

Not Reported in F.Supp., 1996 WL 381563 (D.Kan.)
(Cite as: 1996 WL 381563 (D.Kan.))

H Only the Westlaw citation is currently available.

United States District Court, D. Kansas.
TURNER AND BOISSEAU, INC., Plaintiff,
v.
**NATIONWIDE MUTUAL INSURANCE COM-
PANY**, Defendant.
Civ. A. No. 95-1258-DES.

June 13, 1996.

[Daniel G. Menzie](#), Peter G. Collins, **Turner & Boisseau, Chartered**, Wichita, KS, [Hal D. Meltzer](#), **Turner & Boisseau, Chartered**, Overland Park, KS, Julie A. Bedinghaus, **Turner & Boisseau, Chartered**, Great Bend, KS, Stephen E. Dixon, P.B. Hoidale Co., Inc., Wichita, KS, for **Turner and Boisseau, Inc.**

[Lee M. Smithyman](#), [David J. Roberts](#), **Smithyman & Zakoura, Chtd.**, Overland Park, KS, for **Nationwide Mutual Insurance Company**.

MEMORANDUM AND ORDER

[SAFFELS](#), District Judge.

* This matter is before the court on the plaintiff's Motion for Review of United States Magistrate Judge's Order (Doc. 57).

I. *BACKGROUND*

In December 1988, the defendant, **Nationwide Mutual Insurance Company** ("Nationwide"), employed the plaintiff, **Turner and Boisseau, Chartered** ("**Turner and Boisseau**"), to represent the defendant's insured in *Murphy v. Smock*, a case filed in the District Court of Finney County, Kansas. The case was tried to a jury on July 20, 1992, but was settled prior to the conclusion of trial.

Turner and Boisseau filed suit in Barton County District Court on May 2, 1995, alleging that **Nationwide** owed the plaintiff \$54,280.19 for attorney's fees, expert's fees, and other costs incurred in defending

Murphy v. Smock between March 17, 1992, and December 8, 1992. The defendant removed the action to federal court on May 23, 1995. On October 12, 1995, the defendant filed a counterclaim against the plaintiff, seeking in excess of \$72,446.27 for fees and costs paid to the plaintiff prior to March 17, 1992. **Nationwide** claims that **Turner and Boisseau** breached its contract to provide the defendant with proper legal services and representation. The defendant alleges that the plaintiff, among other things, billed the defendant for fees and expenses that were substantially greater than necessary.

On November 10, 1995, Nationwide served its first set of twelve interrogatories and sixteen requests for production on the plaintiff. Interrogatory No. 4 read as follows: "Describe each occasion, giving case numbers, if applicable, where You have retained the services of Joseph Lichtor, M.D." On December 22, 1995, Turner and Boisseau served its answers and responses on the defendant. The plaintiff objected to Interrogatory No. 4 on the basis that it was irrelevant and not calculated to lead to discoverable evidence. The plaintiff also submitted that the request was burdensome and overbroad, in that it would force the plaintiff to review each of its case files to determine which experts were retained.

On January 22, 1996, Nationwide filed a motion to compel the defendant to provide complete answers to Interrogatory Nos. 2, 4, 5, 7, 8, and 9, and to produce the documents sought in Request for Production Nos. 12, 13, and 15. On February 29, 1996, Magistrate Reid granted the defendant's motion in part. The court ordered Turner and Boisseau to answer Interrogatory No. 4, but narrowed the scope of the request to a list of cases in which the plaintiff had retained Dr. Lichtor to conduct an independent medical examination and/or had retained Dr. Lichtor as a medical expert to testify at trial. The court also directed the defendant to limit its request to a specific seven-year period. In response to the court's order, the defendant informed the plaintiff that it sought information for the period 1986 through 1992.

On March 18, 1996, Turner and Boisseau filed the instant motion. The plaintiff asks the court to reverse

Not Reported in F.Supp., 1996 WL 381563 (D.Kan.)
(Cite as: 1996 WL 381563 (D.Kan.))

that portion of the magistrate judge's order requiring the plaintiff to respond to Interrogatory No. 4.

II. DISCUSSION

*2 The district court reviews orders of a magistrate judge as to non-dispositive pretrial matters under a "clearly erroneous or contrary to law" standard. [Fed.R.Civ.P. 72\(a\)](#). The court must affirm the magistrate judge's ruling unless "on the entire evidence [the court] is left with the definite and firm conviction that a mistake has been committed." [Ocelot Oil Corp. v. Sparrow Indus.](#), 847 F.2d 1458, 1464 (10th Cir.1988) (quoting [United States v. United States Gypsum Co.](#), 333 U.S. 364, 395 (1948)).

The information which the magistrate judge ordered **Turner** and **Boisseau** to provide in response to **Nationwide's** Interrogatory No. 4 concerns the defendant's counterclaim. **Nationwide** alleges that **Turner** and **Boisseau** recommended Dr. Lichtor to conduct an independent medical examination, without notifying the defendant that Dr. Lichtor charged excessive fees and generated opinions so extreme that he had been subject to protective orders and had been prohibited from testifying in several state district courts in Kansas and Missouri. According to the defendant, Dr. Lichtor submitted a bill for \$4,000 for time set aside, but not actually expended, to testify at trial. The defendant claims that the plaintiff should have informed **Nationwide** of Dr. Lichtor's billing practice, in that such a practice is not common among expert witnesses.

The scope of discovery through interrogatories is limited only by relevance and burdensomeness. [Rich v. Martin Marietta Corp.](#), 522 F.2d 333, 343 (10th Cir.1975). "[A] request for discovery should be considered relevant if there is *any possibility* that the information sought may be relevant to the subject matter of the action." [Snowden v. Connaught Labs., Inc.](#), 137 F.R.D. 325, 329 (D.Kan.1991). **Nationwide** contends that information regarding the relationship between the plaintiff and Dr. Lichtor, as requested in Interrogatory No. 4, is relevant to the issues raised in its counterclaim. The defendant maintains that by investigating other cases in which **Turner** and **Boisseau** has hired Dr. Lichtor to provide expert testimony, it can establish the plaintiff's knowledge of the doctor's billing procedures and reputation within the

legal community.

The plaintiff argues that while the information which **Nationwide** seeks in Interrogatory No. 4 could establish that Dr. Lichtor has worked for **Turner** and **Boisseau** on previous occasions, the interrogatory does not tend to elicit relevant facts regarding the doctor's excessive fees and generation of extreme opinions. The plaintiff suggests that the defendant could obtain the desired information by deposing Dr. Lichtor, and by asking him about his fees and about whether he has been the subject of protective orders.

The plaintiff's argument ignores the fact that **Nationwide** seeks to show **Turner** and **Boisseau's** *knowledge* of Dr. Lichtor's billing practices and reputation, not merely the doctor's actual fees and reputation. We agree with the magistrate judge's conclusion that information concerning the frequency of dealings between the plaintiff and Dr. Lichtor is relevant to the issues raised in the defendant's counterclaim.

*3 Having found that the information sought in Interrogatory No. 4 is relevant, we turn to the plaintiff's argument that such discovery is overly burdensome. **Turner** and **Boisseau** contends that in order to comply with the magistrate judge's order, it would need to hire several people to manually search all of its case files for the period 1986 to 1992.

Courts normally allow discovery unless the hardship on the interrogated party is unreasonable in light of the benefits to the requesting party. [8A Charles A. Wright et al., Federal Practice and Procedure § 2214, at 439 \(2d ed.1994\)](#). The fact that answering an interrogatory will cause great labor and expense is not of itself reason to deny a motion to compel discovery. See [Snowden](#), 137 F.R.D. at 332-33. The court finds that Interrogatory No. 4, as modified by the magistrate judge's order, is not overly burdensome on the plaintiff. As noted by the magistrate judge, Dr. Lichtor could likely assist **Turner** and **Boisseau** in locating those cases in which he has been retained.

IT IS THEREFORE BY THE COURT ORDERED that the plaintiff's Motion for Review of United States Magistrate Judge's Order (Doc. 57) is denied.

D.Kan.,1996.

Not Reported in F.Supp., 1996 WL 381563 (D.Kan.)
(Cite as: 1996 WL 381563 (D.Kan.))

Turner and Boisseau, Inc. v. Nationwide Mut. Ins. Co.
Not Reported in F.Supp., 1996 WL 381563 (D.Kan.)

END OF DOCUMENT