

FILED IN CHAMBERS
U.S.D.C. - Rome

JUN 15 2012

JAMES N. HATTEN, Clerk
 Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GAIL HART,

Plaintiff,

v.

WAL-MART STORES, INC. d/b/a
WAL-MART,

Defendant.

CIVIL ACTION

NO. 1:11-CV-03519-RLV

O R D E R

This case comes before the court on a motion to quash subpoena issued to non-party ML Healthcare, LLC ("MLH"). (MLH's Mot. to Quash [Doc. No. 33].) The defendant issued a subpoena to MLH for the production of records by MLH. (Def.'s Subpoena for Produc. of Docs. [Doc. No. 28].) The defendant's subpoena for production of records included the following:

- (1) The complete contract between [MLH] and Spivey Station Surgery Center.
- (2) The complete contract between [MLH] and Peachtree Orthopaedic Physical Therapy.
- (3) The complete contract between [MLH] and Peachtree Orthopaedic Clinic.
- (4) All other correspondence between [MLH] and [anyone] pertaining to this matter.
- (5) All correspondence and emails between [MLH] and [the plaintiff's counsel] and/or the Borroughs Johnson Hopewell Coleman firm, regarding [MLH's] services in this case, and all other correspondence or emails between [MLH] and anyone else pertaining to this matter.
- (6) All billing records, engagement agreements or other documents regarding fees and expenses charged or paid by [MLH] for services in this matter.

(7) The exact amount of money [MLH has] paid to date in this matter to [medical providers] regarding any treatment of [the plaintiff].

(8) All tax forms (or tax returns) reflecting all income paid by [MLH], from 2002 through the current date

(9) The exact amount of money [MLH has] paid to date in this matter [to any medical provider] regarding any treatment of [the plaintiff].

(10) A listing of all cases in which any member of [MLH] group has worked in any capacity as an expert witness, expert consultant, treating physician of any party, or otherwise in any capacity for Genet M. Hopewell, and/or the Burroughs Johnson Hopewell Coleman firm from 2002 through this date

(Def.'s Subpoena for Produc. of Docs. Ex. A at 1-3.)

1. The Subpoenaed Information Is Not Barred for Being Irrelevant or by the "Collateral Source Rule"

First, MLH argues that the defendant's subpoena should be quashed because items 1 through 9 of the subpoena seek irrelevant and inadmissible information which is barred by the "collateral source rule." (MLH's Mot. to Quash at 2.) MLH points out that evidence of a third-party's payment of medical bills incurred by a plaintiff allegedly as a result of a tort is not admissible or relevant as to the issue of damages. (Id.) MLH also contends that the "collateral source rule" allows a plaintiff to seek recovery for damages caused by tortious conduct even if the plaintiff has been reimbursed by an insurer. (Id. at 3.)

In response, the defendant argues that Fed. R. Civ. P. 26(b)(1) provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party"

and that "relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." (Def.'s Resp. to MLH's Mot. to Quash at 4 [Doc. No. 36].) The defendant contends that one of the reasons for the request was to show potential "bias, credibility, and impeachment" of medical providers that might have a financial interest in MLH. (Id. at 6.) The defendant also contends that MLH's use of the "collateral source rule" is improper since MLH is not an insurer and the rule does not bar discovery seeking information regarding funding relationships with medical providers. (Def.'s Resp. to MLH's Mot. to Quash at 7-8).

The court agrees with the defendants that the subpoena should not be quashed because Fed. R. Civ. P. 26(b)(1) provides for broad rules of discovery of information that "need not be admissible at trial." The court also agrees that the defendant has asserted viable reasons for requesting the information in the subpoena and that the "collateral source rule" should not operate when the information requested is to be used for purposes of showing bias, credibility, or impeachment.

2. The Subpoenaed Information is Not
Barred for Seeking Trade Secrets

Second, MLH argues that the defendant's subpoena should be quashed because items 1-3 of the subpoena seek MLH's trade secrets.

(MLH's Mot. to Quash at 3.) MLH contends that their contracts with medical providers are trade secrets which they protect from disclosure to third parties. (MLH's Mot. to Quash at 4.) MLH points out that under Fed. R. Civ. P. 45(c)(4)(B)(i), "the issuing court may, on motion, quash or modify a subpoena if it requires disclosing a trade secret or other confidential research, development, or commercial information." (Id.)

In response, the defendant contends that MLH has failed to make any showing that their agreements with medical providers constitute "trade secrets" other than through conclusory allegations. (Def.'s Resp. to MLH's Mot. to Quash at 10.) The defendant also points out that even if MLH made a showing that the information sought was entitled to protection, a protective order limiting the dissemination of the requested information would be the proper remedy. (Id.)

The court agrees with the defendant that the subpoena should not be quashed because MLH has not made a showing of good cause for a protective order. Fed. R. Civ. P. 26(c)(1)(G) provides that the court may, for good cause, issue an order to protect including requiring that a trade secret not be revealed. However, the court agrees with the defendant that MLH has not made a showing that any of the information in items 1-3 of the subpoena was a trade secret.

3. MLH Does Not Show Over-Broadness or Harassment

Third, MLH argues that the defendant's subpoena should be quashed because it is overly broad and intended to harass or annoy MLH. (MLH's Mot. to Quash at 5.) MLH contends that items 1-3, 8, and 10 of the subpoena are not tailored to request documents relevant to this litigation. (Id.) MLH argues that since the contracts in items 1-3 are irrelevant to the litigation, the requested items 1-3 of the subpoena must be intended to harass them. (Id.) MLH further argues that the scope of items 8 and 10 going all the way back to 2002 is overly broad considering that this litigation began in 2011. (Id.) Additionally, MLH points out that Fed. R. Civ. P. 45(c)(3)(A)(iv) states a court "must quash or modify a subpoena that . . . subjects a person to undue burden." (Id.)

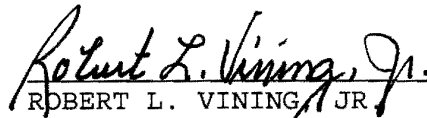
In response, the defendant contends that the alleged injury took place in 2009 and requesting documents seven years prior to the injury is not egregiously overbroad. (Def.'s Resp. to MLH's Mot. to Quash at 12.) The defendant also contends that MLH has merely made boilerplate objections and has not met its burden pursuant to Fed. R. Civ. P. 45(c)(3)(A)(iv) to demonstrate that the requests are overly burdensome. (Def.'s Resp. to MLH's Mot. to Quash at 12.)

The court agrees with the defendant that the subpoena should not be quashed because MLH has not made a showing of any specificity regarding why the defendant's requests are overly broad or somehow

unduly burdensome. Fed. R. Civ. P. 26(b)(2)(C)(iii) provides that the court must limit the extent of discovery if it determines that the burden or expense of the proposed discovery outweighs its likely benefit. The court agrees with the defendant that MLH has not made any showing of the scope of difficulty, time, or expense required to comply with items 8 or 10 of the subpoena.

For the reasons stated above, the court DENIES MLH's motion to quash the defendant's subpoena [Doc. No. 33]. Additionally, the court DIRECTS the CLERK of COURT to place the defendant's response to MLH's objections to document requests [Doc. No. 36] under seal to prevent the release of personally identifiable information of the plaintiff.

SO ORDERED, this 15TH day of June, 2012.


ROBERT L. VINING, JR.
Senior United States District Judge