

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

MAR 27 2013

TIM RHODES  
COURT CLERK

36

Oklahoma Department of Securities,  
*ex rel.* Irving L. Faught, Administrator,

Plaintiff,

v.

Case No. CJ-2012-6164

2001 Trinity Fund, L.L.C. and  
Robert Arrowood,

Defendants.

**DEFENDANT ROBERT ARROWOOD'S REPLY TO DEPARTMENT'S RESPONSE TO  
DEFENDANT'S MOTION TO COMPEL**

Defendant Robert Arrowood hereby submits his Reply to the Response of Plaintiff Oklahoma Department of Securities ("ODS") to his Motion to Compel certain crucial documents used by ODS in compiling the allegations in the Petition filed against him on September 28, 2012. Defendant Arrowood contends that the factual information he seeks is not protected by the work-product privilege as asserted by ODS. In support of this Reply, Defendant Arrowood shows the Court as follows:

As an initial matter, it should be emphasized that the parties are allowed to obtain discovery on any matter that is not privileged and is at least reasonably calculated to lead to the discovery of admissible evidence. The courts have held that the scope of discovery should be broadly and liberally construed to achieve full disclosure of all potentially relevant information. *Hickman v. Taylor*, 329 U.S. 495, 505, 67 S.Ct. 385, 91 L.Ed. 451 (1947)). "Mutual knowledge of all of the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession." *Id.* at

507. As a result, “the privilege limitation must be restricted to its narrowest bounds.” *Id.* at 505.

In its Response to The Motion to Compel, ODS claims that the requested factual information obtained from the witnesses interviewed by ODS in connection with the case against Mr. Arrowood is privileged attorney work-product, and thus protected from discovery by the Defendant. However, consistent with the Supreme Court’s dictates, the law is clear that while attorney opinion work-product may be protected from discovery, the underlying facts used in preparing those opinions are not. Attorney prepared documents may be discoverable if they contain “relevant and nonprivileged facts” and “production of those facts is essential to the preparation of one’s case.” *Hickman* at 512.

The work product doctrine protects from disclosure documents and tangible things prepared in anticipation of litigation by or for a party or by or for that party’s attorney acting for his client. The doctrine applies only to documents a party has assembled and *not to facts learned from those documents. Thus, the doctrine cannot be used as a shield against discovery of the facts that have been learned*, the identity of the persons who have learned such facts, or the existence or non-existence of documents, even though the documents themselves may not be subject to discovery.

*Henderson v. Holiday CVS, L.L.C.*, 269 F.R.D. 682, 688 (S.D.Fla. 2010) (emphasis added). *See also Resolution Trust Corp. v. Heiserman*, 151 F.R.D. 367, 373 (D. Colo. 1993) (stating that “Rule 26(b)(3) distinguishes between factual work-product and mental impressions. Factual work-product, unlike mental impressions, is discoverable upon a showing that (a) the party seeking discovery has substantial need for the materials in the preparation of his case; and (b) he is unable without undue hardship to obtain the substantial equivalent of the material by other means”); *Infosystems, Inc. v. Ceridian Corp.*, 197 F.R.D. 303, 307 (E.D. Mich. 2000) (holding that “[t]he defendant seeks no more than factual statements of non-party witnesses. It should not be frustrated in its ability to test the perception and credibility of these persons”); *National Union Fire Insurance v. Murray Sheet Metal*, 967 F.2d 980, 985 (4th Cir. 1992) (stating that “fairness

in the disposition of civil litigation is achieved when the parties have knowledge of the relevant facts....”).

Accordingly, to the extent ODS is asserting the work-product privilege with regard to any factual statements of the witnesses interviewed in preparing the case against Defendant Arrowood, its claim of privilege must be rejected by this Court. As ODS admits, even if the documents are deemed to be covered by the work-product privilege, this Court may still order the production of those documents upon a showing of substantial need. There can be no serious question that the evidence on which ODS based its Petition meets this standard. *See Resolution Trust* at 375 (stating that “[h]ere, it is beyond dispute that the defendants need the information requested. It contains the evidence upon which RTC bases its complaint,” including the factual deposition testimony supporting RTC’s claims).

The Petition filed by ODS accuses Mr. Arrowood of extremely egregious conduct with regard to his investors. As set forth in his Motion to Compel, the Administrator of ODS appeared in a news report on an Oklahoma City television station to castigate Mr. Arrowood, and went so far as to compare his business activities to those of Bernie Madoff. The report of the ODS filing against him has had a very serious impact on Mr. Arrowood’s ability to conduct his business operations, and has devastated both his personal and professional reputation. It is thus imperative that Mr. Arrowood be given immediate access to the factual information provided by the ODS witnesses in order to effectively and efficiently mount a defense to what he considers to be a wholly frivolous and unsubstantiated Petition. Under the circumstances of this case, Mr. Arrowood should not be required to use his own resources to do so, and further delay his defense of this action. *Id.* (holding that it would be wasteful for the defendants to attempt to replicate Resolution Trust’s investigation when the information sought was readily available to the entity).

In light of the foregoing, Defendant Robert Arrowood respectfully requests that this Court direct the Oklahoma Department of Securities to provide the witness statements, with attorney opinion work-product redacted, to Defendant Arrowood within ten days of this Court's Order.

Respectfully Submitted,



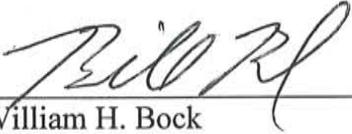
---

William H. Bock, OBA# 13888  
Michelle L. Greene, OBA# 17507  
WILLIAM H. BOCK, INC.  
6492 N. Santa Fe Ave., Suite A  
Oklahoma City, OK 73116  
Telephone: (405) 848-5400  
Facsimile: (405) 848-5479

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 27, 2013, a true and correct copy of the foregoing Defendant Robert Arrowood's Reply to Department's Response to Defendant's Motion to Compel was mailed by first-class mail, postage prepaid, to:

Shaun Mullins  
Gerri Kavanaugh  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, OK 73102

  
\_\_\_\_\_  
William H. Bock