

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

SUSAN ADENIYI-JONES, et al. : CIVIL ACTION
: :
v. : :
: :
STATE FARM MUTUAL AUTOMOBILE : NO. 14-7101
COMPANY :

MEMORANDUM

Bartle, J.

October 21, 2015

Plaintiffs Susan Adeniyi-Jones ("Adeniyi-Jones") and Abraham K. Munabi ("Munabi") have brought this action against their insurer, defendant State Farm Mutual Automobile Insurance Company ("State Farm"). They allege breach of contract as well as bad faith on the part of State Farm in negotiating with them regarding their claim for underinsured motorist benefits. See 42 Pa. Cons. Stat. § 8371. Plaintiffs' claims arise out of an October 11, 2011 motor vehicle accident between Adeniyi-Jones and Tyrell McCoy ("McCoy"). McCoy settled with the plaintiffs for his policy limits of \$25,000, and the plaintiffs now seek additional compensation from their own policy.

State Farm has moved to compel the deposition of Rhonda Hill Wilson ("Wilson"), counsel for plaintiffs. The plaintiffs have countered with a motion for a protective order.

Generally, discovery is available to a party if it "is relevant to any party's claim or defense and proportional to the

needs of the case.” See Fed. R. Civ. P. 26(b)(1). Although the court proceeds with caution, there is no heightened evidentiary burden on the party seeking to depose counsel. See Premium Payment Plan v. Shannon Cab Co., 268 F.R.D. 203, 204-05 (E.D. Pa. 2010).

The party seeking a protective order precluding the deposition of counsel has the burden to show that the deposition would cause:

undue burden or oppression measured by (1) the extent to which the proposed deposition promises to focus on central factual issues, rather than peripheral concerns; (2) the availability of the information from other sources, viewed with an eye toward avoiding cumulative or duplicative discovery; and (3) the harm to the party's representational rights resulting from the attorney's deposition.

Frazier v. Se. Pa. Transp. Auth., 161 F.R.D. 309, 313 (E.D. Pa. 1995).

State Farm seeks to depose Wilson with respect to discussions that she had with State Farm's claims adjuster concerning the plaintiffs' insurance claim before filing this lawsuit. These conversations involve central factual issues relevant to the plaintiffs' allegation in this lawsuit that State Farm acted in bad faith in negotiating settlement of their insurance claim. Included in the alleged acts of bad faith is State Farm's failure to request a statement under oath from Adeniyi-Jones or a medical examination of her. State Farm counters that it acted reasonably pursuant to an oral agreement with Wilson

that she would provide State Farm information that would render a statement under oath and medical examination unnecessary. The existence of any oral agreement is central both to the plaintiffs' statutory bad faith claim and the defendant's defense. A deposition of counsel is appropriate where "the attorney's conduct itself is the basis of a claim or defense, [and] there is little doubt that the attorney may be examined as any other witness." See Johnston Dev. Grp., Inc. v. Carpenters Local Union No. 1578, 130 F.R.D. 348, 352 (D.N.J. 1990).

Wilson disputes State Farm's characterization of her conversations with it. As such, Wilson has factual information in her knowledge that is only available from Wilson. The plaintiffs have not met their burden to demonstrate that "the information is so readily available from other sources that an order compelling [counsel's] deposition would be oppressive." See Premium Payment Plan, 268 F.R.D. at 206 (alteration in original) (citations omitted). Even where a conversation takes place among a handful of individuals, each individual's unique perspective is independently discoverable. See Johnston Dev. Grp., 130 F.R.D. at 353.

Finally, harm to the plaintiffs' representational rights is minimal because the communications, by their very nature, are not protected by the attorney-client privilege. The attorney-client privilege does not protect communications between the representative of the defendant and plaintiffs' counsel. See,

e.g., In re Teleglobe Commc'ns Corp., 439 F.3d 345, 361 (3d Cir. 2007). Whether Wilson will be required to be disqualified as counsel for plaintiffs will have to await another day. See Johnston Dev. Grp., 130 F.R.D. at 353.

Accordingly, we will grant the motion of State Farm to compel the deposition of Wilson. The defendant may depose Wilson limited to her communications with the defendant regarding the plaintiffs' pre-litigation insurance claim. The motion of Adeniyi-Jones and Munabi for a protective order will be denied.

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STATE FARM MUTUAL AUTOMOBILE CO. : NO. 14-7101

ORDER

AND NOW, this 21st day of October, 2015, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of defendant State Farm Mutual Automobile Insurance Company to compel the deposition of Rhonda Hill Wilson (Doc. # 40) is GRANTED, limited to Wilson's communications with the defendant regarding the plaintiffs' pre-litigation insurance claim; and

(2) the motion of plaintiffs Susan Adeniyi-Jones and Abraham K. Munabi for a protective order (Doc. # 42) is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.