UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO.: 6:17-cv-00714-PGB-TBS

LORI COSTA,

Plaintiff,

v.

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant.
_____________________________________/

METLIFE'S MOTION TO OVERRULE NON-PARTIES BEACHSIDE LEGAL SERVICES, P.L.L.C'S AND SCOTT A. TURNER'S OBJECTIONS TO METLIFE'S SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS IN A CIVIL ACTION AND COMPEL PRODUCTION OF DOCUMENTS FROM LESLIE A. MCELHINNEY, CPA, PA

Defendant, METROPOLITAN LIFE INSURANCE COMPANY ("MetLife"), pursuant to Federal Rules of Civil Procedure 26 and 45, and Middle District of Florida Local Rule 3.04, respectfully requests the entry of an order overruling Non-Parties', BEACHSIDE LEGAL SERVICES, P.L.L.C. and SCOTT A. TURNER (collectively the "Non-Parties"), Objection and Response to Subpoena and compelling the production of documents from Leslie A. McElhinney, CPA, P.A. (the "CPA") pursuant to MetLife's Subpoena to Produce Documents, Information or Objects in a Civil Action, dated October 17, 2017 ("Subpoena") (attached as **Exhibit 1**).

I. Introduction & Factual Background

This lawsuit involves a claim for disability benefits by Plaintiff, Lori Costa ("Costa"), under a MetLife individual disability insurance policy. The Complaint alleges that, in early 2010, Costa, an attorney, "noticed the gradual onset symptoms including balance issues, speech,

coordination, fatigue, and weakness. They markedly worsened in 2015." *See* Complaint at § 7. Costa also alleged that she "began experiencing cognitive problems, including processing errors, slower processing, word errors, difficulty concentrating, and experiencing extreme dizziness", which prevented her from performing the duties of a litigation attorney on or around September 23, 2015, when she ceased working at her law firm, Turner and Costa n/k/a Beachside Legal. *Id.* at §§ 8-12. During discovery (including Costa's deposition), however, MetLife uncovered various "non-medical" reasons for Costa's departure from her firm, which rebut her disability claims, including the fact that her firm was having monetary problems (her partner, Scott Turner, the current principle in Beachside Legal, had taken 99% of the firm's profits to pay an outstanding IRS debt, leaving her with only 1% of the firm's income for that year). The discovery at issue relates directly to those defenses.

II. Discovery Standard

The broad scope of discovery is well known. Rule 26(b)(1), Fed. R. Civ. P., provides:

> **(1)** ***Scope in General.*** Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

"The term 'relevant' in Rule 26 should encompass 'any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.'" *Dobruck v. Borders*, 8:16-CV-1869-T-33JSS, 2017 WL 417184, at *1 (M.D. Fla. Jan. 31, 2017), citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). Additionally, Rule 401, Fed. R. Evid., provides that "[e]vidence is relevant if it has any tendency to make a fact more or

less probable than it would be without the evidence, and the fact is of consequence in determining the action."

In addition, the scope of discovery under a subpoena is exceedingly broad and is the same as the scope of discovery under Rule 26(b). "The discovery provisions of the Federal Rules of Civil Procedure allow the parties to develop fully and crystallize concise factual issues for trial." *Callaway v. Papa John's USA, Inc.*, 09-61989-CIV-ZLOCH, 2010 WL 4024883, at *5 (S.D. Fla. Oct. 12, 2010) (citations omitted). Accordingly, discovery requests are to be broadly and liberally construed. *Id.*

III. MetLife's Subpoena

On or about October 17, 2017, MetLife propounded a Subpoena to Produce Documents, Information or Objects in a Civil Action to Leslie A. McElhinney, CPA, P.A., the accountant for Costa's former employer, Turner & Costa n/k/a Beachside Legal. *See* Costa Depo. 88:1-13 (the pertinent portions of Costa's deposition cited herein are attached hereto and incorporated herein as **Exhibit 2**). On or about November 17, 2017, the Non-Parties served improper blanket objections to MetLife's Subpoena. A copy of the Non-Parties Objections are attached as **Exhibit 3**. To date, the CPA has not responded to the Subpoena nor filed an objection.

Pursuant to Local Rule 3.04(a), MetLife sets forth below its Subpoena request, the Non-Parties' objections/response, and MetLife's arguments as to why the objections should be overruled.

DOCUMENTS REQUESTED:

> Any and all documents, materials or information, papers of any kind relating to, pertaining to, concerning, mentioning, with record or knowledge of **Lori Costa ("Costa")** and/or **"Entities"**[1] and/or

[1] "Entities" is defined as "any corporation, company, partnership, business entity, professional association and/or intellectual property that Lori Costa owns, previously owned, created, operated and/or had any equity interest, relationship and/or involvement with including but not limited to the following:

> **any other corporation, company, partnership, business entity, professional association and/or intellectual property that she currently owns, previously owned, created, operated and/or had any equity interest, relationship and/or involvement with** from 2008 through the present date.

In response, the Non-Parties asserted the following general objections:

> The same seeks information that is irrelevant, immaterial, not reasonably calculated to lead to discovery of admissible evidence and is too broad in scope and time. Further, the subpoena seeks information regarding an entity, Turner and Costa, PL. The request seeks information as far back as 2008, and it is not believed that Lori Costa was a participant as an owner in a previous law firm. Turner and Costa, PL started in 2010 and terminated in 2016, and as such, the request for information after that date would be an abuse of subpoena.
>
> Further, to the extent the same seeks any personal information of or from Scott A. Turner, Esquire, the undersigned[sic] files these additional objections as the same is irrelevant, immaterial, not reasonably calculated to lead to discovery of admissible evidence, is burdensome, harassing and an abuse of subpoena power to seek personal and private individual information.

MetLife's Reasons for Compelling Records from the CPA:

MetLife is entitled to the full discovery permitted under the Federal Rules of Civil Procedure, as it directly relates to the central issue in this case: the reason Costa stopped working at Turner & Costa n/k/a Beachside Legal. During deposition, Costa testified that both her law firm and Scott Turner had various monetary and tax issues that affected Costa's partnership interest and caused her income to drop precipitately, likely contributing to her departure from the firm for reasons unrelated to her alleged medical condition. *See* Costa Dep. 148:18-25 – 154:1-14 (testimony regarding Beachside Legal's and Mr. Turner's IRS tax audit and financial issues requiring taking money from the firm to pay back taxes in either 2013 or 2014); Costa Dep. 50:7-

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- **Turner & Costa, PL**

20; 137:25 – 143:1-10 (testimony regarding salary and profit sharing during Mr. Turner's and Costa's 50/50 partnership; in 2009 Costa's salary was between $100,000 and $200,000 but dropped to approximately $80,000 in 2014. In addition, in 2012 Costa's profit share was 21.77 percent while Turner's was 78.23 percent; in 2014 her profit share dropped to 1.5 percent despite being a 50/50 partner); Costa Dep. 90:22-25; 91:1-14 (testimony regarding dispute over profit split over trial verdict).

The Court should overrule the Non-Parties' blanket general objections because documentation concerning financial records and earned income relating to Lori Costa and related entities in which she had an ownership interest or other involvement with including Turner and Costa n/k/a Beachside Legal immediately prior to her onset of symptoms in 2010 are clearly relevant to whether Plaintiff is totally disabled and whether other underlying reasons relating to the Firm's financial issues and partnership profit sharing and salary splits were the real reasons for her employment departure. For instance, Costa testified that in 2008 and 2009 she was making over $100,000 in income as an associate. Costa Dep. 50:7-20. In 2010, Costa made partner and her income rose in 2012 to approximately $201,000 plus guaranteed payments of $83,000. Costa Dep. 144:17-24. Then, in 2014, despite billing approximately 2,600 hours her income dramatically decline to approximately $82,000.00. *Id.* She further admits that she believes Mr. Turner was unfair in her compensation and complained to him once or twice about it. Costa Dep. 209:18-22.

Moreover, Beachside Legal asserts blanket general objections to the Subpoena including that the requests are irrelevant, immaterial, overly broad in scope and time, and not reasonably

calculated to lead to the discovery of admissible evidence.[2] From the outset, objections which state that a discovery request is "vague, overly broad, or unduly burdensome" are, by themselves, meaningless, and are deemed without merit. A party properly objecting on these bases must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome. *See Milinazzo v. State Farm Ins. Co.*, 247 F.R.D. 691, 695 (S.D. Fla. 2007). Moreover, "[d]iscovery should ordinarily be allowed unless it is clear that the information sought has no possible bearing on the claims and defenses of the parties or otherwise on the subject matter of the action." *Id.* at 696. MetLife's requests are also narrowly tailored in time going back only two (2) years prior to Plaintiff's alleged onset of symptoms and are clearly relevant and material to determine the validity of Plaintiff's claims that she is unable to perform her duties as a litigation attorney.

CONCLUSION

WHEREFORE, based on the foregoing reasons, Defendant, METROPOLITAN LIFE INSURANCE COMPANY, respectfully requests the Court:

(1) overrule the Non-Parties, BEACHSIDE LEGAL SERVICES, P.L.L.C. and SCOTT A. TURNER, Objection and Response to Subpoena, dated November 17, 2017;

(2) compel Leslie A. McElhinney, CPA, P.A. to provide information and documents responsive to the Subpoena; and

(3) for such other and further relief this Court deems just and proper.

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[2] The Non-Parties' objection that the items requested in the Subpoena are "not reasonably calculated to lead to the discovery of admissible evidence" is no longer an acceptable objection pursuant to the current version of Federal Rule of Civil Procedure 26.

Local Rule 3.01(g) Certification of Good Faith Conferral

MetLife's counsel certifies that Dana Chaaban, Esq. attempted to confer with Leslie A. McElhinney, CPA, P.A. on March 22, 23 and 26, 2018 regarding the relief requested in this Motion but messages left with the CPA's office were not returned.

Respectfully Submitted**,**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 26, 2018, I filed the foregoing document with the Clerk of Court. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or via US Mail, an authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

SHUTTS & BOWEN LLP

/s/ Dana Chaaban
DANA CHAABAN, ESQ.

SERVICE LIST

Lori Costa v. Metropolitan Life Insurance Company
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