

Not Reported in F.Supp.2d, 2010 WL 1956892 (N.D.Miss.)
(Cite as: **2010 WL 1956892 (N.D.Miss.)**)

Only the Westlaw citation is currently available.

**This decision was reviewed by West editorial staff
and not assigned editorial enhancements.**

United States District Court,
N.D. Mississippi,
Delta Division.
William L. DAWSON, Plaintiff
v.
JANTRAN, INC., in personam, and the M/V Leland
Speakes, in rem, Defendants.

Civil Action No. 2:09-CV-60-P-A.
May 13, 2010.

[Dennis M. O'Bryan](#), [Howard M. Cohen](#), O'Bryan
Baun CohenKuebler Karamanian, Birmingham, MI,
[Linton Cook Kilpatrick](#), [Martin A. Kilpatrick](#), Attor-
ney, Olive Branch, MS, for Plaintiff.

[Thomas Bradford Janoush](#), Westerfield & Janoush,
Cleveland, MS, for Defendants.

ORDER

[S. ALLAN ALEXANDER](#), United States Magistrate
Judge.

*1 The plaintiff seeks an order striking the defendants' response to his motion for maintenance and cure or precluding the defendants from offering any defenses for its failure to pay maintenance and cure. Docket # 59. In support of this motion, the plaintiff, William Dawson, asserts that the defendants should not be allowed to file an answer to his motion for maintenance and cure because they have frustrated his discovery efforts. Docket # 60, p. 13. Dawson argues that the defendants' 30(b)(6) witness was unable to respond to his questions regarding investigation of a maintenance and cure claim and that he is entitled to

this information. Docket # 60. Further, Dawson argues that he should be allowed to obtain the information gathered by the defendants' attorney, Tom Janoush. Docket # 60, p. 9.

The work product doctrine protects an attorney's thoughts, mental impressions, documents and other tangible and intangible items prepared in anticipation of litigation. [Hickman v. Taylor](#), 329 U.S. 495, 510-11, 67 S.Ct. 385, 393, 91 L.Ed. 451 (1947). See [Fed.R.Civ.P. 26\(b\)\(3\)](#). The doctrine shields documents prepared by or for an attorney in anticipation of litigation. [Dunn v. State Farm Fire & Cas. Co.](#), 927 F.2d 869, 875 (5th Cir.1991); See [Fed.R.Civ.P. 26\(b\)\(3\)](#). In the Fifth Circuit, the doctrine can apply where litigation is not imminent, as long as the primary motivating purpose behind the creation of the documents is to aid in possible future litigation. [In re Kaiser Aluminum and Chemical Co.](#), 214 F.3d 586, 593 (5th Cir.2000).

The court finds that the relief sought by plaintiff is excessive and unwarranted. Once litigation becomes imminent, any investigation is protected by the attorney work product doctrine. Dawson asserts that the defendants had constructive notice of a potential maintenance and cure claim when he left the boat complaining of chest pain. Docket # 70, p. 2. If that is true,^{FN1} then any investigation regarding such a claim is arguably protected from disclosure by the work product doctrine. Certainly any investigation conducted after this action was filed fell within the protections of the doctrine. The court will not punish the defendants for invoking a well-settled and important protection by striking their response or any available defenses.

^{FN1}. Whether Dawson notified the defendants of his illness is a question of fact that will not be resolved in this Order.

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The plaintiff further contends that the defendants cannot hide behind the attorney work product doctrine and that they should be punished for failing to produce a privilege log. Docket # 70, p. 7–9. Although this argument strikes the court as being without merit, [FN2](#) the court has not been fully briefed by either party on this issue and declines to rule, at this time, on whether the defendants had a duty to produce a privilege log as described in L.U.Civ.R.26(a)(1)(C).

[FN2](#). If this were the case, every case would require production of a privilege log, which would have to be supplemented regularly up until the day of trial. Such a requirement makes no logical sense in light of the underlying purposes of and philosophy behind the doctrine; it would appear to the court that it would become merely a “make-work” requirement with no real justification.

The plaintiff's motion to strike [docket # 59] is **DENIED**.

SO ORDERED.

N.D.Miss.,2010.
Dawson v. Jantran, Inc.
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