

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

YVONNE TAYLOR, <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 09-377
)	
v.)	Magistrate Judge Bissoon
)	
PITTSBURGH MERCY HEALTH)	
SYSTEM, INC., <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiffs' Motion (Doc. 221) to compel will be granted, to the extent described below.

Defendants represent that none of the documents listed in their privilege log are relevant to conditional certification. *See* Defs.' Opp'n Br. (Doc. 226) at 2-3 (privilege aside, these documents essentially were false "hits" identified through computer search of agreed-upon terms). The subject lines corresponding to the privilege log entries, to the extent that they have been provided, appear to support this conclusion. *See generally* Defs.' privilege log (filed as Ex. B under Doc. 223-1).

Under the circumstances, the Court questions whether Plaintiffs' challenges to Defendants' privilege log constitute the best use of the litigants', and the Court's, time and resources, commodities that already have been substantially taxed in this case. Nevertheless, a privilege log has been produced, and its contents are insufficient to permit meaningful review.

In the broadest sense, the Court is satisfied with Defense counsel's explanations regarding the log's handling of "families" of withheld documents. *See* Defs.' Opp'n Br. at 4-5. Counsel's explanations, however, do not account for the many "blank" fields scattered

throughout the privilege log. On page one of the log, for example, the entry for “Doc[.] ID” F967-E00214702, in “Family ID” F967-E00214699, contains a string of blank fields.

See Doc. 223-1 at pg. 4 of 53. It may be that Doc. ID F967-E00214702 is the second page of Doc. ID F967-E00214701 (the entry for which also contains blank fields), although this cannot be determined through the privilege log itself.

The privilege log is replete with entries containing blank fields. Although the reader may attempt to deduce why Defendants left certain fields blank, such efforts are bound by uncertainty. In other instances, there appears no explanation why the fields are blank, such as in the entry for Family/Doc. ID no. F967-E00208151, a single document of unspecified type and subject matter. *See* Doc. 223-1 at pg. 5 of 53.

The blank fields contained in Defendants’ privilege log are too numerous to recount, and, in order for the log to serve any purpose, it must be more complete. Accordingly, Plaintiffs’ Motion to Compel (**Doc. 221**) is **GRANTED** to the extent that Defendants shall produce an amended privilege log, on or before **May 25, 2011**.

In so ruling, the Court does not preclude the parties from reaching alternative agreements regarding the handling of the withheld documents and/or privilege log issues,¹ nor does it preclude Defendants from declining to produce any documents that are clearly non-responsive and/or irrelevant to the issues conditionally certified in the case. Regardless of how this matter

¹ For example, opposing counsel could discuss whether existing or new conventions may be adopted to better understand the contents and/or format of Defendants’ privilege log, as well as whether groups of non-responsive/irrelevant entries may be excluded from production irrespective of privilege. To the extent that any true privilege disputes exist, it would serve the interests of both the parties and the Court for counsel to narrow the scope of their disagreement.

unfolds, Plaintiffs may object to Defendants' amended privilege log and/or assertions of non-responsiveness/irrelevance after May 25, 2011, a date chosen to allow the parties to focus on more pressing discovery matters now at hand.

IT IS SO ORDERED.

April 12, 2011

s\Cathy Bissoon
Cathy Bissoon
United States Magistrate Judge

cc (via ECF email notification):

All Counsel of Record