of the motion — that Mr. Londono would be required to appear, but that Defendants could invoke the privilege to any particular question, if appropriate. As a

result, the parties convened a deposition on March 7, 2017, and Defendants' counsel invoked the attorney-client privilege in response to certain inquiries. Plaintiff seeks a Court order requiring Mr. Londono to appear again for deposition and answer certain questions, asserting that the privilege is either inapplicable or waived. Defendants object and contend that Plaintiff fails to sufficiently identify those instances where he believes the privilege was improperly invoked and further that they were entitled to invoke the privilege in response to the questions propounded by Plaintiff's counsel.

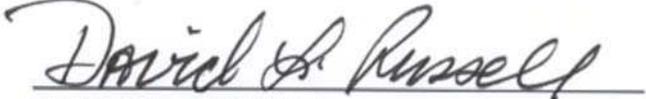
Mr. Londono previously served as in house counsel for the Defendants, and just prior to Plaintiff's termination he apparently reviewed the termination recommendation and indicated that he concurred in the decision. In support of Defendants' request to avoid the deposition entirely, Mr. Londono executed a Declaration, stating therein he did not recall signing the termination document related to Plaintiff's termination, but that doing so was within the scope of his work as an attorney. "My role in signing off on termination documents was exclusively as an attorney to ensure legal compliance and when I had discussions about termination decisions, the discussions were for purposes of providing legal advice." Doc. No. 56-1.¹ Accordingly, that certain communications would be privileged is readily apparent. However, because the inquiry necessary for application of the attorney-client privilege is fact-dependent, and because from the interaction between

¹ The content of the Declaration makes certain of Defendants' objections during the Deposition bewildering. Defendant's counsel invoked a privilege when Plaintiff's counsel inquired: "[a]s a corporate counsel, did your responsibilities include ensuring that terminations or terminating an employee, that employee wasn't terminated in violation of federal or state law?" Doc. No. 62-8. From the Court's perspective this inquiry does not seek information about a communication between a client and counsel nor does it seek a document or tangible thing protected by the work-product privilege. Rather, it merely inquired about something Mr. Londono had previously disclosed, that he signed off on termination agreements to ensure legal compliance.

counsel for both parties and the witness at the deposition, the Court is unable to clearly discern what specific inquiries Plaintiff seeks so as to determine the contours of the privilege in this case. Accordingly, the Court hereby orders Plaintiff's counsel to submit to Defendants' counsel and the Court a list of questions for Mr. Londono, a deposition on written questions. Defense counsel shall file under seal Mr. Londono's responses thereto, and the Court will make an *in camera* review of those answers for a determination of whether Defendant is entitled to rely on its claim of privilege. The Court will then order disclosure by Defendants to Plaintiff, as it deems appropriate.

Plaintiff's written questions shall be served on Defendant's counsel within five days. Mr. Londono's responses thereto shall be filed under seal no later than April 17, 2017. Plaintiff's request that the Deposition be reconvened is hereby DENIED. His request for costs and fees is similarly DENIED.

IT IS SO ORDERED this 5th day of April 2017.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE