

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

LORI COSTA,

Plaintiff,

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

vs.

METROPOLITAN LIFE INSURANCE
COMPANY,

Defendant.

**NON-PARTY'S RESPONSE TO 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 CIVIL ACTION AND COMPEL PRODUCTION OF
DOCUMENTS FROM LESLIE A. MCELHINNEY, CPA, PA**

Non-Parties, BEACHSIDE LEGAL SERVICES, P.L.L.C. and Scott A. Turner, pursuant to Fed. R. Civ. P. 45 (2)(B)(i)(ii) hereby file this Response to Defendant MetLife's Motion to Overrule Objections and Compel Production of Documents from Leslie A. McElhinney, CPA, PA, as follows.

I. FACTS

The instant case involves a claim for disability benefits by Lori Costa from Metropolitan Life Insurance Company. Beachside Legal Services, P.L.L.C. and Scott A. Turner are not now nor have they ever been a party to this lawsuit nor in any way a contracting party with Defendant herein. A Subpoena to Produce Documents, Information or Objects in a Civil Action was allegedly served on Leslie A. McElhinney. Although no certificate reflects actual service, nor has any Proof of Service been provided, the undersigned will assume the same is a valid discovery request only for the purposes of this Response. MetLife attached as "Exhibit 1" the

subject Subpoena. Additionally, assuming the Defendant has timely filed this Motion to Overrule Objections and Motion to Compel pursuant to The Federal Rules of Civil Procedure and/or local Rules, Beachside Legal Services, P.L.L.C. and Scott A. Turner file this response to the pending Motion. Currently pending before this Court is a substantially similar Motion directed to Beachside Legal Services, P.L.L.C.. A Reply has been filed and that matter awaits ruling by this Court. Although the Request to Leslie A. McElhinney, CPA, PA at first blush is narrower, in fact the request seeks substantially similar protected and private information. Finally, it has been brought to the attention of the undersigned, while the matter is pending before this Court regarding Beachside Legal Services, P.L.L.C., counsel for MetLife recently called Leslie A. McElhinney demanding that she quickly get them the requested documents.

II. DISCOVERY STANDARDS

The Federal Rules of Civil Procedure control the issues before this court. Federal Rule of Civil Procedure 26(b)(1) provides:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any **non-privileged** 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. (emphasis added).

Federal Rule of Civil Procedure 45 (d) Protecting a Person Subject to a Subpoena. Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid **imposing undue burden or expense on**

a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply. (emphasis added).

Federal Rule of Civil Procedure 26(b)(1) Discovery Scope and Limits.

C. When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

- (I) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

In addition, the Committee Notes on Rules - 2015 Amendments states, “Information is discoverable under revised Rule 26(b)(1) if it is relevant to any party’s claim or defense and is proportional to the needs of the case.”

Rule 45 protects against the imposition of an undue burden and disclosure of privileged or other protected material, Fed. R. Civ. P. 45(c)(3)(A)(iii), (iv). “Whether a subpoena imposes an ‘undue burden’ upon a witness is a case specific inquiry that turns on ‘such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.” *American Electric Power Co., Inc. v. United States*, 191 F.R.D. 132, 136 (S.D. Ohio 1999) (quoting *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44, 53 (S.D.N.Y. 1996)). “Courts are required to balance the need for discovery against the burden imposed on the person

ordered to produce documents, and the status of a person as a nonparty is a factor that weighs against disclosure.” Id. See U.S. Monumental Life Ins. Co., 440 F.3d 729, 735 (6th Cir. 2006); see also Katz v. Batavia Marine & Sporting Supplies, 984 F.2d 422, 424 (Fed. Cir. 1993). The party seeking discovery bears the burden of demonstrating relevance. American Electric Power, 191 F.R.D. at 136. “The determination of issues of burden and reasonableness is committed to the sound discretion of the trial court.” Concord Boat Corp., 169 F.R.D. at 49. See also 9A Wright & Miller, Federal Practice & Procedure, § 2463.

**III. BEACHSIDE LEGAL SERVICES, P.L.L.C. and SCOTT A. TURNER’S
OBJECTIONS TO METROPOLITAN LIFE’S MOTION TO COMPEL DISCOVERY**

**A. BEACHSIDE LEGAL SERVICES, P.L.L.C. WAS NEVER FORMERLY KNOWN AS
TURNER & COSTA, PL**

Beachside Legal Services, P.L.L.C. is not now nor has it ever been formerly known as Turner & Costa, P.L. As explained to Metropolitan Life through Ms. Costa in her deposition, by counsel for Ms. Costa and by Scott A. Turner, Lori Costa and Turner & Costa, PL have never been employed by or in anyway associated with Beachside Legal Services, P.L.L.C., a separate legal entity. Turner & Costa was a professional liability company and Beachside Legal Services is a professional legal liability company. The Subpoena was directed seeking records of Beachside Legal Services, P.L.L.C. (n/k/a Turner & Costa, PL) as if that is the appropriate legal title/entity for Mr. Turner’s new business. Attorneys are aware of the distinction when a corporation or company changes to an entirely different legal entity. This was not a mere name change as alleged by the defendants. This involved the process of ending one legal entity and the formation of an entirely new legal entity. Ms. Costa was never employed by Beachside Legal Services, P.L.L.C. nor by Scott A. Turner individually. Therefore, any and all requests seeking

any information regarding Beachside Legal Services, P.L.L.C. and/or Scott A. Turner are irrelevant and outside the scope of Rule 26(1) in the instant case because they are not associated with Turner & Costa, PL nor Ms. Costa. Defendant seeks tax records before Lori Costa was a partner in 2010, after she was disabled and no longer a part of any firm in 2016 and from basically any entity or person by including such language as “including but not limited to” and “from 2008 to present.”

B. METROPOLITAN LIFE HAS NOT DEMONSTRATED A SUBSTANTIAL NEED FOR DISCOVERY THAT OUTWEIGHS BEACHSIDE LEGAL SERVICES, P.L.L.C. AND SCOTT A. TURNER’S MULTIPLE INTEREST IN NON-DISCLOSURE

Defendant’s defense theories rest upon the interesting belief that Ms. Costa ceased working for Turner & Costa PL during the alleged “relevant period” because “MetLife uncovered various non-medical reasons for Costa’s departure from her firm.....including the fact that her firm was having monetary problems.” Defendant has used these unsubstantiated theories for an overly broad fishing expedition into nonparty’s private, protected, confidential and privileged records. Defendant is correct that it is entitled to certain relevant discovery, however, that entitlement is balanced by protected interests. Per Rule 26, the discovery demanded is subject to a balancing test between the burden or expense of the proposed discovery versus its likely benefit.

In the instant case, the request seeks any records from 2008 to present, not solely regarding Lori Costa, but records “including **but not limited to**, Turner and Costa, PL.” At first blush it would seem the interest is in Turner & Costa, PL records, however the documents “may include but are not limited to: “1. All documents concerning Costa during the **relevant period**” (defined as 2008 to present) and 2. “All documents concerning **Entities** during the relevant

period” (entities includes Beachside Legal Services, P.L.L.C as it is alleged they are formerly known as Turner & Costa, PL). If there was a compliance, the Defendant would then have access to all business and personal records from 2008 to present that would include all personal records of Scott A. Turner and his wife, as those records are directly related to the business records. This request also seeks “all financial statements, by any person or entity to any person or entity”.

When balanced against the alleged theories of the Defendant, Beachside Legal Services, P.L.L.C., and Scott A. Turner, as non-parties, should be protected from this personal, invasive and unnecessary disclosure of private and protected information. The personal and business records of these non-parties would have no relevant evidentiary value to either prove the breach of contract case nor any valid affirmative defense. If Scott A. Turner and his wife had any personal tax burdens, the reasons may be many for the same, or if any business had any financial concerns, this is of no value to this case at all.

**C. METROPOLITAN LIFE’S SUBPOENA REQUESTS DOCUMENTS THAT ARE
SUBJECT TO CONFIDENTIALITY, ATTORNEY-CLIENT, AND/OR WORK
PRODUCT PRIVILEGES**

Turner & Costa PL was a working law firm, and, therefore, its records on their face are subject to the protection of attorney-client and work product privileges. When communications appear, on their face to be privileged, the **party seeking disclosure** has the burden to prove they are not privileged. *Eight Hundred, Inc. v. Fla. Dept. Revenue*, 837 So. 2d 574, 576 (1st DCA 2003) (emphasis added). Metropolitan Life has not demonstrated these records are not privileged. The requests from Defendants would obviously and quite necessarily involve review for privileged information and redaction to protect the same. It would be a violation of Attorney

Turner's ethical duties to his former and active clients by failing to personally perform a privilege review and either withhold or redact documents. The undersigned must protect its attorney client and work product privileges.

Moreover, Mr. Turner's business records, personal tax records and income records for Beachside Legal Services, P.L.L.C. would do nothing to further the merits of any valid defense. The issue in this case does not involve the business and personal tax records of Mr. Turner and his new business entity. Moreover, those tax records are confidential between himself and his accountant based on Florida Statute § 90.5055. These communications, too, are privileged on their face, and Metropolitan Life has not demonstrated that these communications are not privileged and subject to disclosure. Again, Metropolitan Life has requested documents that are protected by confidentiality, work product privilege, and attorney client privilege. Metropolitan Life has not made any effort of a substantial showing of need or remote relevance for these personal and business tax records or their relation to a claim for disability.

It is undisputed Lori Costa has never had an interest in Beachside Legal Services, P.L.L.C., was not a partner in Turner & Costa, PL until 2010, discontinued work in 2015 and Turner & Costa, PL formally dissolved and discontinued existence in 2016.

Inexplicably missing from the Motion to Compel, was the disclosure that Lori Costa has provided MetLife all of her personal tax records during the relevant period. Those documents did provide the Defendant with any potential relevant information regarding the earnings she had during the relevant period. MetLife was also provided multiple records that revealed the gross billable hours Lori Costa completed during the relevant period also. Although the undersigned is not privy to the subject policy terms, it may be assumed that the disability policy provides

benefits for a disability as defined in the policy **at the time of the disability**. The original underwriting on the subject policy would have determined the amount of covered benefits available **at the time of underwriting**. Assuming both are true here, the business income, business tax records, personal income records from a non-party has absolutely no relevance and can not be reasonably calculated lead to the discovery of admissible evidence. The real issues, as apposed to some very interesting theories and speculation, are whether the policy was in force at the time of the alleged disability, what is the definition of disability, what is the alleged disability, and does the alleged disability fall within the definition of the terms of the policy. To be blunt, even her personal income tax records have minimal relevance, as MetLife issued a policy defining the benefits she is to receive not based on billable hours or what is reported as income after the issuance of the policy. To then somehow suggest the personal tax records or business records of a non-party are equally relevant is disingenuous. As such, Beachside Legal Services, P.L.L.C. and Scott A. Turner should be protected from this disclosure.

WHEREFORE, Non-Parties, BEACHSIDE LEGAL SERVICES, P.L.L.C, and Scott A. Turner by and through the undersigned, requests this Court enter an Order denying the subject Motions and protecting Beachside Legal Services, P.L.L.C. and Scott A. Turner from the disclosure of the personal, private, protected and objectionable information.

Respectfully Submitted,

April 2, 2018
Satellite Beach, FL

/s/ Scott A. Turner
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on April 2, 2018, a true and correct copy of the foregoing has been furnished by Electronic Mail to: Dana Chaaban, Esquire, Shutts & Bowen, LLP, 200 South Biscayne Boulevard, Suite 4100, Miami, FL 33131, dchaaban@shutts.com, jmeagher@shutts.com, jlandau@shutts.com (Attorney for Defendant) and John Tucker, Esquire, Tucker & Ludin, P.A., 5235 16th Street, N., St. Petersburg, FL 33703 dana@tuckerludin.com and service@tuckerdisability.com (Attorneys for Plaintiff) on April 2, 2018.

/s/ Scott A. Turner
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