

Personal Injury Defendant Entitled to Discovery Regarding Extent of Relationship Between Plaintiff's Lawyer and Plaintiff's Doctor

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[Steinger, Iscoe & Greene, P.A., et al. v. GEICO Gen. Ins. Co.](#), No. 4D11-4162 (Fla. 4th DCA Nov. 21, 2012). In a personal injury case “where there is a preliminary showing that the plaintiff was referred to a doctor by [his or her lawyer] (whether directly or through a third party) or vice versa,” Florida’s Fourth District Court of Appeal has held that the “defendant is entitled to discover information regarding the extent of the relationship between the law firm and the doctor.”

Facts

Plaintiff sued GEICO for uninsured motorist coverage. During pre-trial discovery, plaintiff’s lawyer disclosed that some of the plaintiff’s treating physicians would render expert opinions on matters such as causation, permanency, and future damages. A series of motions and hearings followed, which led GEICO to seek to depose plaintiff’s law firm’s office manager to obtain information regarding the nature and extent of the relationship between the law firm and the treating physicians.

Court Opinion

The Court focused its analysis on the issue of bias. The Florida evidence code allows a party to attack a witness’s credibility based on bias. *See* § 90.608(2), Fla. Stat. (2012). A treating physician, like any other witness, is subject to impeachment based on bias. Thus, discovery aimed at producing evidence of a treating physician’s bias is generally permissible. One of the key issues the Court focused on was: “when does the nature of the relationship between a law firm and a treating physician raise the specter of financial bias sufficient to warrant discovery from the law firm and

discovery beyond that generally allowed from an expert[?]"

According to the Court, GEICO made a “what’s good for the goose is good for the gander” argument by contending that fairness requires that when a plaintiff’s law firm maintains an ongoing relationship with a treating physician, the insurer should be entitled to delve deeper into that relationship.

The Fourth DCA concluded that “where there is a *preliminary showing* that the plaintiff was referred to the doctor by the lawyer (whether directly or through a third party) or *vice versa*, the defendant is entitled to discover information regarding the extent of the relationship between the law firm and the doctor” (emphasis added). The Court noted that when allowing such discovery, trial courts will need to balance the privacy rights of the former patients and clients, and implement appropriate safeguards.

Here, the Court determined that GEICO had not yet made the required preliminary showing, but noted that if GEICO can establish that the law firm referred plaintiff to the health care providers (or *vice versa*), more extensive financial bias discovery may be appropriate. While this case should enable Florida defendants to discover the financial relationship between plaintiffs’ law firms and the health care providers to whom they refer their clients, parties should expect future arguments regarding what constitutes the required “preliminary showing.”

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