

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH HUSSEY : CIVIL ACTION
: :
v. : :
: :
CHASE MANHATTAN BANK, : :
ET AL. : NO. 02-7099

MEMORANDUM ORDER

AND NOW, this 26th day of July, 2005, it is ORDERED that Liberty Mutual Insurance Company's Motion To Quash Subpoena (Doc. No. 60) is GRANTED.

On July 18, 2005, Plaintiff Joseph Hussey served a subpoena directed to the "Custodian of Records, Liberty Mutual" at an office of Liberty Mutual located at 111 South Independence Mall East, Suite 710, Philadelphia, Pennsylvania. (Doc. No. 60 ¶ 3, Ex. A.) The subpoena directs the custodian of records "to produce for testimony at the trial of this matter a corporate designee with the appropriate knowledge and authority to authenticate, as records maintained in the normal course of business, all those records previously produced by Liberty Mutual in the course of this litigation."¹ Plaintiff's long-term disability policy, however, was issued and administered by Liberty Life Assurance Company of Boston ("Liberty Life"), not Liberty Mutual.² (*Id.* ¶ 4; McGee Aff. ¶¶ 2, 20-21.) According to counsel for Liberty Life, the relevant documents are in the custody of the claims department of Liberty Life, located in Dover, New

¹ In his Complaint, Plaintiff initially named Liberty Life Assurance Company of Boston and Liberty Mutual Group as Defendants in this action. On December 31, 2003, we granted summary judgment in favor of these Defendants, concluding that they were not fiduciaries under ERISA with respect to Plaintiff's claim. (Doc. No. 42 at 7-10.)

² Liberty Life is a corporation affiliated with Liberty Mutual Insurance Company and is a member of the Liberty Mutual Group of Companies. (McGee Aff. ¶ 21.)

Hampshire. (Doc. No. 60 ¶ 6(a).) None of these documents are in the custody of Liberty Mutual. (*Id.*)

“A party’s lack of possession or legal control over documents requested by a subpoena is normally a valid defense to a subpoena and justification for a motion to quash.” *In re Grand Jury*, 821 F.2d 946, 951 (3d Cir. 1987); *see also Gerling Int’l Ins. Co. v. Comm’r*, 839 F.2d 131, 140 (3d Cir. 1988) (“In the absence of control by a . . . corporation over documents in the physical possession of another corporation, the [first] corporation has no duty to produce.”); *Highland Tank & Mfg. Co. v. PS Int’l, Inc.*, 227 F.R.D. 374, 379 (W.D. Pa. 2005) (“In order to properly command a nonparty to produce documents for inspection and copying, it must appear that the documents subpoenaed are within the control of the nonparty witness.”). “Control is defined as the legal right, authority or ability to obtain documents upon demand.” *United States Int’l Trade Comm’n v. ASAT, Inc.*, No. 05-5009, 2005 U.S. App. LEXIS 10826, at *26 (D.C. Cir. June 10, 2005) (quoting *Camden Iron & Metal, Inc. v. Marubeni Am. Corp.*, 138 F.R.D. 438, 441 (D.N.J. 1991)). The subpoenaing party bears the burden of establishing the opposing party’s control over the relevant witnesses or documents. *Camden Iron & Metal, Inc.*, 138 F.R.D. at 441 (citing *United States v. Int’l Union of Petroleum & Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989)). Citing to Liberty Mutual’s website, Plaintiff asserts that the Liberty Mutual family of companies operates out of its Philadelphia office. (Doc. No. 62 at 2.) Even if true, however, this assertion does not establish that Liberty Mutual exercises custody or control over Liberty Life’s documents regarding Plaintiff’s claims. Because Plaintiff has offered no evidence that Liberty Mutual controls the relevant witnesses or documents, Liberty Life’s Motion To Quash is

granted.³

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge

³ We note that counsel for Plaintiff and Liberty Life have agreed to hold a telephonic deposition of the relevant corporate designee to authenticate the documents listed in the subpoena. (Doc. No. 62 at 2.) Consequently, Plaintiff will not be prejudiced by granting the instant Motion To Quash.