

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 OBJECTION AND RESPONSE TO DEFENDANT METLIFE'S  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM BEACHSIDE  
LEGAL SERVICES, P.L.L.C. F/K/A TURNER & COSTS PL

Non-Party, BEACHSIDE LEGAL SERVICES, P.L.L.C., pursuant to Fed. R. Civ. P. 45 (2)(B)(i)(ii) hereby files this Response to Defendant Metlife's Motion to Compel Production of Documents from Beachside Legal Services, P.L.L.C. served on March 2, 2018, 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. is not now nor has it ever been a party to this lawsuit nor in any way a contracting party with Defendant herein. A Subpoena to Testify at a Deposition *Duces Tecum* was served on Beachside Legal Services, P.L.L.C., a non-party, on November 7, 2017. This *Duces Tecum* requested Beachside Legal Services, P.L.L.C. to comply on October 31, 2017 in Miami, FL, in direct conflict and disregard for Federal Rule of Civil Procedure 45. Moreover, compliance was impossible as the date of service was *after* the requested date for the Deposition *Duces Tecum*. Beachside Legal Services, P.L.L.C. timely filed its Non-Party Objection and Response on November 16, 2017. The subject Subpoena to Testify

at a Deposition *Duces Tecum* was served on Beachside Legal Services, P.L.L.C., on January 29, 2018. Again, Beachside Legal Services, P.L.L.C. timely served its Non-Party Objection and Response with documents on January 30, 2018. The subject Motion to Compel Production of Documents from Beachside Legal Services, P.L.L.C. f/k/a Turner & Costa PL was served on March 2, 2018, some 31 days post response. At the outset it should be noted the subject Subpoena *Duces Tecum* is moot as the Defendant voluntarily canceled the subject deposition *Duces Tecum* the day before it was to take place. No deposition or discovery is pending as to this non-party. Assuming the Defendant has timely filed this Motion to Compel pursuant to The Federal Rules of Civil Procedure and/or local Rules and assuming the Defendant timely serves yet another Subpoena *Duces Tecum* in compliance with any discovery Order of this Court, Beachside Legal Services, P.L.L.C. files this response and Affidavit.

## **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.’S OBJECTIONS TO METROPOLITAN LIFE’S MOTION TO COMPEL DISCOVERY *DUCES TECUM***

**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 now by Scott A. Turner, Esquire, 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 now moot Subpoena *Duces Tecum* was directed at Beachside Legal Services, P.L.L.C. (f/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. Therefore, any and all requests directed toward Beachside Legal Services, P.L.L.C. are irrelevant and outside the scope of Rule 26(1) in the instant case because they are not an entity associated with Turner & Costa, PL or Ms. Costa. Defendant alleges that an internal email to staff (Defendants Exhibit 4) somehow evidences Beachside Legal Services, P.L.L.C. was formerly known as Turner & Costa, PL. This is quite disingenuous. It is obvious on its face that the 5:25 AM internal email was to let staff know Lori Costa would not be able to work, but also to let them know "... the firm name **will** change" (emphasis added). The new Professional Legal Liability Company had not officially been formed. The staff would not be concerned with what form the new entity was in, however, staff would need to know how to answer the phone correctly and put the entity that will be formed in the future correctly on correspondence, emails, pleadings etc. See Exhibit A attached Affidavit of Scott A. Turner, Esquire.

**B. METROPOLITAN LIFE HAS NOT DEMONSTRATED A SUBSTANTIAL NEED FOR DISCOVERY THAT OUTWEIGHS BEACHSIDE LEGAL SERVICES, P.L.L.C.'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 of a voluntary lifestyle change, or in the alternative, financial issues within the old firm, or in the alternative, a non-medical reason (without explanation). Defendant has used these unsubstantiated theories for an overly broad fishing expedition into a nonparty's protected confidential and privileged records. Defendant is correct that it is entitled to certain relevant discovery, however, that entitlement is balanced by the protected interests of the non-party from whom the discovery has been requested. 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 to Beachside Legal Services, P.L.L.C. is overly burdensome and exceedingly costly. Defendant has requested "[a]ll documents concerning financial reports, profitability reports, billing reports, billing records for BLS/TC and/or Costa . . . during the relevant period" and "all billing records." The relevant period defined as "2008 through the present day." These documents contain client names, billing descriptions, work descriptions, work discussions, client discussions, descriptions of letters and emails, phone call descriptions with clients and carriers and data subject to the attorney-client and work product privileges, the redaction of which would take countless hours. When balanced against the needs of this case, this request of a nonparty is excessive. Many of those cases may still be pending. In his original objections to Defendant's Subpoena *Duces Tecum*, Attorney Turner stated that he estimated, "150 hours of time to fully look into any and all closed files (to the extent they even exist in closed storage), look in any old computer systems (to the extent any old used/closed system even can be restored and recoverable) by paying some properly qualified technician, and to the extent any old client could be contacted to waive any privileged billing information." Defendant has completely disregarded and ignored this substantial burden it has placed on a non-party. By stating, "here is zero burden or expense to Beachside Legal in providing MetLife with the records," is in blatant disregard for this small firm and its capabilities. It should be stated that Scott Turner had a conversation with counsel for the Defendant on February 12, 2018 at 8:30 AM and told them in very clear terms that many of the documents requested do not even exist, the old computer system has been replaced, the old Time Slips program has been upgraded, many closed and old files are in storage, many older files still

are pending, and he had given them what he had. This was ignored and not mentioned by the Defendant's Counsel to this Court. The completion of the Defense request will be more than a few simple key strokes. Rather, Defendant has requested information from 2008 to present regarding cases from a very active law firm. In any given year, 200-300 cases have been active. There are potentially thousands of closed and active files that would have to be individually pulled (to the extent available from closed storage or existing in closed electronic filing) and researched by the undersigned to fully comply with this request. Beachside Legal Services, P.L.L.C. is a full-time working law firm consisting of Attorney Turner and his six full-time staff members. He is the only full time attorney at the firm. His time estimate is reasonable based on the number of closed and open files subject to the discovery request over the alleged "relevant period." Causing any one employee or employees to be pulled from their work duties in an effort to further comply would cause a great financial burden and harm to Beachside Legal Services, P.L.L.C. Attorney Scott Turner attaches an affidavit supporting this time estimate and burden. When balanced against the alleged theories of the Defendant, Beachside Legal Services, P.L.L.C., as a non-party, should be protected from this invasive, unnecessary disclosure of protected information.

**C. METROPOLITAN LIFE'S SUBPOENA DUCES TECUM 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 for this moot *duces tecum*. This again, would be of great burden and expense to Beachside Legal Services, P.L.L.C. to even attempt to perform. The undersigned must protect its attorney client and work product privileges. It is currently unknown what extent these potential records even exist in either electronic or paper form and exactly how long it may even take to perform an adequate privilege review.

Moreover, Mr. Turner's business' and personal tax records and income records for Beachside Legal Services, P.L.L.C. would do nothing to further the merits of this case. 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 entitled 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.

In conclusion, it is undisputed Lori Cosa 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, were the documents that were provided (with the exception of an internal email to the staff attached as Exhibit 4). Those documents did provide the Defendant with any potential relevant information regarding the billable hours during the relevant period kept in Lori Costa's work employee file. In fact, the entire file was provided and this also was told to counsel for the Defendant on February 12, 2018. Although the undersigned is not privy to the subject policy terms, it may be assumed (having sold disability insurance for a number of years for North Western Mutual Life Insurance Company before law school) 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 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.

A Defendant should not be permitted to demand discovery from a non-party where compliance with the demand is overly burdensome, excessive in both time and financial resources, seeks privileged and protected information, is harassing and irrelevant to the real issues before any Court and/or Jury.

Therefore, based on the above, Beachside Legal Services, P.L.L.C. should be protected from this disclosure.

WHEREFORE, Non-Party, BEACHSIDE LEGAL SERVICES, P.L.L.C, by and through the undersigned, requests this Court enter an Order protecting Beachside Legal Services, P.L.L.C. and the undersigned from producing any and all objectionable information.

Respectfully Submitted,

March 16, 2018  
Satellite Beach, FL

/s/ Scott A. Turner  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY on March 16, 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](mailto:dchaaban@shutts.com), [jmeagher@shutts.com](mailto:jmeagher@shutts.com), [jlandau@shutts.com](mailto: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](mailto:dana@tuckerludin.com) and [service@tuckerdisability.com](mailto:service@tuckerdisability.com) (Attorneys for Plaintiff) on November 16, 2017.

/s/ Scott A. Turner  
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