

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES M. CROWHORN, on	)	
behalf of himself and all others	)	C.A. No. 00C-06-010 WLW
similarly situated,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
NATIONWIDE MUTUAL	)	
INSURANCE COMPANY,	)	
	)	
Defendant.	)	

Submitted: August 13, 2002

Decided: September 3, 2002

**ORDER**

On Defendant's Motion for Protective Order Re:  
Plaintiff's Fourth Set of Requests for Production. Granted.

John S. Spadaro, Esquire, and Roger D. Landon, Esquire, of Murphy, Spadaro & Landon, Wilmington, Delaware for the Plaintiff.

Nicholas E. Skiles, Esquire, of Swartz, Campbell & Detweiler, Wilmington, Delaware, Curtis P. Cheyney, III, Esquire, *Pro Hac Vice*, James C. Haggerty, Esquire, *Pro Hac Vice*, for the Defendant.

WITHAM, J.

Upon consideration of Nationwide Mutual Insurance Company's ("Nationwide's" or the "Defendant's") Motion for Protective Order Regarding Plaintiff's Fourth Request for Production, and the response of James M. Crowhorn ("Mr. Crowhorn" or the "Plaintiff") thereto, as well as the arguments of the parties, it appears to the Court that:

1. On May 23, 2002, the Plaintiff served its Fourth Set of Requests for Production of Documents upon the Defendant. This document propounded only one request which sought all IME reports<sup>1</sup> that included the terms "symptom magnification," "symptom exaggeration" or "maximum medical improvement" previously produced to the Plaintiff in the prior action of *Phillips v. Nationwide*.<sup>2</sup> Counsel for the Plaintiff was also counsel for the *Phillips* plaintiff in that case. As a result of the settlement therein, a confidentiality agreement was entered into by the *Phillips* plaintiff, and her counsel.

2. Nationwide seeks an order protecting it from producing any or all IME reports produced by Nationwide in the prior *Phillips* action. The basis for Nationwide's motion is that the requested discovery is merits-based and irrelevant

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<sup>1</sup> Mr. Crowhorn excludes from his instant request for production, any IME reports where the subject was the *Phillips* plaintiff.

<sup>2</sup> From the documents submitted by the parties, it appears that this prior action was: captioned as *Phillips v. Nationwide Mutual Insurance Company*, C.A. No. 97C-02-050 that was later consolidated with an action caption[ed] as *Nationwide Mutual Insurance Company v. Annette Phillips*, C.A. No. 97C-02-038.

Def. Motion for Prot. Order Re: Plf.'s Fourth Req. for Prod. of Docs., Exh. C, P.17, n.5.

to the issue of class certification. Moreover, the Defendant argues that the information sought is protected, specifically, under the confidentiality agreement and, generally, under the doctor-patient privilege. To that end, Nationwide points out that this Court has previously issued an Order quashing Plaintiff's subpoena to Neurology Associates seeking the same reports.

3. The Court finds that the type of information sought by the Plaintiff is relevant to establish whether or not there is a class of litigants who have breach of contract claims similar to the Plaintiff's; however, with that being said, the Plaintiff must rephrase his request for production to protect confidentiality.

4. Under Superior Court Civil Rule 26(b)(1), the type of information requested by the Plaintiff is relevant and likely to lead to admissible information regarding the class certification of his breach of contract, good faith claims. As this Court previously stated in its July 10, 2002 Opinion:

The plaintiff's allegations with respect to the misuse of IME's do not involve a particular doctor or IME provider but focus on *Nationwide's* use of the IME reports. For this reason, all IME reports related to abuses in the complaint (and their corresponding claim files) are relevant. For example, it is alleged that the terminology "maximum medical improvement" is used as a pretext to cut off benefits; therefore, information as to IME reports using that language and the status of benefits after such language is used is relevant.<sup>3</sup>

5. Nonetheless, if the prior production by Nationwide in the case of

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<sup>3</sup> *Crowhorn v. Nationwide Mut. Ins. Co.*, 2002 WL 1767529 at \*11 (Del. Super.).

*James M. Crowhorn v. Nationwide*  
C.A. No. 00C-06-010 WLW  
September 3, 2002

*Phillips v. Nationwide*, was performed *without* the redactions required by this Court's July 10, 2002, Memorandum Opinion,<sup>4</sup> Plaintiff's request as currently stated requires Nationwide, in effect, to give away the identities of eight patients. That is not proper presently in these proceedings.

6. Under this Court's Scheduling Order of May 16, 2002, the Plaintiff was to receive 500 claim files by the present date. Within these 500 files, the Plaintiff may certainly request all IME reports (and Nationwide may make proper redactions) which include the terms "symptom magnification," "symptom exaggeration" or "maximum medical improvement."

Wherefore, consistent with this Order, Nationwide Mutual Insurance Company's Motion for Protective Order Regarding Plaintiff's Fourth Request for Production is **granted** for the reasons stated in this Order. Plaintiff may renew his request for production in compliance with this Order.

IT IS SO ORDERED.

/s/ Hon. William L. Witham, Jr.  
J.

WLW/dmh  
oc: Prothonotary  
xc: Order Distribution

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<sup>4</sup> *See id.*