

# *Meridian Trust Company v. Provident Life*

This case deals with discovery produced after a court order compelling discovery. Unfortunately, the documents provided are rife with redactions based on previously unasserted work product protection.

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MERIDIAN TRUST COMPANY, Guardian of the Property of Mehrukh Khan and Aalia Khan,  
Minors,

v.

PROVIDENT LIFE AND CASUALTY INSURANCE COMPANY.

Civ. No. 91-4504.

April 1, 1992.

Robert B. White, Jr., Rapp, White, Janssen & German, Ltd., Philadelphia, P , for plaintiff.  
Peter J. Hoffman, Robert L. Sachs, Jr., Mc Kissock & Hoffman, P.C., Philadelphia, P , for  
defendant.

## **MEMORANDUM ORDER**

POWERS, United States Magistrate Judge.

\*1 Plaintiff, Meridian Trust Company (“Meridian”), as guardian of the minor children-beneficiaries of Abdul Aziz Khan (the “insured”), instituted this action against defendant, Provident Life and Casualty Insurance Company (“Provident”) on July 15, 1991. On July 30, 1989, the insured was killed in a mid-air collision as one (1) of seven (7) passengers aboard his recently purchased Beechcraft A36 Bonanza aircraft. The dispute is based on Provident’s failure and refusal to pay to Meridian the accidental death benefit under a life insurance policy between

the insured and Provident. The thrust of Provident's argument is that the accidental death provision is not applicable in this case because, in contravention of the terms of the policy, the insured was operating the aircraft for training or testing purposes at the time of the collision. Plaintiff contends that the flight was recreational in nature and that Provident denied the claim in bad faith.

On October 21, 1991, plaintiff served defendant with a Request for Production of Documents (Set II) requesting the complete law file of the Law Department of Provident pertaining to the death of the insured. After receiving no response to the request, on January 21, 1992 plaintiff filed a motion to compel production of the requested documents. (Document No. 11). The motion was unopposed and on February 4, 1992 this Court granted the motion to compel, ordering Provident to produce copies of all the documents requested within twenty (20) days of the Order. (Document No. 21).

On March 31, 1992, this Court was informed via telephonic conference that the documents had been turned over to plaintiff, however, certain portions of two (2) letters written by Robert L. Sachs, Jr., as outside counsel, to J. Edward Nanney, Provident's in-house counsel, had been redacted. During the conference, Mr. Sachs informed the Court that after discussion with his client, he was advised to assert the work-product privilege as to these redacted portions of the letters.

It is well-established that the work-product doctrine contained in Federal Rule of Civil Procedure 26(b)(3) FN1 is a qualified privilege, *Hickman v. Taylor*, 329 U.S. 495, 512 (1947); *United States v. Nobles*, 422 U.S. 225, 237-39 (1975); *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 1978 WL 1333, \*5 (E.D.P 1978); *Carte Blanche PTE, Ltd. v. Diners Club International, Inc.*, 130 F.R.D. 28, 32 (S.D.N.Y.1990), and because it is only a qualified

privilege, it may be waived. *Nobles*, 422 U.S. at 239. In this case, defendant waived the work-product privilege by failing to make timely objections to plaintiff's request for production of the Law Department files. Fed.R.Civ.P. 34 provides, "The party upon whom the request is served shall serve a written response within 30 days after the service of the request." Failure to make timely objections constitutes a waiver of those objections even if they are based upon the work-product doctrine. *Weber v. Chateaugay Corporation*, 1990 WL 87310, \*4 (E.D.P 1990); *Klitsch v. General Motors Corp.*, 1990 WL 192037, \*1 (E.D.P 1990); *Krewson v. City of Quincy*, 120 F.R.D. 6, 7 (D.Mass.1988); *Perry v. Golub*, 74 F.R.D. 360, 363-64 (N.D.AI 1976); *Davis v. Romney*, 53 F.R.D. 247, 248 (E.D.P 1971).

\*2 In this case, Provident provided no response whatsoever to plaintiff's request within the thirty (30) days allowed under Fed.R.Civ.P. 34. Furthermore, Provident did not provide any opposition to plaintiff's motion to compel production of the requested documents. In addition to being given the opportunity to object to the document request as well as the motion to compel, Provident could have moved for a protective order pursuant to Fed.R.Civ.P. 26(c). Counsel failed to take any action to shield the information contained within its Law Department file until it improperly took the initiative to redact certain sections prior to turning the file over to plaintiff. The Court was not made aware of any objections until March 31, 1992 when Mr. Sachs orally articulated the work-product objection. Furthermore, an objection on the ground of privilege should be made in writing and not orally. *United States v. O'Neill*, 619 F.2d 222, 225-26 (3d Cir.1980).

Producing the file with redactions was not only an improper method of advancing its objections, but such action was actually in violation of this Court's February 4, 1992 Order. *Perry*, 74 F.R.D. at 364. Fed.R.Civ.P. 37(b) provides that "If a party ... fails to obey an order to

provide or permit discovery ... the court in which the action is pending may make such orders in regard to the failure as are just.” The imposition of sanctions at this time is inappropriate.

However, the decision to impose sanctions is within the discretion of the Court and sanctions will be imposed if Provident disregards this Order as well.

## **ORDER**

Now, this 1 day of April, 1992, upon consideration of the parties’ telephonic arguments, IT IS ORDERED that the defendant, Provident Life and Casualty Insurance Company, shall produce unredacted copies of the letters written by Mr. Robert L. Sachs, Jr. to J. Edward Nanney within ten (10) days of the date of this Order.

FN1. Fed.R.Civ.P. 26(b)(3) provides:

In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

E.D.P, 1992.

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Not Reported in F.Supp., 1992 WL 73094 (E.D.P)