

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ROBERT REBAUDO,	:	
Plaintiff,	:	
	:	
v.	:	Case No. 3:07 CV 396(DJS)
	:	
AT&T SERVICES Inc. and	:	
WILLIAM F. HENDERSON,	:	
PRESIDENT, COMMUNICATIONS	:	
WORKERS OF AMERICA	:	
LOCAL 1298	:	
Defendants.	:	

MEMORANDUM OF DECISION AND ORDER

The Plaintiff, Robert Rebaudo (“the Plaintiff”), brought this action alleging wrongful discharge, breach of implied contract, breach of the implied covenant of good faith and fair dealing, retaliation, negligent investigation, negligent infliction of emotional distress, defamation, and discrimination against the Defendants, AT&T Services Inc. (“AT&T”) and William F. Henderson, and also alleging negligent representation against the Defendant, Communications Workers of America Local 1298. Now pending before the court is AT&T’s motion for expedited reconsideration, sanctions, and order (“the motion for expedited reconsideration”), of the court’s protective order issued on December 7, 2007. **(Dkt. #s 45 and 49.) Whereas the court grants the request to reconsider its December 7, 2007 protective order, the relief sought in this motion is DENIED.**

I. BACKGROUND

On December 7, 2007, the Plaintiff filed a motion for protective order concerning the continued deposition and the disclosure of the Plaintiff’s medical records. In the first set of interrogatories and requests for production, dated June 29, 2007, AT&T asked that the Plaintiff

sign medical authorizations so that AT&T could obtain the Plaintiff's health care records. On November 12, 2007, AT&T deposed the Plaintiff, and the parties agreed to continue the deposition on December 7, 2007. On December 5, 2007, the Plaintiff requested copies of the medical records that AT&T had obtained from the health care providers in order to prepare for the deposition. AT&T refused to provide the Plaintiff with these copies. In response, the Plaintiff filed a motion for protective order (dkt. # 44) concerning the continued deposition and an order that AT&T disclose the Plaintiff's medical records.

In support of its motion for protective order, the Plaintiff showed that he had served a request for production ("request for documents") of "any and all documents containing any statement(s) or admissions(s) obtained from any person, including any party to this action, concerning the incidents alleged in his complaint or [the] Defendant's answer or defenses." The court granted in part and denied in part the motion for protective order. The order read: "The [P]laintiff's request for a protective order concerning the continued deposition and the disclosure of the [P]laintiff's medical records is GRANTED. The defendant shall disclose copies of all the medical records obtained through the authorizations provided by the [P]laintiff at least one week prior to the date of the [P]laintiff's continued deposition. The [P]laintiff's request for costs associated with the filing of this motion is DENIED." (Dkt. # 44.)

II. DISCUSSION

AT&T now asks the court to reconsider and vacate its December 7, 2007 protective order. Specifically, AT&T asks the court to, (1) reverse the December 7, 2007, grant of the Plaintiff's motion for protective order entitling the Plaintiff to receive copies of his medical records from AT&T; (2) require the Plaintiff to appear for a deposition to occur within thirty (30) days of this

order, on a date agreed upon by the parties; and (3) award AT&T with sanctions and costs associated with filing the motion for expedited reconsideration.

A. MOTION FOR RECONSIDERATION STANDARD

“A motion for reconsideration is committed to the sound discretion of the court.” Kregos v. Latest Line, Inc., 951 F. Supp. 24, 26 (D. Conn. 1996). In general, the three grounds justifying reconsideration are “an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice.” Virgin Atl. Airways, Ltd. v. Nat’l Mediation Bd., 956 F.2d 1245, 1255 (2d Cir. 1992) (internal quotation marks omitted). “The standard for granting [a motion for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked-matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). “Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court.” Range Rd. Music, Inc. v. Music Sales Corp., 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000). That is, “[a] motion for reconsideration may not be used to plug gaps in an original argument or to argue in the alternative once a decision has been made.” SPGGC, Inc. v. Blumenthal, 408 F. Supp. 2d 87, 91 (D. Conn. 2006) (internal quotation marks omitted). “It is also not appropriate to use a motion to reconsider solely to re-litigate an issue already decided.” Id. at 91-92.

B. APPLICATION OF THE MOTION FOR RECONSIDERATION STANDARD
TO AT&T'S MOTION FOR EXPEDITED RECONSIDERATION SEEKING A REVERSAL
OF THE DECEMBER 7, 2007 PROTECTIVE ORDER

AT&T's motion for expedited reconsideration fails to meet the standard required to reverse the December 7, 2007 protective order.¹ AT&T does not argue that there has been some intervening change of controlling law, or that new evidence has come to light. AT&T seems to argue that there is a need to correct a "clear error" or to prevent "manifest injustice" because the Plaintiff is not entitled to receive copies of his own medical records. AT&T's position is that this information constitute confidential, attorney-work product information of AT&T and therefore, the Plaintiff is not entitled to discover it. The court disagrees. Merely because AT&T obtained the medical records through a signed authorization of the Plaintiff does not mean that this information is now confidential. First, as AT&T notes in its memorandum, this medical information is the Plaintiff's information. Thus, it would be paradoxical to find that the Plaintiff's medical information is the privileged work of AT&T. Second, the Plaintiff's request for documents concerning the incidents of the lawsuit clearly encompasses these medical records. Third, given the large quantity of medical records that the Plaintiff has amassed, justice requires that the court allow the Plaintiff and his counsel to prepare themselves thoroughly, prior to the deposition. See Fed. R. Civ. P. 26 (c) ("Upon motion by a party . . . the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . ."). Accordingly, AT&T's motion for expedited reconsideration seeking a reversal of the December

¹ AT&T's attack on the December 7, 2007 protective order is not unlike Japan's attack on Pearl Harbor, Hawaii, sixty six years ago, both were unwarranted and doomed to fail.

7, 2007 protective order is **DENIED**.

C. AT&T'S MOTION FOR EXPEDITED RECONSIDERATION SEEKING AN ORDER THAT THE PLAINTIFF APPEAR FOR A DEPOSITION WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER, ON A DATE AGREED UPON BY THE PARTIES

Next, AT&T requests that the court issue an order for the Plaintiff to appear for a deposition within thirty (30) days of the date of this order. In the December 7, 2007 protective order the court directed AT&T to “disclose the medical records obtained through the authorizations provided by the [P]laintiff at least one week prior to the date of the [P]laintiff's continued deposition.” The court did not otherwise state a time element regarding this deposition. Experienced legal professionals should be able to communicate and establish deposition times pursuant to the scheduling order without the court's direction. Thus, AT&T's motion for expedited reconsideration seeking an order for a deposition is hereby **DENIED**.

D. AT&T'S MOTION FOR SANCTIONS AND COSTS ASSOCIATED WITH THE FILING OF THE MOTION FOR EXPEDITED RECONSIDERATION

Next, AT&T claims that even if the Plaintiff is entitled to discover these medical records, this is not a basis for the Plaintiff to fail to appear at the last minute for the deposition. Although the court does not dispute that, absent an order to the contrary, deponents must appear for scheduled depositions, this principle does not control the court's decision.

To begin with, the court notes that the decision to impose sanctions for failing to appear at a deposition is discretionary. See Fed. R. Civ. P. 37 (d). Under Rule 37 (d), “[i]f a party . . . fails (1) to appear before the officer who is to take the deposition after being served with a proper notice . . . the court in which the action is pending on motion *may make such orders in regard to the failure as are just . . .*” Id. (Emphasis added.) Further, Rule 37 (d) states that: “The failure

to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26 (c).” Id.

Notwithstanding the court’s discretion to decide sanctions, the Plaintiff’s failure to appear was reasonable under the circumstances. A thorough review of the record indicates that AT&T knew that the Plaintiff had issues with the deposition, that he would be filing a motion for protective order prior to the deposition, and further, that such a motion would require an expedited ruling. As noted above, the Plaintiff conferred with AT&T on December 5, 2007, two days prior to the scheduled deposition. In an email, the Plaintiff stated his request for the medical records. Rather than promptly responding to the request either through email or by telephone, AT&T waited until the next day to address the issue, denying the Plaintiff’s request. At 5:33 p.m. that evening, the Plaintiff’s attorney sent an email explaining that she would be filing a motion for protective order regarding the deposition scheduled to take place the next day. At 6:01 p.m., AT&T responded by saying that they planned on going forward with the deposition. The plaintiff reiterated that he would be filing the motion. At 7:22 p.m., the plaintiff faxed his motion to AT&T. AT&T did not respond to this motion. Upon receiving the plaintiff’s motion the next morning, the court immediately issued an order imposing the protective order and continuing the deposition.

Given this evidence, AT&T knew or should have known, at least two days before the deposition, that problems existed and that the Plaintiff would be filing a motion for protective order. Knowing this, AT&T could have taken a variety of proactive measures, the simplest being to postpone the deposition until the discovery issue could be resolved. Instead, no proactive

