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THRESHOLD ISSUE - JURISDICTION

Because the suit was filed in federal court, jurisdiction must be proper. A federal court has limited jurisdiction and must have personal jurisdiction and subject matter jurisdiction to hear the case.

Here, the facts indicate that jurisdiction was proper, thus it is assumed the court has proper personal and subject matter jurisdiction over Priscilla's action.

1. PRISCILLA'S MOTION TO COMPEL FURTHER RESPONSES FROM GROCERY

Priscilla (P) seeks responses from Grocery (G) regarding two interrogatories. The first requests the names and addresses of every grocery employee who worked construction on the soda display and every soda company employee who did so. The second interrogatory requests copies of every training manual has used in training its employees. Each request is discussed in turn.

Discoverable Information

A party can request discovery if the information sought is not privileged, is relevant and proportional, and is reasonably calculated to lead to admissible evidence. Parties are required to make mandatory disclosures to opposing counsel within thirty days of a Rule 26(f) conference. Mandatory disclosures include the disclosure of a relevant insurance policy, witnesses that will be testifying, the nature of testimony, and the amount and calculation of damages.

Methods of Discovery

Information is discoverable by several methods, including by interrogatories, depositions, or by subpoena of parties and non-parties.

Interrogatories

Interrogatories are written questions that seek written answers regarding matters related to the case. Interrogatories may not be in the form of compound questions and each party is entitled to serve a maximum of 25 written interrogatories on each witness. A party may request that the court allow further interrogatories, and the court has discretion whether to allow a party to so request. A party may object to an interrogatory and must do so in writing stating the grounds for the objection.

Motion to Compel

A party may file a motion to compel under FRCP 37 for failure to produce discoverable information.

In response to a motion to compel, the nonmoving party may raise either the attorney-client privilege or the attorney work product doctrine to avoid disclosing privileged information. The party raising a privilege must state which privilege that applies and must state with particularity the nature of the information and/or documents being withheld, and the grounds for the privilege. A court may ask for the party to produce the documents/information for *in camera* inspection. The court makes the final determination as to whether the privilege applies. If the court finds no privilege applies, the nonmoving party must produce the requested information/documents. If the producing party fails to comply, the court may impose sanctions in the form of costs or contempt of court.

With this framework in mind, each issue will be discussed in depth below.

- a. *Names and Addresses of all Grocery employees who worked on construction of the soda display*

Here, the names and addresses of all grocery employees who worked on construction of the soda display would be relevant to establish the breach and causation elements of P's negligence case. If P can establish that Grocery employees were acting in the scope of employment when they constructed the soda display and as result of their negligence, their faulty construction was both the actual and proximate cause of her injuries, then this information would help P meet her burden of proving those elements in her case. Additionally, because these employees may be called as witnesses in the case, it is mandatory that G disclose the names and addresses of these potential witnesses.

In sum, because P's request for the names and addresses of potential witnesses, the court should grant her motion to compel.

a-1. Names and Addresses of Every Soda Company Employee who Worked on Construction of the Soda Display

Here, the suit is against Grocery and not against the soda company, thus a request for the names and addresses of every soda company employee who worked on construction of the soda display would not be relevant to the suit at hand. Additionally, G may not have the names and addresses of these employees, since they do not work for G directly. G could implead the soda company into the suit to have the soda company indemnify G for any damages it has to pay out. Additionally, an interrogatory may not consist of a compound request/question. The motion can also be denied on these grounds.

As such, the court should deny P's motion to compel as to the names and addresses of soda employees.

b. Copies of Every Training Manual Grocery has used in Training its Employees

The court should deny this request because federal law allows a maximum of 25 interrogatories. Because this is the 26th interrogatory, P should have filed a request with the court to seek additional interrogatories. Because the facts do not indicate she did, P's motion to compel production of the training manuals should be denied.

2. GROCERY'S MOTION TO COMPEL

Grocery has moved to compel P to submit to mental and physical examinations and for productions of her taxes since 1995. Each request is discussed in turn.

a. Physical Examination

A court may order a physical examination of a party when the party's physical condition is at issue in the case and when the moving party shows good cause for the examination.

Because P suffered a physical injury when a very large display of bottled soda products fell on her at G's store, her physical condition is at issue. P is claiming medical expenses, pain and suffering, and lost wages as damages, so the nature and extent of her injuries must be established through evidence of her physical condition for her to prove and recover damages as part of a negligence claim.

Thus, if G shows good cause for the physical examination, the court should grant the order.

b. Mental Examination

A court may order the medical examination of a party if the party's mental condition is at issue in the case or if the party's mental condition is being used to establish a defense, such as insanity.

Here, P has suffered a physical injury and there are no facts that show that P has suffered a mental or psychological condition. G might argue that because she was hit in the head, she might have suffered some psychological damage, and thus, her mental state would be at issue, but this argument is likely to be unsuccessful. For the court to grant a

mental examination of P, G would have to show good cause, which P has not done.

As such, because P's mental state is not at issue in this negligence action, the court should not grant G's request for a mental examination.

c. *Production of P's Tax Returns since 1995*

Discoverable Information

See rule *supra*.

Here, P's tax returns dating ten years back from the date of the suit are irrelevant to the negligence suit at issue.

G may argue that establishing P's income is relevant to establishing lost wages in the suit, however, requesting tax returns dating back ten years is not proportional, as she may not have her tax returns dating back that far and her lost wages could be calculated by simpler means, such as by looking at more recent pay stubs.

Though establishing lost wages is relevant to P's negligence case, there are simpler, more proportional means for establishing the amount of lost wages P is entitled to. Thus, the court should not grant G's motion to compel P's tax returns dating back to 1995.

In sum, G's motion to compel an order for P's physical examination should be granted. G's motions to compel an order for P's mental examination and for all of P's tax returns dating back to 1995 should be denied.

3. GROCERY'S RESPONSE TO PRISCILLA'S INTERROGATORY ABOUT ITS EXPERTS

Expert Discovery

A part of a party's mandatory disclosures before trial, a party must provide the name, addresses, credentials, and any reports an expert prepares for the litigation at hand.

Here, G will argue that Xavier was hired before the action commenced and G has not identified Xavier as a witness, so G does not have to disclose X as an expert witness. Additionally, G will argue that Xavier is not an employee of G's and is merely an independent contractor, so there is no duty under mandatory disclosure rules to disclose his identity as a potential witness. The court could go either way on this issue, however because P's request was for "all experts hired for the litigation," and Xavier had not been hired for the litigation, the court should deny P's request.

4. GROCERY'S ASSERTION OF PRIVILEGE REGARDING XAVIER

Attorney-Client Privilege

The attorney-client privilege is an evidentiary privilege that protects the discovery of information obtained in the course of the attorney-client relationship. The federal rules apply this privilege to any confidential communications between an attorney and his client or his client's agent. To object to discovery on the basis of privilege, the party asserting the privilege must identify the privilege that has attached, the nature and type of information sought to be withheld, and the grounds for raising the privilege.

Here, assuming Xavier was hired by G's counsel, then Xavier is an agent of G and the attorney-client privilege would attach. However, G's objection to the privilege was improper. G should have identified the precise privilege they were asserting, the nature and type of the privileged information, and the grounds for the privilege. Because G's objection just

stated "privileged," the court should overrule G's assertion of privilege.

Question #1 Final Word Count = 1584

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