

<b>Matter of Patrick F. Adams, P.C. v Perlman</b>
2007 NY Slip Op 31489(U)
June 1, 2007
Supreme Court, Suffolk County
Docket Number: 0009629/2007
Judge: Sandra L. Sgroi
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INDEX NO. 3656-2007

9629-07

SUPREME COURT - STATE OF NEW YORK  
SPECIAL TERM, PART 19 SUFFOLK COUNTY

Mot Seq: 001 MG

Present:

Hon. SANDRA L. SGROI**CASEDISPOSED**

Adj'd Date: 5-17-07

Return Date: 5-24-07

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 In the Matter of

PATRICK F. ADAMS, P.C.,

Petitioner,

-against-

NORMAN PERLMAN and SUSAN SCIAMETTA,

Respondents.

PATRICK F. ADAMS, P.C.

Attorney for the Petitioner

49 Fifth Avenue

P.O. Box 1089M

Bay Shore, New York 11706-7306

LAW OFFICES OF NORMAN PERLMAN

Attorney for the Respondents

P.O. Box 636

Woodmere, New York 11598

Upon the following papers numbered 1 to 14 read on this Proceeding: Notice of Petition, Petition and supporting papers 1-8; Affirmation in opposition and supporting papers 9-12; Reply Affirmation and supporting papers 13-14; it is,

**ORDERED** that the Petitioner's motion to quash the subpoena duces tecum dated March 4, 2007, served by the Respondent Norman Perlman, Esq. on the Petitioner is granted to the extent provided herein; and it is further

**ORDERED** that the Petitioner is directed to provide the Respondents with "forms, reports and responses sent to Workers' Compensation Board" concerning the claim of the claimant (see, Petitioner's Exhibit "A", item "E") within thirty (30) days of service of a copy of this order.

Enter Judgment.

The Respondent, Norman Perlman, Esq., served a subpoena on the Petitioner, Patrick F. Adams, P.C., requesting that the Petitioner bring its:

“\*\*\*entire file including but not limited to letters sent and received, forms, memoranda, notes, diary notations, intra-office communications relative to:

(A) Claimant’s history of attendance work efforts, accident occurrence and removal from respondent Our Lady of Perpetual Help’s premises on date of accident 11-28-03;

(B) Claimant’s history of volunteer work for either respondent;

(C) List of all medical and health related bills received, paid and listed both through or independent of Workers’ Compensation processing;

(D) any and all accident or incident reports prepared whether submitted or not submitted to any third party;

(E) Any and all forms, reports and responses sent to Workers’ Compensation Board on behalf of initiating or supporting a Workers’ Compensation claim for claimant\*\*\*. (Petitioner’s Exhibit “A”).

The Petitioner alleges that this subpoena, which the Respondent Norman Perlman has served on behalf to his client and the co-Respondent herein Susan Sciametta in a Workers Compensation proceeding, is over broad. It is clear from a reading of the subpoena that it seeks both material covered by attorney client privilege and material prepared for litigation (see, *CPLR § 3101*) in addition to non-privileged information.

According to the Respondents, Susan Sciametta was severely injured on November 28, 2003, while doing volunteer work for Our Lady of Perpetual Help Church. The Diocese of Rockville Centre is a self insured entity. The Respondents allege that Susan Sciametta never made a claim under Workers’ Compensation and never authorized any person or entity to make a claim on her behalf. The Respondent Norman Perlman was retained to represent Susan Sciametta and he raised the issue of jurisdiction. While the Diocese apparently has purchased an insurance policy to cover volunteers, Perlman alleges that the policy is not mandatory and that a volunteer worker must voluntarily choose coverage for it to be applicable. That issue is not before the Court at the present time and it will be initially determined by the Workers’ Compensation Judge assigned to this matter (see, *O’Rourke v. Long*, 41 N.Y.2d 219, 359 N.E.2d 1347, 391 N.Y.S.2d 553; *Mattaldi v. Beth Israel Medical Center*, 297 A.D.2d 234, 746 N.Y.S.2d 258; *Besaw v. St. Lawrence County Ass’n. for Retarded Children*, 301 A.D.2d 949, 754 N.Y.S.2d 111, 112; *Corp v. State*, 257 A.D.2d. 742, 682 N.Y.S.2d 738).

There is limited incorporation of *CPLR* provisions by two sections of the *Workers’ Compensation Law* §§ 119 and 121 and the authority to govern disclosure is delegated to the Board (see, e.g., *Workers’ Compensation Law* §§ 111, 118, 142 [3]). The standard applied at a hearing is governed by *Workers’ Compensation Law* § 118, which provides that the Board “shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure” (see, *Matter of Spiotta v Liberty Mut. Ins. Co.*, 120 Misc 2d 641; 466 N.Y.S.2d 229).

This being said, the subpoena that was issued by the Respondent Norman Perlman demanding the records held by Patrick F. Adams, P.C. and any subpoenas issued under *Workers’ Compensation Law* § 119 by an attorney

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are regulated by the *CPLR* (see, *Goldberg v. Kroeger*, 85 A.D.2d 519, 444 N.Y.S.2d 619, *aff'd* 56 N.Y.2d 610, 450 N.Y.S.2d 481, 435 N.E.2d 1096). According to *New York Practice Series-Workers' Compensation* by Martin Minkowitz, motions to quash any subpoena that is issued as part of the Workers' Compensation proceeding may be made before the Supreme Court of the State of New York (see, *New York Practice Workers' Compensation* §s 15:4, Subpoenas (2007); see also *Hill v. Stesti* 43 NYS2d 415).

According to the Appellate Division in the case of *Petition of Maryland Cas. Co.*, (274 A.D. 211, 80 N.Y.S.2d 181):

If the subpoena duces tecum issued under and pursuant to section 119 of the *Workmen's Compensation Law* is objected to, the procedure is to move, in the appropriate court, for an order vacating it\*\*\*.

The Petitioner has therefore followed the correct procedure by commencing a proceeding in the State Supreme Court to quash the subpoena.

Confidential communications made between an attorney and a client during the course of professional employment are generally privileged unless waived (see, *CPLR* 4503(a)). In addition, an attorney's work product is immune from disclosure (*CPLR* § 3101(c)), as are materials prepared in anticipation of litigation unless a party shows "substantial need" and is unable to duplicate them "without substantial hardship" (*CPLR* 3101 §(d)(2)). However, the Court notes that "[t]he burden of establishing any right to protection is on the party asserting it; the protection claimed must be narrowly construed, and its application must be consistent with the purposes of the underlying immunity." (*Spectrum Systems Intern. Corp v. Chemical Bank*, 78 N.Y.2d 371, 377, 575 N.Y.S.2d 809, 581 N.E.2d 1055). While the burden is on the Petitioner herein to show that the subpoena is improper, that burden is readily met in this case where items "A" and "D" of the subpoena duces tecum are so broad as to require the production of any document in the file of the attorney concerning the Respondent Susan Sciametta. The Petitioner is directed to provide the Respondents with "forms, reports and responses sent to Workers' Compensation Board" concerning the claim of the claimant (see, Petitioner's Exhibit "A", item "E") within thirty (30) days of service of a copy of this order. Since these documents have already been disclosed to the Workers' Compensation Board and there has been no showing that these documents are covered by any privilege, the motion to quash is denied as to this item.


As noted above, parts of the subpoena herein are over broad because it requires the production of the entire legal file of the attorney for the Diocese and in addition it requires the production of materials created in anticipation of the pending litigation including "intra-office communications" (see, *In re Ehmer*, 272 A.D.2d 540, 708 N.Y.S.2d 903; *Degliuomini v. Degliuomini*, 308 A.D.2d 501, 764 N.Y.S.2d 846; see also, *Grotallio v. Soft Drink Leasing Corp.*, 97 A.D.2d 383, 468 N.Y.S.2d 4). Item "C" in the subpoena does not call for the production of documents but instead improperly requests that the Petitioner compile a list of all medical and health related bills of Sciametta.

Under these circumstances the motion of the Petitioner to quash must be granted to the limited extent provided

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herein with leave given to the Respondent to serve another, more carefully drafted, subpoena duces tecum (see, *Oak Beach Inn Corp. v. Town of Babylon*, 239 A.D.2d 568, 658 N.Y.S.2d 72).

Dated: 6/1/07

  
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SANDRA L. SGROI, J. S. C.  
