

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Equal Employment Opportunity Commission, et al. v. Genesh, Inc.

EEOC v. Genesh · No. 24-2445-DDC-ADM · Decided February 13, 2026

SUMMARY

The United States District Court for the District of Kansas ruled on intervenor-plaintiff LZ’s motion to compel documents withheld or redacted based on attorney-client privilege and work-product protection. The court held that communications involving Genesh’s outside harassment investigator could be privileged, but that Genesh waived privilege over communications concerning its investigation of LZ’s harassment complaint by asserting the Faragher/ Ellerth affirmative defense. The court ordered production of unredacted documents corresponding to privilege log entries 2–4, 6–16, and 23–29 by February 20, 2026.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Angel D. Mitchell
JURISDICTION	United States District Court for the District of Kansas
DECIDED	February 13, 2026
DOCKET	24-2445-DDC-ADM
DISPOSITION	other
PROCEDURAL POSTURE	Intervenor-plaintiff LZ moved to compel nonparty Axis Point Coaching and Consulting and its employee Jana Stuart to produce documents withheld or redacted based on attorney-client privilege and work-product protection. The district court conducted an in camera review and granted the motion in part and denied it in part.
STANDARD OF REVIEW	The court reviewed the subpoenaed communications in camera and applied federal common-law attorney-client privilege principles and Federal Rule of Civil Procedure 26(b)(3) to work-product claims.
PRECEDENTIAL VALUE	unpublished

TOPICS

discovery dispute attorney client privilege work product doctrine sexual harassment title vii

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether communications between Genesh's counsel and Axis Point or Jana Stuart could fall within the attorney-client privilege despite Stuart's status as an outside consultant.
2. Whether counsel's selection of documents for Stuart to review in preparation for her deposition constituted protected work product.
3. Whether Genesh waived privilege by failing to assert privilege objections in response to LZ's written discovery.
4. Whether Genesh waived privilege by failing to file a motion to quash or motion for protective order within the subpoena objection period.
5. Whether Genesh waived attorney-client and work-product protection over communications concerning the investigation of LZ's sexual-harassment complaint by asserting the Faragher/ Ellerth affirmative defense.

HOLDINGS

1. An authorized consultant may act as a company's representative and the functional equivalent of the client when the consultant's communications with counsel are necessary to provide legal advice. Accordingly, Axis Point and Stuart's involvement did not, by itself, destroy the attorney-client privilege or constitute a waiver.
2. The emails listing a handful of basic pleadings and documents for Stuart to review before her deposition were not protected work product because the selection did not reveal counsel's mental processes.
3. Genesh did not waive privilege by failing to assert privilege objections over communications that Axis Point and Stuart produced in response to subpoenas.
4. Genesh did not waive privilege by failing to file a motion to quash or motion for protective order within the 14-day period referenced by Federal Rule of Civil Procedure 45(d)(2)(B).
5. By asserting the Faragher/ Ellerth affirmative defense and relying on Stuart's investigation to show that Genesh exercised reasonable care to prevent and promptly correct harassment, Genesh waived attorney-client and work-product protection over communications concerning the LZ investigation, investigative procedures applicable to that investigation, and Genesh's subsequent actions in response.

KEY QUOTATIONS

“Thus, when an authorized . . . consultant acts as a company’s representative in communications necessary to provide the” (6)

“Axis Point is Genesh—the client, not a third party—when communicating with counsel about the sexual-harassment allegations at issue in this lawsuit.” (6)

“When a party puts the reasonableness of an internal investigation at issue by asserting the Faragher/ Ellerth defense, that party waives any privilege that might otherwise apply to documents concerning the

investigation.” (11)

“Applying these principles, the court concludes that Genesh has waived attorney-client and work-product privilege over email communications with counsel about the specific investigation of LZ’s charges” (13)

FACTUAL BACKGROUND

Genesh operates more than 50 Burger King franchises and retained Axis Point as its outside agency to investigate employee-harassment complaints. Under the parties' service agreement, Axis Point acted as Genesh's representative and communicated investigation findings to Genesh's designated corporate counsel. After Genesh asserted the Faragher/Ellerth affirmative defense in response to LZ's sexual-harassment claims, LZ sought communications involving Axis Point and counsel concerning investigations, investigative procedures, and responses to LZ's complaint.

PROCEDURAL HISTORY

The EEOC sued Genesh, Inc. under Title VII and the Civil Rights Acts based on alleged sexual harassment at Genesh-owned Burger King restaurants. LZ intervened and issued subpoenas to Genesh's outside harassment-investigation consultant, Axis Point, and Jana Stuart. After discovery conferences addressing Genesh's privilege objections, the court permitted LZ to file the motion to compel and ordered production of specified documents without redactions.

DISPOSITION

other

CASES CITED

- In re Grand Jury Proc., 616 F.3d 1172, 1182-83, 1185 (10th Cir. 2010)
- New Jersey v. Sprint Corp., 258 F.R.D. 421, 425 (D. Kan. 2009)
- Upjohn Co. v. United States, 449 U.S. 383, 390 (1981)
- United States v. Merida, 828 F.3d 1203, 1209 (10th Cir. 2016)
- In re Qwest Commc’ns, Int’l, Inc., 450 F.3d 1179, 1185 (10th Cir. 2006)
- Frontier Ref., Inc. v. Gorman-Rupp Co., 136 F.3d 695, 702 n.10 (10th Cir. 1998)
- Republic of Ecuador v. For Issuance of a Subpoena Under 28 U.S.C. Sec. 1782(a), 75 F.3d 1179, 1185 (10th Cir. 1996)
- United States v. Nobles, 422 U.S. 225, 238 (1975)
- Resolution Trust Corp. v. Dabney, 73 F.3d 262, 266 (10th Cir. 1996)
- TP ST Acquisition, LLC v. Lindsey, No. 21-2020-JAR, 2022 WL 252001, at *10 (D. Kan. Jan. 26, 2022)
- Pipeline Prods., Inc. v. Madison Cos., No. 15-4890-KHV-ADM, 2019 WL 1900341, at *3 (D. Kan. Apr. 29, 2019)
- In re Syngenta AG MIR 162 Corn Litig., No. 14-md-2591-JWL, 2017 WL 2555834, at *6 (D. Kan. June 13, 2017)

- High Point SARL v. Sprint Nextel Corp., No. 09-2269-CM, 2012 WL 234024, at *13 (D. Kan. Jan. 25, 2012)
- Black v. Union Pac. R.R. Co., No. 23-1218-EFM-ADM, 2025 WL 2770681, at *7 (D. Kan. Sept. 29, 2025)
- Sporck v. Peil, 759 F.2d 312, 316 (3d Cir. 1985)
- In re Allen, 106 F.3d 582, 608 (4th Cir. 1997)
- In re San Juan Dupont Plaza Hotel Fire Litig., 859 F.2d 1007, 1018 (1st Cir. 1988)
- N. Nat. Gas Co. v. Approximately 9117.53 Acres in Pratt, Kingman, & Reno Ctys., Kan., 289 F.R.D. 644, 647 (D. Kan. 2013)
- Arizona Pub. Serv. Co. v. U.S. E.P.A., 562 F.3d 1116, 1130 (10th Cir. 2009)
- Pignanelli v. Pueblo Sch. Dist. No. 60, 540 F.3d 1213, 1217 (10th Cir. 2008)
- Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 764-65 (1998)
- Debord v. Mercy Health Sys. of Kan., Inc., 737 F.3d 642, 654 (10th Cir. 2013)
- Helm v. Kan., 656 F.3d 1277, 1289 (10th Cir. 2011)
- Culp v. Remington of Montrose, LLC, No. 18-cv-02213-MSK-GPG, 2020 WL 2316099, at *1-2 (D. Colo. May 11, 2020)
- Doe v. USD No. 237, No. 16-2801-JWL-TJJ, 2019 WL 1925107, at *5 (D. Kan. Apr. 30, 2019)
- Doe v. USD 237, No. 16-2801-JWL, 2019 WL 2612941, at *5-6 (D. Kan. June 26, 2019)
- Norris v. City & Cnty. of Denver, No. 1:20-cv-01226-DDD-SKC, 2022 WL 17340403, at *5 (D. Colo. Nov. 30, 2022)

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