

Hon. Alberto Rivas, J.S.C.  
Middlesex County Superior Court  
56 Paterson Street  
PO Box 964  
New Brunswick, NJ 08903-0964

**FILED**  
JUNE 09, 2022  
HON. ALBERTO RIVAS, J.S.C.

EUGEN SCHENFELD.

Plaintiff,

v.

INTERNATIONAL BUSINESS  
MACHINES (IBM), JOHN KELLY,  
ZACHARY M. LEMNIOS, LARRY  
O'CONNELL, JOHN DOES 1-10 (said  
names being fictitious) and ABC  
CORPORATIONS 1-10 (said corporations  
being fictitious)

Defendants.

SUPERIOR COURT OF NEW JERSEY  
MIDDLESEX COUNTY  
CIVIL DIVISION

Docket No. MID-L-7334-18

CIVIL ACTION

**ORDER**

**THIS MATTER** having been opened before the Court by the Law Offices of Cahn & Parra, LLC attorneys for Plaintiff, Eugen Schenfeld, on a motion to compel discovery and amend interrogatories. The Court, having heard the parties for oral argument on April 1, 2022, issued an Order requiring that the subject emails be submitted to the Court so an *in-camera* review could be conducted in order to ascertain any relevancy they might have on the instant matter.

Generally, pursuant to Rule 4:10-2(a), parties may obtain discovery regarding any non-privileged matter that is relevant to the subject of a pending action or is reasonably calculated to lead to the discovery of admissible evidence. "Relevant evidence," although not defined directly in the discovery rules, is defined elsewhere as "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action." Payton v. NJ. Tpk. Auth., 148 N.J. 524, 525 (1997). The relevance standard refers not only to matters which would be admissible in evidence but also to information reasonably calculated to lead to admissible evidence respecting the cause of action or its defense. R. 4:10-2(a).

New Jersey's discovery rules are consistently construed under a liberal approach that favors broad pretrial discovery. Jenkins v. Rainer, 69 N.J. 50, 56 (1976). "Our court system has

long been committed to the view that essential justice is better achieved when there has been full disclosure so that the parties are conversant with all the available facts." Catalpa Investment Group, Inc. v. Zoning Bd. of Adjustment, 254 N.J. Super. 270, 273 (Law. Div. 1991).

The Court has had the opportunity to review Exhibits 10, 12, and 17, which consist of emails previously produced by Defendant IBM in other litigation that they were a party to. Exhibit 12 consists of documents that discussed IBM's offer to relocate employees whose work appeared to be shifting overseas to Austin, Texas. The Court finds that the subject matter contained within the emails that comprise Exhibit 12 bear no relevancy to these issues in this case. Therefore, Exhibit 12 will not be ordered to be turned over

Exhibit 17 discusses the implementation of Project Concord, which is a predominant subject in this case; however, the focus of these documents are instructions being handed down to IBM executives operating outside of the United States. The Court finds that the relevancy of these emails to the issues in the present case is minimal. Therefore, Exhibit 17 will not be ordered to be turned over.

Exhibit 10 contains emails that discuss the effort undertaken by IBM to increase the number of "millennial" employees. An email dated June 10, 2016 was sent by IBM employee Erich Clementi, a Senior Vice President of Sales and Distribution, Chairman Europe, which contained the term "dinobabies" that was used to describe older IBM employees. Furthermore, the push to increase the number of millennial employees and decrease the number of older employees was the subject over several emails involving Ginni Rometty, the predecessor Chief Executive Officer of IBM, and Diane Gherson, who was then Senior Vice President for Human Resources. The time-frame for these emails is the period between April 24, 2016 and July 30, 2107. John Kelly, who is a party to this litigation, was the recipient of some of these emails as evidenced by the April 28, 2016 email.

The emails contained within Exhibit 10 evidence an interest at the then CEO-level to change the profile of IBM employees so that it reflected a younger work force. The core issue presented in this case is whether Plaintiff was illegally separated from IBM due to his age. Therefore, the relevancy of these emails to this litigation is pronounced. And so, for good cause shown;

**IT IS ON THIS 9<sup>th</sup> DAY OF JUNE 2022, ORDERED AS FOLLOWS:**

**ORDERED** that Defendant IBM is to produce Exhibit 10 to Plaintiff within **ten (10)** **days** of the filing of this Order. There are two exceptions to the decision to turnover Exhibit 10. The emails dated July 27, 2017 and July 6, 2017, referencing Lead to Africa do not have to be turned over as they are not relevant to the present issues; and it is further

**ORDERED** that Defendant IBM does not have to turn over the emails contained within Exhibit 12 or Exhibit 17; and it is further

**ORDERED** that a copy of this Order shall be served upon all counsel upon its upload to eCourts. Pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not electronically served within seven (7) days of the date of this Order.



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**Hon. Alberto Rivas, J.S.C.**