

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

JOHN POLITZ & HELEN POLITZ

PLAINTIFFS

V.

CIVIL ACTION NO. 1:08cv18-LTS-RHW

**NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY, U.S. SMALL BUSINESS
ADMINISTRATION, AND JOHN DOES 1
THROUGH 10**

DEFENDANTS

**NATIONWIDE MUTUAL FIRE INSURANCE COMPANY'S
MOTION TO QUASH SUBPOENAS DUCES TECUM
DIRECTED TO DR. MARK WEBB**

Defendant Nationwide Mutual Fire Insurance Company (“Nationwide”), by and through its attorneys of record, files this Motion to Quash Subpoenas Duces Tecum Directed to Dr. Mark Webb, seeking an order from this Court relieving Dr. Webb from any requirement to produce certain categories of documents listed in the subpoena served upon him. In support of its Motion, Nationwide states:

1. On June 22, 2009, Plaintiffs filed a Notice of Issuance of Subpoena to Produce Documents, Information or Objects, and attached thereto a subpoena to produce documents directed to Dr. Mark Webb. [Docket 372-2]. Dr. Webb is a licensed psychologist who, pursuant to the Court’s Order of June 1, 2009 [Docket 348], recently conducted an independent medical examination of Plaintiff Helen Politz. Dr. Webb’s examination was related to Plaintiff’s claim that she suffered emotional distress as a result of actions by Nationwide in adjusting her Hurricane Katrina homeowner’s policy claim.

2. In the subpoena issued to Dr. Webb, Plaintiff seeks fourteen (14) categories of documents that span a period of ten (10) years, many of which have no relevance to the claims or

defenses asserted by the parties to this action. Nor do these documents have any probative value on issues of any potential bias by Dr. Webb. Finally, even if the documents do have some marginal relevance to this case, that relevance is significantly outweighed by the over breadth and burdensomeness of Plaintiff's document requests. *See U.S. v. Butler*, 429 F.3d 140 (5th Cir. 2005) (finding subpoena was properly quashed as unduly burdensome and overly broad where it sought documents in twenty-eight categories over a period of seventeen years); *Williams v. City of Dallas*, 178 F.R.D. 103, 110 (N.D. Tex. 1998) (document subpoena was facially overbroad where not limited by reasonable restrictions on time); and *In re Duque*, 134 B.R. 679, 683 (S.D. Fla. 1991), *on remand*, 154 B.R. 93 (S.D. Fla. 1993) (determination of subpoena's reasonableness requires court to balance interests served by complying with subpoena against those served by quashing it). For these reasons, Nationwide requests portions of the subpoena served on Dr. Webb be quashed as set forth below.

3. Under Rule 45 of the Federal Rules of Civil Procedure, the Court must, on a timely motion, quash or modify any subpoena that "subjects a person to undue burden." Fed. R. Civ. P. 45(c)(3)(A)(iv). In determining whether a subpoena is unduly burdensome and unreasonable, the Court must consider the facts of the case, "such as the party's need for the documents and the nature and importance of the litigation." *WIWA v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). Six factors are considered in making this determination, including "(1) **relevance** of the information requested; (2) the need of the party for the documents; (3) the **breadth** of the document request; (4) the **time period** covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the **burden** imposed." *Id.* (emphasis added). Furthermore, when non-parties are subpoenaed for documents, the court also considers "the expense and inconvenience to the non-party." *Id.*

4. Document Request 1 in Plaintiff's subpoena seeks "[a]ll documents indicating income generated, and the number of separate cases involving services which you rendered to or at the request of Nationwide Mutual Fire Insurance Company, . . . Watkins, Ludlam, Winter & Stennis, P.A. and/or Kirkland & Ellis, LLP . . . in the last ten years." These documents clearly have nothing to do with the merits of Plaintiff's claim or any opinion Dr. Webb might express with regard to Plaintiff's mental condition. Rather, the documents requested would include legal matters for Nationwide and for attorneys at Watkins, Ludlam, Winter & Stennis, P.A. and/or Kirkland & Ellis, LLP who have no connection to this lawsuit and could include materials that would invade the privacy concerns of litigants other than those to the present lawsuit, particularly given that Dr. Webb's field of practice is psychology. Moreover, the ten year time framed referenced in this request is overly broad and burdensome. *See U.S. v. Butler*, 429 F.3d 140.

5. Document Request 2 seeks "[c]opies of all complaints filed in any court against you alleging medical negligence, malpractice and/or violation of the standard of care in the practice of medicine in the last ten (10) years." The information sought in this request is not relevant to any substantive issues raised in this lawsuit, nor does it bear any reasonable relevance to any issue of bias in Dr. Webb's testimony. Moreover, any legal Complaints filed against Dr. Webb would be a matter of public record equally available to and accessible by the Plaintiff. Due to the substantially low degree of relevance in these requested materials, Dr. Webb should not be forced to expend the time and money necessary to produce copies of civil Complaints when Plaintiff is equally suited and able to obtain such documents herself from a list of responsive case names, which Dr. Webb is able to provide.

6. Document Request 3 seeks “[c]opies of all 1099’s, profit and loss statements, internal memoranda, or other financial documents which indicate, address or outline the income you or your clinic have received” from a number of sources, including workers’ compensation carriers, employers or lawyers representing either; any insurance company or law firm representing any insurance company; and all other payments from insurance liability companies for consulting work, all covering a ten year period. This request is simply nothing more than a fishing expedition into the financial records of Dr. Webb’s medical practice. *See U.S. v. Dale*, 155 F.R.D. 149, 152 (S.D. Miss. 1994) (quashing document subpoena to State insurance commissioner in part because it constituted an impermissible fishing expedition, which “is generally insufficient to justify the pretrial production of documents”). The information requested is not relevant to any substantive issues raised in this lawsuit, nor does it bear any reasonable relevance to any issue of bias in Dr. Webb’s testimony. For example, this lawsuit does not involve a “work-related injury,” nor has Dr. Webb been asked to perform any “consulting work” in this lawsuit. Thus, records related to Dr. Webb’s past performance of such services for other clients is completely irrelevant. Moreover, the over breadth of the request in seeking payment histories for all work involving any insurance company or any lawyer over a ten year period is significantly burdensome. *See WIWA*, 392 F.3d at 820-21 (finding that subpoena *duces tecum* was overly broad where it sought the production of personal information, such as tax forms, which were irrelevant to the Plaintiff’s claims at issue).

7. Document Request 4 seeks records related to “programs or conferences sponsored by any liability, homeowners or workers’ compensation insurance company or industry group, where you have spoken since January 2000 on issues involving civil justice, IME’s or EME’s, physical impairment or restrictions and/or rehabilitation of injured patients.” With the exception

of the IME that was performed on Plaintiff related to alleged emotional distress, none of the other categories of information contained in this request have any bearing on this lawsuit. The work performed by Dr. Webb in this matter has no relationship to “civil justice, EME’s, physical impairment or restrictions and/or rehabilitation of injured patients.” As such, these matters are totally irrelevant to this lawsuit, and Dr. Webb should not be required to produce ten years of such documents.

8. Request 5 seeks documents related to presentations regarding “functional capacity exams, permanent impairments and/or occupational restrictions.” Since none of these categories are presented by Plaintiff’s emotional distress claim, the documents requested are irrelevant. *See* WIWA, 392 F.3d at 820-21.

9. Request 6 seeks “[a] list or record of all referrals for treatment or exam” made to Dr. Webb by plaintiffs’ or claimant’s counsel since 2000. There is simply no relevance at all to any request that Dr. Webb identify every plaintiff’s attorney who has referred a client to him for examination or treatment during the last ten years. Such a request is also unnecessarily burdensome, and tends to invade the privacy interests of third party patients who have absolutely no connection to this lawsuit. *See Fruge v. Rowan Companies, Inc.*, 1989 WL 136539, *1 (E.D. La.) (granting motion quash subpoena issued to third party hospital where subpoena “call[ed] for confidential and privileged information of patients not involved in this litigation,” and the party issuing the subpoena could not explain how such information was relevant); *and In re Dolezal*, 970 S.W.2d 650, 652-53 (Tex. App. 1998) (“[I]f Dolezal were required to provide the information requested in the subpoena duces tecum, ***the privacy rights of non-party patients would be violated*** and Dolezal would be exposed to liability for invasion of that privacy”) (emphasis added).

10. Request 7 seeks “[a] list of records of all referrals for treatment or exam” made to Dr. Webb by any liability, UM, or workers’ compensation insurance carrier, or any lawyer or law firm representing an insurance company. The information requested has no relevance to this case, nor does it bear any reasonable relevance to the issue of bias by Dr. Webb. Furthermore, as with Request 6, this Request is unreasonably burdensome, and tends to invade the privacy interests of uninvolved third parties.

11. Requests 8 and 9 seek documentation for all contracts, retainer agreements, and expert witness payments made to Dr. Webb within the last ten years. Payments and unrelated retainer agreements Dr. Webb received and executed in other cases up to ten years ago have no bearing on the issues – or Dr. Webb’s opinions – in this case. Nor does such information have any probative value on issues of any potential bias by Dr. Webb.

12. Request 12 seeks “A copy of any ‘learned treatise’ ... any medical article, textbook, journal or other authoritative source referenced in any report which you have given in the above-captioned case” or upon which he has relied in reaching opinions in this case. The burden and expense associated with compiling and producing such materials substantially outweighs the modicum of relevance these documents have to the substantive issues involved in this case. Moreover, any treatises, journals or textbooks relied upon by Dr. Webb would be publicly available and equally-accessible by Plaintiff, provided Dr. Webb provides the names of such materials.

13. Request 14 seeks a copy of “any transcripts from any depositions you have ever given.” This request is overly broad, irrelevant, and unduly burdensome. As a preliminary matter, document requests in subpoenas must be limited to those documents that are actually within the non-party’s custody, control, or possession. *WIWA*, 392 F.3d at 821. Plaintiffs have

shown nothing to indicate that Dr. Webb in fact has copies of “any transcripts from any depositions” he has ever given, and as a non-party, Dr. Webb must not be required to invest the time and expense required in tracking down and obtaining copies of such documents. *Id.* Furthermore, this request is facially overbroad. *See Williams*, 178 F.R.D. at 110. It is neither limited to any specific time period in Dr. Webb’s career, nor is the deposition testimony requested limited to any particular subject matter. As a result, it is impossible to determine whether the requested depositions have any relevance to this case.

14. The documents and information sought through the above requests have no relationship to the claims or defenses asserted in this lawsuit, are not reasonably probative of any alleged bias held by Dr. Webb. Thus, they simply cannot meet the minimum standards of relevancy required for discovery under the Federal Rules of Civil Procedure. Moreover, given the over breadth of these requests, both in terms of subject matter and the time period covered by the requests, any minimal relevance these documents might have is greatly outweighed by the burdensomeness of requiring Dr. Webb to essentially produce ten years worth of records for his practice.

15. For these reasons, Nationwide respectfully requests that these portions of the subpoena served on Dr. Webb be quashed.

16. Alternatively, Nationwide submits that Plaintiff should be required, in the interest of fairness and judicial economy, to clarify the basis for requesting the documents and information sought through the aforementioned subpoenas, and state specifically how the documents and information have any relevance or connection to the claims or defenses at issue in this litigation.

WHEREFORE, PREMISES CONSIDERED, Nationwide prays that its Motion to Quash Subpoenas Duces Tecum Directed to Dr. Mark Webb be granted.

This, the 6th day of July, 2009.

Respectfully submitted,

NATIONWIDE MUTUAL FIRE INSURANCE
COMPANY

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing using the Court's ECF System, which sent electronic notification of such filing to the following:

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This, the 6th day of July, 2009.

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