

IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA

LIEN LE and KHAI LE,

Plaintiffs,

v.

WAL-MART STORES EAST, LP,
BRIAN HOOD, JOHN DOE MANAGER,
and JOHN DOE EMPLOYEE,

Defendants.

CIVIL ACTION FILE
NO. 2011A-4164-2

13 MAR 14 PM 1:13
STATE COURT OF COBB-02
COBB COUNTY GA
CLERK

ORDER

The above-styled case is before the Court on Defendant Wal-Mart Stores East, LP's Motion to Compel Discovery from Non-party ML Healthcare. After review of the Motion and related briefs, and with non-party ML Healthcare having failed to file any response to the discovery at issue or to Defendant's Motion to Compel, for good cause shown, IT IS HEREBY

ORDERED that ML Healthcare shall produce, within 10 days, all documents maintained in any form which are within its control or custody and which are responsive to Wal-Mart's Requests for Production to ML Healthcare Nos. 1-20.

SO ORDERED THIS 12 day of March, 2013.



The Honorable ~~Maria B. Solick~~
Cobb County State Court

**IN THE STATE COURT OF COBB COUNTY
STATE OF GEORGIA**

LIEN LE and KHAI LEE,

Plaintiff,

v.

WAL-MART STORES EAST, LP, BRIAN
HOOD, JOHN DOE MANAGER, and
JOHN DOE EMPLOYEE,


Defendants.

CIVIL ACTION FILE
NO. 11-A-4164-2

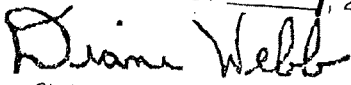
ORDER

The above-styled case is before the Court on Non-Party ML Healthcare, LLC's Motion for Reconsideration. Subject to the Stipulated Confidentiality and Protective Order entered by this Court on this day, the Motion for Reconsideration is hereby **DENIED**.

So ORDERED this 30 day of May, 2013.



The Honorable Maria B. Golick
Cobb County State Court

FILED IN THIS OFFICE
THIS 30 DAY OF May, 2013

Clerk, State Court of Cobb County

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

ML

JUN 15 2012

JAMES N. HATTEN, Clerk
[Signature]
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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CHAMBERS
U.S.D.C. - Rome
JUN 25 2012

JAMES N. HATTEN, Clerk

Deputy Clerk

TICORA WILLIAMS,

Plaintiff,

v.

WAL-MART STORES EAST, L.P.,

Defendant.

CIVIL ACTION

NO. 1:11-CV-3712-RLV

O R D E R

This case arises from an alleged slip and fall accident which occurred at one of the defendant's stores. This matter comes before the court on a motion to quash a subpoena issued to non-party ML Healthcare, LLC ("MLH") [Doc. No. 62].¹ The defendant issued a subpoena to MLH for the production of records by MLH. The defendant's subpoena sought records from MLH as outlined in Exhibit A of MLH's motion to quash. [Doc No. 62, Exhibit A]. For the reasons stated below, the court denies MLH's motion to quash.²

¹ The court notes that the parties filed nearly identical pleadings in Hart v. Wal-mart Stores East, L.P., 1:11-CV-3519. On June 15, 2012, this court issued an order denying the motion to quash in that suit, wherein MLH and the defendant raised extremely similar arguments as raised in the current motion in this suit.

² On page 6 of its motion to quash, MLH states that it will produce a number of documents in response to the defendant's subpoena. Specifically, MLH states that it will produce the distribution agreement between MLH, the plaintiff, and the

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

First, MLH argues that the defendant's subpoena should be quashed because it seeks information that is not relevant. Specifically, MLH argues that the defendant's request for documents and correspondence relating to amounts MLH paid to Resurgens Orthopaedics, Key Health Medical Solutions, Inc., Premier South Medical Group, P.C., Peachtree Orthopaedic Clinic, Shawn Jones, DC, and Peachtree Orthopaedic Physical Therapy, are not relevant because 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 to the issue of damages. Moreover, MLH also argues 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 insured.

In response, the defendant argues that Federal Rule of Civil Procedure 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

plaintiff's counsel. Moreover, MLH stated that it was willing to produce medical provider bills as well as various diagnostic documents. Based on these concessions, this order only addresses the outstanding objections raised to the defendant's subpoena.

admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." The defendant contends that it seeks this information to show "bias, credibility, and impeachment" of medical providers that might have a financial interest in MLH. 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.

The court agrees with the defendants that the subpoena should not be quashed. In reaching this conclusion, the court notes that Rule 26(b)(1) of the Federal Rules of Civil Procedure provides for broad 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 possible bias or to impeach.

2. The "Trade Secrets" Objections
to Defendant's Subpoena Are Improper

Second, MLH argues that the defendant's subpoena should be quashed because the defendant seeks to discover MLH's agreements with medical providers, which MLH argues are trade secrets.

Specifically, MLH points out that under Rule 45(c)(4)(B)(I) of the Federal Rules of Civil Procedure, "the issuing court may, on motion, quash or modify a subpoena if it requires disclosing a trade secret or other commercial information."

In response, the defendant contends that MLH failed to make any showing that their agreements with medical providers constitute "trade secrets" other than through conclusory allegations. 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.

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. In reaching this conclusion, the court notes that Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure 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 sought by the defendant's subpoena is or was a trade secret.

3. The Defendant's Non-Party Requests
Are Proper in Terms of Breadth and Scope

Third, MLH argues that the defendant's subpoena should be quashed because it is overly broad and intended to harass or annoy MLH. MLH argues that these requests are not tailored to request documents relevant to this litigation. MLH further argues that the defendant's request for tax records going back to 2002 is overly broad considering that this litigation began in 2011. Finally, MLH points out that Rule 45(c)(3)(A)(iv) states a court "must quash or modify a subpoena that . . . subjects a person to undue burden."


In response, the defendant contends that the alleged injury took place on September 23, 2010, and requesting any information from 2002 is not egregiously overbroad. Additionally, the defendant argues that MLH has merely made boilerplate objections and has not met its burden pursuant to Rule 45(c)(3)(A)(iv) of the Federal Rules of Civil Procedure to demonstrate that the requests are overly burdensome.

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 overbroad or somehow unduly burdensome. In reaching this conclusion, the court notes that Rule 26(b)(2)(C)(iii) of the Federal Rules of Civil

Procedure 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 the defendant's subpoena.

For the above reasons and for those stated in the defendant's response dated May 30, 2012, the court DENIES MLH's motion to quash the defendant's subpoena [Doc. No. 62].

SO ORDERED, this 25th day of June, 2012.



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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LISA SZALANSKI,)	
Plaintiff)	
)	
v.)	CIVIL ACTION FILE
)	
WAL-MART STORES EAST, LP,)	NUMBER 1:13-cv-3496-TCB
et al.,)	
)	
Defendants.)	

ORDER

The Court received email correspondence between January 10 and January 15, attached hereto. In the correspondence, Injury Finance, LLC, a non-party, objects to a subpoena issued to it.

Injury Finance's objections to the subpoena are overruled. However, documents and tangible things produced by Injury Finance in response to the subpoena shall be held in the strictest confidence and shall be used only for the purpose of the prosecution of Plaintiff's claims and the assertion of Defendants' defenses in this case.

IT IS SO ORDERED this 15th day of January, 2014.



Timothy C. Batten, Sr.
United States District Judge



To: "Cy Malone" <cmalone@fmsmlaw.com>,
Cc: "Howard Lessinger" <hlessinger@mclain-merritt.com>,
Bcc: Chad Lennon/GAND/11/USCOURTS,
Subject: Re: Case No. 1:13 CV 3496; Lisa Szalanski v. Wal-Mart East, L.P - Subpoena to non-party Injury Finance LLC
From: Julee Smilley/GAND/11/USCOURTS - Friday 01/10/2014 03:21 PM

History: This message has been replied to.

"Cy Malone"

Dear Ms. Smiley:

01/10/2014 03:13:26 PM

From: "Cy Malone" <cmalone@fmsmlaw.com>
To: <julee_smilley@gand.uscourts.gov>
Cc: "Howard Lessinger" <hlessinger@mclain-merritt.com>
Date: 01/10/2014 03:13 PM
Subject: Case No. 1:13 CV 3496; Lisa Szalanski v. Wal-Mart East, L.P - Subpoena to non-party Injury Finance LLC

Dear Ms. Smiley:

I am advising the court of a potential discovery dispute in this action. Because this involves a non-party, the matter is presented by e-mail rather than a motion. I tried to contact counsel for Defendants, Howard Lessinger, yesterday and today by phone and e-mail to discuss this matter but have not heard back from him.

I represent a non-party, Injury Finance LLC, which [was] served [with] a subpoena to produce documents. (Doc 16) Injury Finance provides funding for health care expenses to injury victims who cannot afford those services. Injury Finance funds health care by purchasing the lien rights for medical services at a discounted rate. The patient also agrees to pay the full value of services as shown on the bill from the health care providers, regardless of whether the case results in any recovery.

Defendants have sought Injury Finance's "entire file", including documents showing what it pays health care providers for their lien rights. Injury Finance will provide documents showing service and charges but is unwilling to disclose what it pays for lien rights.

I expect Defendants will argue what Injury Finance pays for lien rights bears on the value of those services. Injury Finance contends the value of services is set by the market and what a health care provider is willing to accept in exchange for its lien rights in a case of doubtful collectability is irrelevant. Injury Finance also

considers that information to be a trade secret which is potentially injurious to its business.

Mr. Lessinger has graciously stipulated (Doc 20) my client will have until next Tuesday, **January 14, 2014**, to respond to the subpoena.

I have copied Mr. Lessinger with this e-mail. Please advise how the court wants us to proceed with this matter.

C. Cyrus Malone
Attorney for Injury Finance LLC

TIME SENSITIVE

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