

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

KAKKADASAN SAMPATHACHAR : CIVIL ACTION
: :
v. : :
: :
: : NO. 03-5905
FEDERAL KEMPER LIFE ASSURANCE :
COMPANY et al. :

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

November 24, 2004

The parties raise four discovery issues in this case in which Plaintiff Kakkadasan Sampathachar, M.D., claims Federal Kemperer Life Assurance Company and American General Life Insurance Company failed to pay the proceeds of two \$1 million policies insuring the life of his wife, Pannathpur Sampathachar, M.D., after she drowned in the Ganges River on November 7, 2001. Dr. Sampathachar alleges breach of contract and a violation of Pennsylvania’s bad faith statute, 42 Pa.C.S. §8371.

The defendant insurance companies deny Dr. P. Sampathachar died, deny they have failed to pay proceeds owed, and deny that they have acted in bad faith. Plaintiff initially filed suit in the Court of Common Pleas of Philadelphia County on September 19, 2003, verifying he was a citizen of the United States residing at 931 Burdette Drive, Downingtown, PA 19335. After Defendant insurers removed the state court action to federal court, Dr. K. Sampathachar filed an amended complaint in which he (1) removed his address from the caption but retained the averral “Dr. K.

Sampathachar is a United States citizen with a residence as set forth in the caption;” and, (2) averred “this Court has jurisdiction under 28 U.S.C. § 1332, because there is diversity of citizenship and the amount in controversy exceeds \$75,000.” Amended Complaint, Paragraphs 2 and 5.

Dr. Sampahachar asks this Court to order the defendants to depose him in India or, alternatively, to pay for his transportation to Pennsylvania or a videoconferenced deposition from India. Dr. Sampathachar also asks this Court to order American General, based in Houston, Texas, to produce its corporate designee for deposition in Philadelphia. Dr. Sampathachar argues the two issues should be handled alike. The third issue is the adequacy of Dr. Sampathachar’s disclosures under Fed.R.Civ.P. 26(a)(1)(A).

DISCUSSION

Under the Federal Rules of Civil Procedure the location of a deposition is first left to the party noticing the deposition. Fed.R.Civ.P. 30(b)(1). Resolution of any dispute regarding location is left to the sound discretion of the court. *Philadelphia Indem. Ins. Co. v. Federal Ins. Co.*, 215 F.R.D. 492, 495 (E.D. Pa. 2003). A party who objects to the place set for deposition ordinarily files a motion for a protective order, averring physical or financial hardship. Fed.R.Civ.P. 26(c). Normally, a plaintiff will be required to make himself or herself available for examination in the district in which suit was brought because the plaintiff selected the forum. Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 2112 (1994); *United States v. Rock Springs Vista Dev.*, 185 F.R.D. 603, 604 (D. Nev.1999) (requiring plaintiff to appear in forum for deposition in absence of showing of good cause for varying from the normal rule).

Courts have devised two approaches to evaluating claims of hardship. In one approach, a plaintiff bears the burden of demonstrating extreme hardship to avoid appearing for his deposition

in the chosen forum. *Clem v. Allied Van Lines International Corp.*, 102 F.R.D. 938, 940 (S.D. N.Y. 1984). The second approach puts the burden on the party opposing a telephonic deposition to come forward with a particularized showing as to why a telephonic deposition would be prejudicial. *Jahr v. IU Intern. Corp.*, 109 F.R.D. 429, 432 (M.D. N.C. 1986). Nothing in the language of Rule 30(b)(7) requires that a telephonic deposition may only be taken upon a showing of necessity, financial inability, or other hardship. Rule 30(b)(7) should be construed *in para materia* with subsection (b)(4) to reduce the cost of federal litigation by providing alternatives to traditional stenographic depositions. *Jahr*, 109 F.R.D. at 431.

“Telephone depositions are not recommended for obtaining controversial testimony. You cannot observe the impact of your questions or the witness’ nonverbal responses. Moreover, you will be unable to ascertain if anyone is listening in or ‘coaching’ the witness.” *Rock Springs*, 185 F.R.D. at 604 (citation omitted). One court found the needs of both parties would be met by requiring the plaintiff who was deposed by telephone also to be deposed in the forum forty-eight hours before commencement of trial. *Anguile v. Gerhart*, 1993 WL 414665 at *3 (D. N.J. 1993).

This case is likely to turn on the testimony by and credibility of Dr. Sampathachar; therefore, a telephonic deposition is inappropriate. Dr. Sampathachar has failed to demonstrate the degree of hardship required under *Clem* to refuse to appear for deposition. Nothing in this decision should be read as preventing a compromise between the parties, along the lines of *Anguile*. In the absence of a compromise, however, this Court orders Dr. Sampathachar to appear in the Eastern District of Pennsylvania for deposition.

The obverse of the logic applies to the deposition of a defendant corporate designee. A defendant neither chooses the cause of action nor the place of its bringing. *Salter v. Upjohn Co.*, 593

F.2d 649, 651 (5th Cir. 1979). Depositions of corporate officers should ordinarily be taken at the corporation's principal place of business. Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 2112; *Kennedy v. Jennelle*, 1991 WL 24904 at *1 (E.D. Pa. 1991). In the absence of a compromise by the parties, the deposition of American General's corporate designee will be taken in Texas.

The third discovery issue involves the degree of specificity with which Dr. Sampathachar disclosed potential witnesses under Fed.R.Civ.P. 26. This court does not believe that its involvement in that question is or should be necessary and, therefore, relies on the parties to reach an amicable solution.¹

The fourth issue concerns Interrogatories 8 and 9 which Dr. Sampahachar served on American General, asking the disposition of claims where the death occurred in India and the disposition of claims made by insureds or beneficiaries of Indian origin. Under Pennsylvania law, to recover under a claim of bad faith, the plaintiff must show that the defendant did not have a reasonable basis for denying benefits under the policy and that defendant knew or recklessly disregarded its lack of reasonable basis in denying the claim. *Terletsky v. Prudential Property and Cas. Ins. Co.*, 437 Pa. Super. 108, 125, 649 A.2d 680, 688 (1994). Since a plaintiff does not have to prove a pattern or practice of prejudice to prevail, but only an unreasonable failure to pay, interrogatories 8 and 9 are irrelevant.

Accordingly, we enter the following:

ORDER

AND NOW, this 24th day of November, 2004, it is hereby ORDERED that Plaintiff shall

¹ The parties are directed to this Court's Operating Procedures, published on the Eastern District website, and are reminded parties are expected to make a good faith effort to resolve discovery issues. Six lengthy letters on these discovery issues are excessive.

appear in the Eastern District of Pennsylvania for oral deposition, Defendant American General's corporate designee shall be deposed in the district in which the corporation resides, and Defendant American General will be protected from answering Interrogatories 8 and 9 absent a more specific showing of relevance.

BY THE COURT:

\s\ Juan R. Sánchez

Juan R. Sánchez, J.