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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

ASHLEY DIAMOND : 5:20-CV-453
Plaintiff : April 14, 2022
TIMOTHY WARD, ET AL. : Macon, Georgia
Defendants :

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE MARC T. TREADWELL,
UNITED STATES COURT DISTRICT JUDGE

APPEARANCES:

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1 April 14, 2022

2 4:00 p.m.

3 Macon, Georgia

4 P R O C E E D I N G S

5 COURTROOM DEPUTY: Good afternoon. This is Kim. I
6 do notice -- I think I noticed -- Now I don't see her. Ms.
7 Vail had connected and now she has dropped off. Maybe she'll
8 try again. I will watch for her to see.

9 I think the only person -- Darlene Fuller, our
10 normal Court reporter is not here. Tammy DiRocco is here and
11 Mr. McCoy you are the only one that wasn't here last month.
12 So now she knows who you are.

13 Okay. Judge Treadwell is going to start the
14 meeting.

15 THE COURT: Good afternoon everybody.

16 ATTORNEYS COLLECTIVELY: Good afternoon, Your Honor.

17 THE COURT: I reviewed your letters. I have looked
18 at the discovery responses. As far as the Plaintiff's issue,
19 does the Plaintiff have anything to add to that?

20 MS. LITTRELL: No, Your Honor. We're prepared to
21 answer any questions the Court may have.

22 THE COURT: Mr. Chalmers, do you have anything to
23 add?

24 MR. CHALMERS: I don't think so, Your Honor.

25 THE COURT: I did, as I said, review the discovery

1 responses. And while I understand that Mr. Chalmers has,
2 based upon what he's getting from his clients, apparently has
3 had some delay and his assurances, of when it's coming, go
4 back a little ways.

5 But when I look at the discovery request they are
6 clearly -- or that one discovery request -- it seeks
7 information that it doesn't -- I'm not surprised that it's not
8 something you can pull out of a database. It requires
9 assimilating, from many sources, a lot of information.

10 So I'm not going to upset Mr. Chalmers current
11 promise to produce that information within 30 days of the date
12 that he made that promise. I do expect Mr. Chalmers that the
13 information will be produced in full at that time.

14 Do you see a problem in that regard, Mr. Chalmers?

15 MR. CHALMERS: I don't. I don't see a problem with
16 that.

17 MS. LITTRELL: Your Honor, could I ask a point of
18 clarification?

19 THE COURT: Yes.

20 MS. LITTRELL: Just to make sure that the promise
21 was made or this aspirational goal was communicated, with
22 respect to the discovery documents that we're discussing now,
23 two days ago. But there was a reference to producing the
24 documents the Court, um, had directed Defendants to produce.
25 My understanding is that Mr. Chalmers is also going to produce

1 these documents on the same timeline and I just wanted to get
2 clarification that that's what we are talking about. All of
3 the outstanding from discovery both -- was directed by the
4 Court at the hearing and what we're talking about here today
5 that was originally, um, narrowed back in, um, January, will
6 be produced by 30-days from the status conference.

7 THE COURT: That's my understanding. Mr. Chalmers.

8 MR. CHALMERS: The cell phone data, which the Court
9 instructed 30-days from the hearing, yes and then, in
10 addition, Ms. Littrell, the information you wrote about in
11 your e-mail which was the discovery responsive material. Both
12 sets.

13 THE COURT: All right.

14 MS. LITRELL: Thank you.

15 THE COURT: Well, it sounds like we are now all on
16 the same page with regard to the issue raised by the
17 Plaintiff.

18 Let me turn to Mr. Chalmers' issues. I confess I
19 had to refresh my recollection with regard to Lachesha Smith.
20 I was frankly surprised to see that her deposition, as a PREA
21 coordinator -- whatever her title was at Jackson, not at
22 Coastal -- took seven hours.

23 Tell me a little bit about why that deposition took
24 seven hours.

25 MS. EZIE: Good afternoon, Your Honor, that might be

1 a question that I can address. Um, it's not my understanding
2 the deposition took seven hours.

3 In any event, there were significant technical
4 difficulties that made that deposition have a late start. We
5 adjourned for lunch. Mr. Chalmers had a recross or redirect.
6 So I do not believe that was a seven hour deposition.

7 In any event, I do believe that the concern
8 regarding the exhibit -- how we manage exhibits in depositions
9 was amicably resolved.

10 My concern was that Mr. Chalmers was requesting an
11 advanced binder of all potential deposition exhibits of the
12 deponent, to the extent these depositions are proceeding
13 virtually. Plaintiff's position is that would, in effect, be
14 seeking work product but if the request is narrower and simply
15 that witnesses be given an opportunity to review -- I'm sorry,
16 Mr. Chalmers rather, um, receive an electronic transmittal of
17 any exhibit prior to the questioning of the witnesses. That
18 is certainly something we can accommodate and, in deed, I did
19 accommodate it during the course of the deposition.

20 I did ask that Mr. Chalmers, rather than add to that
21 to the time that the deposition would proceed would not begin
22 to complain, as the day progressed, including again with the
23 tech issues that prevented us from even starting the
24 deposition before closer to about 11:00 a.m. Eastern, after
25 its notice time of 10:00 a.m. So I just want to clarify the

1 record on that point.

2 There is no outstanding dispute, that I'm aware of,
3 regarding the transmittal of, um, exhibits during the course
4 of the deposition to Mr. Chalmers before the questioning about
5 those exhibits began.

6 THE COURT: Mr. Chalmers?

7 MR. CHALMERS: Thank you, Your Honor. We certainly
8 did go seven hours plus. And I will say first we did --
9 Ms. Ezie is absolutely right, we had just a terrible time
10 getting started. It was noticed for 10:00 a.m. We didn't
11 really get started until 11:00. That's because they had two
12 shut downs of the power at Jackson, as a regular kind of
13 morning thing. So that was on us. We started very late. We
14 didn't start until 11.

15 But the deposition went until 6:30. That's
16 Ms. Ezie's questioning. I questioned my client for about 10
17 or maybe 15 minutes. I think it was closer to ten minutes.
18 And we got out of there at about 7:00 p.m.

19 So by my count -- and admittedly I'm not accounting
20 for breaks. We took a half hour lunch and we had some 10
21 minute breaks here and there, not a lot, two or three of them.
22 By my count that is a seven hour deposition for a witness at
23 Jackson, when Ms. Diamond has been at Coastal for almost all
24 of what's at issue in this case.

25 And a good part of the inquiry related to the Smith

1 incident, the Arneika Smith incident. I understand counsel
2 wants to question witnesses about how PREA works. So that's
3 fair game. But it was a long deposition, which is why I
4 pointed that as an example for my concern about the higher
5 level official depositions.

6 MS. LITTRELL: Your Honor, if I could be briefly
7 heard on this. Ms. Ezie conducted the deposition and I was a
8 participant. I attended.

9 And there are two points I think that are important.
10 One is to answer your question, "Why did it take so long?"
11 The deposition, I thought, was conducted, um, comprehensive
12 but a very efficient manner. And sort of methodically went
13 through her knowledge based of PREA, rules and roles and
14 procedures, but also her personal knowledge. She had almost
15 daily contact with Ms. Diamond. There are a number of
16 allegations that Ms. Diamond directly reported PREA incidents
17 to her that she did not then follow up on.

18 Their personal knowledge, um -- allegations that
19 Ms. Diamond handed her threatening letters, that she returned
20 them. That the basis for her failure to report or her
21 reticence in other respects was a result of Ms. Smith directly
22 saying, "Do you want to go into lockdown. That's what's going
23 to happen to you."

24 She was her boss when it came to being an orderly
25 and her orderly duties and had the ability to revoke those.

1 And I simply have to, um, take issue with the
2 characterization that there was a significant amount of time
3 that was spent questioning about the Arneika Smith, um,
4 incident. I would guess that may -- that took maybe 30 or 40
5 minutes. It was a very small stub of, you know, admittedly,
6 along with a very productive day.

7 I would ask the Court to reserve judgments on the
8 question of whether the deposition went too long until he saw
9 the transcript because I thought that it was masterfully, um,
10 conducted and gained, um, relevant information.

11 THE COURT: Well, I haven't seen the transcript so I
12 can't make any judgment. But just extrapolating from what I
13 do know that if it took six-and-a-half-hours to depose
14 Ms. Smith -- even at seven hours you're not going to have
15 enough time to depose witnesses who know a lot more and who
16 are much more involved.

17 I'm not going to put any time -- or I'm not going to
18 reduce the time limit now. Let's see how things go. My
19 antenna are up though, based upon that one deposition. But
20 I'm not going to grant Mr. Chalmers' request at this point
21 that I limit other depositions based upon what did or did not
22 happen at Ms. Smith's deposition.

23 How many more depositions are scheduled?

24 MS. LITTRELL: I believe there are 10, not including
25 the 30(b)6 deposition or depositions. We have encountered the

1 same difficulties with respect to identifying the 30(b)6
2 deponents and getting those scheduled. We served a category
3 of, um, information through which we sought 30(b)6
4 depositions, um, last year back in September.

5 We've been working -- we agreed to postpone those,
6 um, at the October 29th status conference and we've been
7 working with Mr. Chalmers and, sort of a similar fashion, have
8 been getting responses that he is working on it, that he will
9 get to it, that he's working on it and that I will hear from
10 him.

11 Because we are running out of time we had hoped to
12 sequence the 30(b)6 deposition early in the deposition process
13 so that we could ensure that our depositions of the Defendants
14 were as efficient as possible. But because, you know, there
15 are seven weeks left we have scheduled all of the depositions.
16 We had to go ahead and notice the 30(b)6 deposition. We did
17 that on April 8th. We still don't know the identities, but
18 we have one deposition scheduled for next Wednesday. Um, and
19 so there may be other, um, 30(b)6 deponents that will be
20 identified. We have a number -- I think, seven categories of
21 topics we seek to get information about. And so that is kind
22 of an outstanding question and also, kind of, goes to the
23 problem of limiting ourselves with respect to other
24 depositions.

25 MR. CHALMERS: Excuse me, Counsel --

1 THE COURT: All right.

2 MR. CHALMERS: -- sixteen categories of topics for
3 the 30(b)6, Your Honor.

4 And working with my client trying to identify who
5 would have the responsive information to be able to testify to
6 the topics, we have come up with -- I'm trying to solidify
7 this -- but I think it will be no less than 12 witnesses for
8 the 30(b)6 itself.

9 So we will have -- and that's simply because of the
10 range of topics. There are 16 categories and they are quite
11 extensive.

12 So we will have -- now, I presume, under the local
13 rules, that counsel will be required to take that 30(b)6
14 deposition in seven hours. So we have 12 witnesses to
15 present. We're going to -- a number of them will overlap with
16 fact witness depositions.

17 So, for example, Grace Atchison will be deposed as a
18 fact witness and she also will be a 30(b)6 deponent on a
19 category or one or more -- more than one category. Same with
20 Dr. Lewis, Brooks Benton and some others.

21 So there is some reason behind the difficulty in
22 marshaling the materials and the people.

23 THE COURT: Well, to answer your first question, as
24 I interpret it, yes, the seven-hour limitation applies to the
25 30(b)6 deposition and it's highly unlikely, at this point, I

1 will allow any deposition to go beyond seven hours.

2 MS. LITTRELL: Your Honor, it's our understanding
3 that each 30(b)6 deponent that is identified is a separate
4 seven hour time limitation.

5 THE COURT: Well, you may be right. I've never had
6 that understanding. You say you have 16 categories?

7 MS. LITTRELL: I didn't say that, Mr. Chalmers said
8 that.

9 I had 16 bullet points that we initially served on
10 November 9th. I have further categorized those into seven
11 categories of information.

12 MR. CHALMERS: They are numbered 1 through 16.

13 MR. MCCOY: Yes. And, Your Honor, we met and
14 conferred with Mr. Chalmers about those topics and made some
15 modifications but otherwise he's never objected to the number
16 of topics. So this is the first we're hearing any
17 objection -- if he is objecting to the topics.

18 THE COURT: He's not. He's only saying it's a seven
19 hour deposition.

20 MR. MCCOY: We have --

21 THE COURT: Which is what the rules say.

22 MS. LITTRELL: Your Honor, I would be happy to -- to
23 the extent that the Court, um, would be willing, um, I would
24 like an opportunity to brief -- if I'm wrong on my
25 understanding -- I've been reading up on the amendments to the

1 rules, um, and, um, my current understanding of 30(b)6 is that
2 these are separate seven hour. However many deponents are
3 identified for each topic that they each are seven hours.

4 But, you know, saying that, I also want to emphasize
5 that we don't want to keep any deponent, witness,
6 professional -- we understand that everyone has important
7 jobs -- and we don't intend to take any more time than is
8 absolutely necessary. But I do want to ensure that we have an
9 opportunity to research that rule and to brief the Court if it
10 would be helpful to do so.

11 THE COURT: Most certainly you can.

12 The next topic has been touched on briefly -- and I
13 understand there can be some technical limitations when you
14 are doing depositions virtually with regard to exhibits. But
15 I certainly understand a lawyer's concern that he needs or she
16 needs to see a document that a witness -- particularly when
17 it's his or her witness -- is being examined about the
18 document. Are you able to work that out?

19 MS. LITTRELL: Yes, Your Honor. We don't anticipate
20 there being any concerns with that. As I understand the
21 concern that Mr. Chalmers is identifying now that he didn't
22 have an opportunity to get the documents before the
23 questioning began. If that's the problem that you were
24 encountering it was -- that was a misunderstanding, I think,
25 on our part, um, in terms of the delay, um, and we'll ensure

1 that that doesn't happen in the future.

2 THE COURT: Okay.

3 MR. CHALMERS: And just as a practical matter I
4 didn't request, as Ms. Ezie indicated, a binder beforehand.
5 So I'm not asking for an advanced read of what they're going
6 to use.

7 And I didn't ask for the exhibits at the start of
8 the deposition. It's their choice not to provide them then.
9 Instead what counsel is doing -- it's their decision -- is to
10 provide the exhibit, hand it across the table essentially as
11 they are about to use it. It takes a little bit of time for
12 that exhibit to be transmitted electronically to me so that I
13 actually have it before they begin questioning.

14 So if they're not going to provide exhibits before
15 the deposition what I would like to be able to do is at least
16 be able to say, "Yes, I have this exhibit now. Okay, you can
17 go ahead and begin your questioning."

18 The second piece of that, of course, is the witness
19 needs to be able to see the document and read it, if she needs
20 to, before the questioning begins. But I understand that's a
21 separate matter.

22 So that's all I was asking and we did, in fact, have
23 difficulty with that. But if that is understandable and
24 acceptable to counsel then we shouldn't have an issue.

25 MS. LITTRELL: We do not have an issue. I can

1 assure you.

2 THE COURT: Well, these are challenges in the age of
3 virtual depositions. Although one solution of that challenge,
4 which lawyers are getting back to, is just showing up and
5 taking their depositions in person. I just throw that out.
6 Particularly when they are document intensive.

7 The third item that Mr. Chalmers raises is the cell
8 phone data. I have not put any restrictions on the use of
9 that data and I'm not going to at this point. I'll entertain
10 any motion.

11 Mr. Chalmers, you'll have to be guided by your
12 judgment, but that's really all I have on that matter.

13 The next item on Mr. Chalmers' list is extension of
14 discovery. What is the Plaintiff's position on that?

15 MS. LITTRELL: Your Honor, we are, um, anxious to
16 get to trial and for Ms. Diamond to have an opportunity to
17 present her case. Um, we're mindful of the capacity
18 constraints that Mr. Chalmers has, um, shared with us. And so
19 we would not oppose a 30-day extension but beyond that our
20 client will be unduly prejudiced.

21 THE COURT: Before I turn to you Mr. Chalmers, let
22 me ask as an aside, but somewhat relevant to this, is anything
23 going on in the Smith case?

24 MS. LITTRELL: I'm not sure who that was directed to
25 but I can update as far as my working knowledge is. I don't

1 have our deadlines but the discovery deadline has passed in
2 that case as has the deadlines to identify experts. Um, and
3 we are, um, moving towards the next stage, um, in the
4 litigation.

5 THE COURT: You say the discovery deadline has
6 passed?

7 MS. LITRELL: Yes, Your Honor.

8 THE COURT: I don't have that in front of me. Has
9 the dispositive motion deadline passed?

10 MS. EZIE: No, Your Honor, that is coming up on the
11 25th of this month.

12 THE COURT: Okay. Mr. Chalmers, as far as your case
13 is concerned, what extension do you think is necessary?

14 MR. CHALMERS: Your Honor, I would ask for 60 days
15 rather than 30. And just to give the Court an idea. We have
16 the 30(b)6 to finish. It should take only seven hours but I
17 understand we're going to be doing some briefing on that.
18 Even at seven hours I expect it will be broken up, perhaps
19 into different days, because we have a number of witnesses
20 with different availability.

21 We have -- I've been providing dates for depositions
22 and right now they are not all scheduled, but I have provided
23 dates as far out as May 10th, 12th, 17th, 19th and 31st, all
24 the way to the end of May with the depositions that Plaintiff
25 want to take.

1 I understand they want to get to trial. I would as
2 well, Your Honor. But they've litigated this case in a way
3 that is inconsistent with wanting to get quickly to a fact
4 finder. The discovery has been enormous. It's been very
5 expensive. Depositions, including the length of the
6 depositions, are very time-consuming.

7 So, you know, it's not entirely on the Defendants
8 that, um -- even though I'm requesting this extension of
9 time -- that they won't get quickly to a fact finder. Part of
10 that is based on the scope of the discovery they are seeking
11 before they get to trial.

12 So, I would -- and I note -- I have that -- my
13 section has several trials upcoming and I have one that I am
14 handling in mid June right now. And so I'm asking for that
15 time with the idea that I will be working as hard as I can on
16 this case but my time will be taken with other matters as
17 well.

18 MS. LITTRELL: Your Honor, if I may be briefly heard
19 with a reply to -- kind of -- there's a -- consistent what I
20 believe is a mischaracterization of power, discovery efforts
21 that I have not responded to to date because I don't want to
22 put the Court into a "he said she said".

23 But there is a major clarification that I think
24 would be helpful to the Court. And that is we have only
25 served two sets of discovery documents. One was May 20 --

1 since the preliminary injunction hearing. One was on May
2 28th, the other was on September 2nd. We have only
3 requested targeted and relevant discovery. And to the extent
4 Mr. Chalmers has raised objections to avoid motion practice,
5 we have further narrowed, by agreement, any discovery that we
6 have requested that we can narrow to ensure that we stay as
7 targeted and as relevant as we can.

8 We have only served 14 requests for production. We
9 have only served 17 interrogatories for 12 Defendants. The
10 discovery we have requested is directly relevant to all of the
11 issues. It's PREA docs, her medical records, institutional
12 file, discipline records, personnel files, et cetera.

13 There are no pending objections that they have
14 produced the amount of pages of documents in response to these
15 relevant and targeted and I would say very limited. We have
16 up to 120 requests for production under the Federal Rules, and
17 300 interrogatories. We have only served 17 and 14 and the
18 last one was in September, other than after this last hearing
19 we wanted to ensure that we got a comprehensive set of
20 documents in Mr. Chalmers' possession.

21 But beyond that, Your Honor, this notion that we are
22 just expanding the litigation, um, is, I think, inaccurate and
23 unfair.

24 THE COURT: Well, I understand that and Mr. Chalmers
25 will point, as he has many times, to the number of 40,000 to

1 make his point.

2 The point that might be the most salient is that
3 Mr. Chalmers is working this case by himself. That's not the
4 Plaintiff's fault. The scope of discovery necessarily is
5 broad and I accept what Ms. Littrell says, that in terms of
6 numerosity, that discovery request have not been significant,
7 even though the activity required to provide the requested
8 information might have been. But it could be that part of the
9 solution, Mr. Chalmers, is the Attorney General's office
10 figures out a way to get you some help. I can't tell them
11 what to do, but that seems to me to be a reasonable, partial
12 solution.

13 I will extend discovery 45 days. Mr. Chalmers, what
14 depositions are you going to take? Obviously I -- I accept
15 your explanation. I'm a little surprised that Ms. Diamond
16 hasn't been deposed yet. That is certainly not my call. But
17 what are you going to do?

18 MR. CHALMERS: I'm deposing Ms. Diamond and the two
19 Plaintiff's experts and perhaps a handful of the witnesses
20 Ms. Diamond has identified as persons with knowledge of
21 claimed assaults. And they are, for the most part, inmates or
22 former inmates.

23 So I don't anticipate -- I think when we identified
24 depositions back in October I had three to five, the two
25 experts, Ms. Diamond and perhaps one or two of the fact

1 witnesses.

2 But I may be willing -- I don't know if we're on
3 public -- but I may, in fact, depose Mr. Doe and the
4 individual that Ms. Diamond communicated with in the cell
5 phone communications.

6 And there may be -- I believe she identified,
7 perhaps, one or two other people who she contends has
8 information related to claimed assaults.

9 I think that's the extent of it, Your Honor. So
10 it's not a long list. And I'm hoping, as soon as I can get to
11 it, that I can get through it relatively quickly. But it's
12 getting to it and getting through these Defendant depositions
13 and 30(b)6 that I envision being a problem.

14 THE COURT: Very well. You have got 45 extra days
15 to get it done.

16 I will remind you again that in terms of trial, when
17 we can get to trial, will to some extent be determined by the
18 scope of dispositive motions. On some issues, at least, for
19 the reasons we have discussed in detail, the paramount issue
20 will be credibility, which obviously I'm not going to resolve
21 in a dispositive motion. Whereas there are some other claims
22 that don't turn as much, if they at all turn, on credibility.
23 I just throw that out as a consideration in timing for when we
24 can get the case to trial.

25 Anything else that the Plaintiffs had to discuss

1 today?

2 MS. LITTRELL: Your Honor, there is one other
3 discovery obstacle -- challenge that we're facing. Because I
4 did raise it in the e-mail, um, I am happy to, you know, draft
5 another e-mail. But it is an issue that I have raised with
6 Mr. Chalmers a number of times and feel as, you know, we could
7 have a fruitful discussion about. But I want to just defer to
8 you as to whether the Court would like to hear this other
9 fairly small issue that goes to outstanding discovery.

10 THE COURT: Well, if we can resolve it quickly let's
11 see.

12 MS. LITTRELL: Well, specifically, we have been --
13 there is an outstanding request for all PREA records and
14 documentation and also any video/audio -- relevant audio and
15 video. We understand that there are two recorded interviews
16 with Investigator Farlow. One was in October of last year and
17 another one was in February of this year.

18 As to the first recorded interview, our client --
19 well, our understanding is that there was, um, a significant
20 amount of information about her sexual abuse, um, and her
21 experience of sexual harassment in that interview.

22 Mr. Chalmers has, um, responded to our request for a
23 copy of that by saying that it is part of an ongoing
24 investigation. We don't know what investigation that is,
25 whether that's administrative or otherwise. And we haven't --

1 we don't know if that's resolved and when, if at all, we can
2 get that information.

3 The second interview, we understand, was conducted
4 with the same investigator and solely focused on PREA
5 allegations and allegations of sexual assault and abuse and,
6 in particular, focused on two allegations of PREA violations
7 in February alone.

8 We haven't gotten the PREA documentation as to those
9 February assaults and we haven't seen the recorded video. We
10 think we are entitled to those.

11 And, um, I also asked Mr. Chalmers -- e-mailed him a
12 few days after, um, one of those two assaults, which we
13 understand happened in front of a camera or where a camera
14 would have recorded it. We understand that that happened on
15 February 14th and on February 17th. I e-mailed asking, you
16 know, for him to preserve that and to produce it and we
17 haven't gotten that video, we haven't gotten the recorded
18 interviews and we don't have any information about February
19 assaults.

20 And, so, you know, we just need that information.
21 We think it's important for us to be able to properly present
22 our case, um, and that's a concern.

23 THE COURT: Mr. Chalmers?

24 MR. CHALMERS: I don't know -- I don't have
25 documentation from this year on PREA but I will certainly ask

1 my clients if there is any recording on PREA. I'm not aware
2 of a February incident. I recall an e-mail from you,
3 Ms. Littrell, that I responded to indicating I'll pass your
4 information immediately on to the facility and I did that.

5 But I don't have that information and I'm not aware
6 of a PREA having been filed. But I will inquire and see if
7 there is any PREA documentation.

8 There is -- just to be clear on a few things.
9 There's no outstanding production for audio or PREA unless
10 there is a PREA incident that has occurred, as Ms. Littrell is
11 describing, that I'm not aware of. But I will inquire of GDC
12 and of the facility if there are any additional PREA
13 documentation and anything that goes with that, including the
14 camera or audio interviews. That's the first piece. And the
15 short answer is if there is PREA documentation or files we
16 haven't produced I will make inquiry now and make that
17 production.

18 But the second thing is --

19 THE COURT: Now are you talking about the February
20 '21?

21 MR. CHALMERS: Yes.

22 THE COURT: What about the --

23 MR. CHALMERS: Well, I'm talking about what
24 Ms. Littrell described as some sort of incident in front of a
25 cell. If there was an incident that Ms. Diamond reported that

1 became a PREA I will go back and ask, "Was there a PREA
2 report? Is there anything that goes with it?" And I will
3 collect it and produce it.

4 THE COURT: What about the October incident?

5 MR. CHALMERS: So, this is where I think there has
6 been confusion and I have explained this more than one time
7 and I have been continually going back to GDC legal to see
8 what the status of this is. There is a difference between a
9 PREA report and the information collecting and gathering and
10 investigation that goes with that and an internal
11 investigation that is conducted by a different arm or
12 department at GDC.

13 And my understanding is that -- I don't even know
14 the name of the Investigator. Ms. Littrell, you mentioned
15 Farlow.

16 MS. LITRELL: Yes, sir.

17 MR. CHALMERS: Because your client was --

18 MS. LITRELL: In both of the -- in two separate
19 interviews where she talks about PREA.

20 MR. CHALMERS: Okay. No, it would not -- this is
21 where your client is misunderstanding. If your client was
22 interviewed by an Investigator, that Investigator it would not
23 have been part of a PREA interview, it would be part of an
24 internal investigation. The purpose of those is to determine
25 whether there is something to refer to the local district

1 attorney. And I believe that was an inquiry into what
2 Ms. Diamond described as the incidences on the flat top back
3 in -- her interview was back October, correct? So back in
4 September or October. That's not a PREA matter and GDC legal
5 and the facility do not have access to that. It is a GDC
6 internal investigation. I have been inquiring about that as
7 to whether it's completed, whether -- because when it is
8 completed then it will be released and made available and then
9 that can be produced. It's not completed as far as I know but
10 I will making inquiry again, as I have been continually.

11 MS. LITRELL: Um, just so -- for the record, um,
12 note that our client believes these interviews to be related
13 to her PREA allegation.

14 MR. CHALMERS: Right.

15 MS. LITRELL: So she is being interviewed by
16 someone that she understands to be GDC personnel and relaying
17 allegations of sexual assault and is presuming that those are
18 part of a PREA process. If that is a dead end for her in that
19 regard then we need to tell her that that information is not
20 going to lead to an investigation of the sexual assault
21 allegations.

22 MR. CHALMERS: No -- that is not a dead end. Your
23 client can and should report a PREA incident in the same way
24 that she would at any time.

25 But you will recall she wrote somewhere or you wrote

1 somewhere perhaps that the Investigator did not want to ask
2 her questions about other PREA incidents, right? The
3 Investigator was asking about a specific incident and the
4 reason for that is because it is part of an investigation that
5 that Investigator is charged with gathering data or
6 information about.

7 So the PREA process, there's no change, there's no
8 difference in the PREA process. Your client needs to use it
9 and report it and it will still separately be investigated at
10 the facility level. The facility people are still -- still
11 will do the PREA investigation that they otherwise would do
12 even if there is a referral for an internal investigation.

13 THE COURT: Let me cut through this. To me, at this
14 point, it doesn't make any difference whether it's a PREA
15 investigation or an investigation under some other name. If a
16 client or if a party has given a recorded statement concerning
17 an issue related to clients or the party's case, generally
18 that party is entitled to that statement and at the very least
19 they are entitled to know that the statement exists and the
20 reason why it's not produced.

21 So, Mr. Chalmers, you will disclose to the Plaintiff
22 any recorded statement taken by the Department of Ms. Diamond,
23 and if it hasn't been produced the reason why it's not being
24 produce and then we can go further.

25 That is usually something -- and this is a bit

1 different I know, but that usually is something that is out on
2 the table right at the beginning.

3 MR. CHALMERS: To be clear, it has been, Your Honor.
4 I did inform Ms. Littrell, a good long while ago in our
5 discussions, that there was an internal investigation and what
6 her client thought was a PREA interview was an internal
7 investigation that had not been released. I communicated in
8 written form by e-mail to that effect to Ms. Littrell a long
9 time ago.

10 So I'm clear on your instruction, are you directing
11 that I collect -- not withstanding whatever restriction there
12 is on the investigation -- that I collect the recording and
13 produce it or collect the information --

14 THE COURT: No. Not at this point. Although it
15 could come to that. I mean, it may be relevant to know why an
16 internal affairs investigation is continuing at this point. I
17 don't know.

18 But if you haven't disclosed to Plaintiff's counsel
19 the existence of any statement made by Ms. Diamond you should
20 do so. Not produce it at this point, I'm not saying that.
21 But they need to know about it.

22 My guess is, this is likely going to be an issue
23 before she's deposed. Because the last thing that the lawyer
24 wants is for her client to be deposed knowing that there are
25 statements out there that the lawyer hasn't seen.

1 We will cross that bridge when we come to it. And
2 they may already have this information. I don't know. But
3 I'm saying that if there is any question about -- I don't want
4 there to be any question that all statements made by
5 Ms. Diamond to department officials, all recorded statements,
6 have been -- the existence of those statements have been
7 disclosed.

8 MS. LITTRELL: Thank you, Your Honor. And, you
9 know, full candor, Mr. Chalmers has, as I stated, um,
10 responded that the October interview was the subject of an
11 ongoing investigation, but beyond that we don't have any
12 information. We don't know if she's being investigated, if
13 the third-party perpetrators are being investigated, if it's
14 GDC personnel who committed some -- (Audio lost)

15 THE COURT: We've lost you.

16 MR. MCCOY: Beth, we lost your audio.

17 THE COURT: And maybe she has lost ours too.

18 MR. MCCOY: I guess so, yeah. Maya, would you send
19 her an instant message or something.

20 MS. LITTRELL: I'm sorry.

21 MR. MCCOY: You're back.

22 MS. LITTRELL: Well, that was just some brilliance
23 that no one will ever hear and I won't be able to re-create.

24 MR. MCCOY: What were we talking about technology
25 issues before?

1 MS. LITTRELL: My apologies. But the point I was
2 trying to make was that we don't know any details of the
3 investigation and we think that's pertinent. And so
4 particularly the October, um, interview is part of, um, an
5 investigation, ongoing investigation, but we don't know
6 whether that's investigating Ms. Diamond, investigating
7 third-party perpetrators, or investigating GDC personnel or
8 others.

9 Um, and also just to clarify that there are two
10 interviews and we understand the second one, which was in
11 February, although it was with the same investigator so there
12 may be some other investigation or this may be part of it, but
13 it is a separate investigation in which all that was talked
14 about -- at least as far as we understand from our client --
15 is all that was talked about was PREA allegations and that
16 there are two from February, one on February 14th and one on
17 February 17th, one in her dorm and one in medical.

18 So I appreciate that we will be getting that
19 information but I didn't want to leave without clarifying if I
20 had muddled that somehow along the way.

21 MR. CHALMERS: Can I ask one point of clarification?
22 When you say February 14th and 17th, are you saying there
23 were interviews on those days or your client says there were
24 PREA incidents on those days?

25 MS. LITTRELL: My understanding is that those were

1 the dates in which there were PREA incidents.

2 MR. CHALMERS: And do you have a date -- I'll ask if
3 there is any recording. But do you have a date of an
4 interview from February?

5 MS. LITTRELL: I do not have that date.

6 THE COURT: All right. Anything else?

7 MS. EZIE: I will just add that Ms. Diamond made
8 another PREA report this week after unfortunately having
9 another abuse incident at the prison.

10 So I share the concern that Mr. Chalmers you are not
11 receiving reports from your client when our client is making
12 PREA reports in the facility. So I do hope that we'll hear
13 about that April incident as part of your next biweekly report
14 and that you will undertake to preserve all records and video.

15 MR. CHALMERS: Your Honor, we have produced -- just
16 as an update, we produced our first report. I e-mailed it to
17 Ms. Littrell on the 8th and we will continue to do that.

18 THE COURT: Okay, all right. Thank you all. Have a
19 good afternoon.

20 ATTORNEYS COLLECTIVELY: Thank you, Your Honor.

21

22 (Proceedings concluded at 4:47 p.m.)

23

END OF RECORD

24

25

1 CERTIFICATE OF OFFICIAL REPORTER

2
3 I, Tammy W. DiRocco, Federal Official Court Reporter,
4 in and for the United States District Court for the Middle
5 District of Georgia, do hereby certify that pursuant to
6 Section 753, Title 28, United States Code, that the foregoing
7 is a true and correct transcript of the stenographically
8 reported proceedings held in the above-entitled matter and
9 that the transcript page format is in conformance with the
10 regulations of the Judicial Conference of the United States.

11
12 Dated this 19th day of April, 2022

13
14 *Tammy W. DiRocco*

15
16 _____
17 Tammy W. DiRocco CCR, CVR
18 Federal Official Court Reporter
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