

Discovery Restrictions Review Problem

Transit Authority, Inc. (Transit Authority) operates a bus system in Big City. Last month, a Transit Authority bus collided with a passenger car driven by Tourist. The accident occurred when Tourist suddenly veered into the bus operator's lane at a major intersection. The bus operator was unable to stop the bus in time to avoid the collision, and Tourist was injured. Immediately after the accident occurred, the bus operator telephoned his supervisor to report the accident. Then, following Transit Authority's standard procedures, the bus operator completed an "Operator's Report of Accident" form. The completed form included the date, time, and place of the accident, the road conditions, the names of witnesses, a brief description of how the accident occurred, and a description of the personal injuries and property damage caused by the accident.

When a Transit Authority supervisor arrived twenty minutes after the accident occurred, she took a statement from the bus operator and recorded that statement on a "Supervisor's Investigative Report" form. Then she interviewed Tourist and recorded Tourist's statement on the "Supervisor's Investigative Report" form. The supervisor noted all witnesses' names, addresses, and telephone numbers in her report. She took photographs of the accident scene, including the position of each vehicle. Finally, she drew a diagram of the scene on the last page of the "Supervisor's Investigative Report" form.

Tourist has filed a personal injury action against Transit Authority in federal court, properly invoking the court's diversity jurisdiction. Tourist alleges that the bus operator, Transit Authority's employee, was driving negligently. She further alleges personal injury and property damage in a total amount exceeding \$200,000. Transit Authority has filed an answer denying the claim of negligence and asserting contributory negligence.

Tourist served two requests for production of documents on Transit Authority. One request was for "any and all accident reports, diagrams, photographs, and any other documents which relate in any way to the collision between the bus and the car." A second request was for the bus operator's "entire personnel file that is maintained by Transit Authority, including disciplinary actions, safety records, and driving records." Transit Authority has refused to produce the accident reports that the operator and the supervisor created on the grounds that the reports were "prepared in anticipation of litigation." In addition, Transit Authority refuses to produce the bus operator's personnel file because the information that it contains "is not relevant."

Tourist has made a motion to compel production of the accident reports and the bus operator's "entire personnel file."

Should Tourist's motion be granted in whole or in part? Explain.