

Guzman v Metropolitan Transp. Sequence No. 001
2012 NY Slip Op 32657(U)
October 15, 2012
Supreme Court, New York County
Docket Number: 401102/2011
Judge: Michael D. Stallman
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

Index Number : 401102/2011
GUZMAN, ALBERT
vs.
METROPOLITAN TRANSPORTATION
SEQUENCE NUMBER : 001
COMPEL

INDEX NO. 401102/11
MOTION DATE 8/23/12
MOTION SEQ. NO. 001

FILED

OCT 19 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

The following papers, numbered 1 to 8 were read in this motion to compel

Notice of Motion— Affirmation of Good Faith — Affirmation—Exhibits A-G—	No(s). <u>1-4</u>
Affirmation of Service _____	
Affirmation in Opposition — Exhibits A-B—Affidavit of Service _____	No(s). <u>5-6</u>
Reply Affirmation — Exhibit A—Affidavit of Service _____	No(s). <u>7-8</u>

Upon the foregoing papers, it is ordered that defendants' motion to compel plaintiff to comply with defendants' demands for authorizations for plaintiff's social security records and records from Bellevue Hospital from 1989 to present is granted in part, and it is further

ORDERED that, within 45 days, plaintiff is directed to provide defendants' counsel with an authorization for the release of his file from the Social Security Administration pertaining to his application for disability benefits in 1989, including complete medical records from the claim folder, and any continuing disability reviews of the benefits based on his head injury, and the motion is otherwise denied.

In this action, plaintiff alleges that, on August 5, 2010, he was struck by defendants' Access-A-Ride mini bus while crossing East 31st Street and Third Avenue in Manhattan. According to the bill of particulars, plaintiff suffered, among other injuries, a femoral neck fracture requiring surgery of the right hip and a right elbow fracture. (Shein Affirm., Ex A [Verified Bill of Particulars] ¶ 9.) Plaintiff was allegedly confined to Bellevue Medical Center from August 5-11, 2010, and Bellevue Hospital Rehabilitation Unit from August 11 to September 3, 2010. (*Id.* ¶ 10.)

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

(Continued . . .)

At his deposition on January 10, 2012, plaintiff testified that he suffered a head injury at a construction site in 1989, woke up in Bellevue Hospital, and found out that he "had some sort of stroke." (Schein Affirm., Ex D [Guzman EBT], at 7.) Plaintiff testified that he never returned to work after that accident and that he began collecting Social Security that same year. (*Id.* at 13.) Although it might appear from plaintiff's deposition testimony that he received social security disability benefits (Guzman EBT, at 13), the affirmed report of Dr. Mann states that plaintiff informed Dr. Mann at his physical examination that he was receiving SSI benefits due to the head injury. (Shein Affirm., Ex E.)

By a notice for discovery and inspection dated January 19, 2012, defendants demanded plaintiff to provide, among other things, authorizations permitting defendants' counsel to obtain plaintiff's social security records, and records from Bellevue Hospital from 1989 to date. (Schein Affirm., Ex F.) Plaintiff objected to those demands on the grounds that they were "palpably improper, overbroad, vague, beyond the scope of discovery, and remote in time." (Schien Affirm., Ex G.) Defendants now move to compel plaintiff to comply with those demands.

The only authorizations at issue are plaintiff's social security records and Bellevue Hospital records from 1989 to the present. Plaintiff apparently provided the other authorizations demanded in defendants' notice for discovery and inspection. (Carnemolla Opp. Affirm., Ex A.)

Defendants argue that they are entitled to the authorizations because they believe that the Access-A-Ride vehicle did not hit plaintiff, but rather plaintiff fell due to his stroke condition.

As to plaintiff's medical records from Bellevue Hospital since 1989,

"[i]t is well settled that a party must provide duly executed and acknowledged written authorizations for the release of pertinent medical records under the liberal discovery provisions of the CPLR when that party has waived the physician-patient privilege by affirmatively putting his or her physical or mental condition in issue."

(*Cynthia B. v New Rochelle Hosp. Med. Ctr.*, 60 NY2d 452, 456-457

(Continued . . .)

[1983][citations omitted].)

"Thus, once the patient has voluntarily presented a picture of his or her medical condition to the court in a particular court proceeding, it is only fair and in keeping with the liberal discovery provisions of the CPLR to permit the opposing party to obtain whatever information is necessary to present a full and fair picture of that condition."

(*Farrow v Allen*, 194 AD2d 40, 46 [1st Dept 1993].) "However, a party does not waive the privilege with respect to unrelated illnesses or treatments." (*McLane v Damiano*, 307 AD2d 338, 338 [2d Dept 2003].)

Here, plaintiff did not place at issue his prior head injury in 1989 and the treatment he received for his head injury. Plaintiff does not allege that he suffered injuries to his head as a result of being allegedly struck by defendants' Access-A-Ride vehicle. While defendants seek to excuse their own liability based on an alleged medical condition resulting from plaintiff's head trauma, plaintiff's denial that such a condition played a role in his accident does not place the head injury and treatment into controversy. (See *Dillenbeck v Hess*, 73 NY2d 278 [1989]; cf. *Zimmer v Cathedral School of St. Mary and St. Paul*, 204 AD2d 538, 539 [2d Dept 1994] [privileged psychiatric and social records were not discoverable simply because defendant contends that plaintiff had a propensity for violent behavior and was the aggressor of their altercation].) Because plaintiff did not place his prior head injury at issue, plaintiff did not waive the physician-patient privilege with respect to the medical records from Bellevue Hospital concerning the treatment for his head injury.

Therefore, defendants' motion is denied with respect to compelling plaintiff to provide authorizations for the release of medical records Bellevue Hospital from 1989 to the present.

As to plaintiff's social security records, the analysis is different. Disclosure of plaintiff's records from the Social Security Administration is governed by the Privacy Act of 1974 (5 USC 552a), which prohibits disclosure "except pursuant to a written request by, or with the prior written consent of,

(Continued . . .)

the individual to whom the record pertains, unless disclosure of the record would be . . . pursuant to the order of a court of competent jurisdiction." (5 USC 552a [b] [11].)

Plaintiff waived any physician-patient privilege attached to those medical records provided to the Social Security Administration in support of plaintiff's application for disability benefits. "[E]ven if the information was intended to remain confidential when it was communicated, once a patient puts the information into the hands of a third party who is completely unconnected to his or her treatment and who is not subject to any privilege, it can no longer be considered a confidence and the privilege must be deemed to have been waived as to that information." (*Farrow v Allen*, 194 AD2d 40, 44 [1st Dept 1993].) Because the Social Security Administration was not involved in providing plaintiff treatment, and because plaintiff does not argue that the Social Security Administration was subject to any other privilege, plaintiff waived any physician-patient privilege attached to medical records provided to the Social Security Administration.

Thus, defendants do not have to establish that plaintiff placed his medical condition at issue with respect to medical records sought from the Social Security Administration. Rather, the standard that governs here is whether the information in the records are either relevant, or reasonably calculated to lead to the discovery of information bearing on the claims. (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139, 1140 [2d Dept 2010]; see e.g. *Cronin v Gramercy Five Assocs.*, 233 AD2d 263 [1st Dept 1996].) Thus, *Budano v Gurdon* (97 AD3d 497 [1st Dept 2012]), which concerned the release of records from a health care provider, Lincoln Medical and Mental Health Center, does not apply here.

The application that plaintiff submitted to the Social Security Administration for benefits (whether for SSDI or SSI) due his head trauma in 1989 is reasonably calculated to lead to evidence as to defendants' defense that plaintiff suffers from a condition that makes him prone to falling or tripping. Such information might be found in the medical records submitted with his application.

The Court does not opine on the admissibility of records obtained from the Social Security Administration relating to plaintiff's benefits claim. The

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records themselves do not establish that plaintiff fell on the date of the alleged accident. However, they are discoverable under the liberal rules of discovery. (See 6-3101 Weinstein-Korn-Miller, NY Civ Prac CPLR ¶ 3101.08 [“the acid test for disclosure of information is not whether the party can make out a *prima facie* case without the evidence, but whether he or she can make out a more persuasive case with it”].)

Therefore, within 45 days, plaintiff is directed to provide defendants' counsel with an authorization for the release of his file from the Social Security Administration pertaining to his application for disability benefits in 1989, including complete medical records from the claim folder, and any continuing disability reviews of the benefits based on his head injury.

Copies to counsel.

Dated: 10/15/12 
New York, New York

1. Check one:
2. Check if appropriate: MOTION IS:
3. Check if appropriate:

CASE DISPOSED NON-FINAL DISPOSITION
 GRANTED DENIED GRANTED IN PART OTHER
 SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

HON MICHAEL D. STALLMAN
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