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Applicable Law

Under the Erie Doctrine, If the case is in Federal Court through Diversity Jurisdiction, then the Federal Court must apply the forums state's substantive law and the Federal Procedural Laws. When determining if a law is substantive or procedural, the courts will balance several factors and see if the law is outcome determinative. They will also look at the Federal Court's interests in using their own rules. Here, P has filed suit in federal district court against G for negligently maintaining the display. Negligence is typically a state court cause of action and there doesn't seem to be a federal question. Therefore, the Court must apply the state law's substantive law.

1. P's Motion to Compel Further Responses to her Interrogatories

P has served G with 26 interrogatories accompanying her complaint. Interrogatories are one of the many discovery tools that a party has in order to get information from the other party. Under the Federal Rules of Civil Procedure, discoverable information is more broad than the FR of Evidence. Evidence is relevant if it has a tendency to make a fact of consequence more or less probable. In order for information to be discoverable under the FRCP, however, the evidence must be relevant and proportional to the needs of the case. Privileged evidence is not discoverable. Additionally, evidence that is not admissible at trial may also be discoverable as long as it is reasonably calculated to lead to relevant, admissible evidence. A party may serve interrogatories to another party by simply giving them notice. Furthermore, whether evidence is discoverable is considered procedural, FRCP will apply. Importantly, a party is only allowed 25 interrogatories.

Here, P is asking for the names and address of every Grocery employee who worked on the construction of the soda display. This is highly relevant and proportional to P's suit because when she was shopping at G, a very large display of bottled soda products fell on her, bruising her head and entire body. The evidence is relevant and therefore discoverable because there was a reason that the bottled display fell. Nothing in the facts state that it was done because of her negligence or the act of a third party at the scene. It is viable to think that since a very large display that was constructed in the store (probably to entice buyers to buy) fell, a parties who were involved in constructing it, could have been negligent in the construction.

However, it is not clear as to P's request for every soda company employee is relevant. If the soda company who ship and deliver the soda products to the grocery store were involved in the construction of the display, then this request would be relevant and proportional but nothing in the facts show that any soda company employee was involved. it is more likely that the employees of the Grocery store were the ones to display the soda products. However, if P has a reasonable believe that employees of the soda company were involved, then it will be relevant.

There is also an issue on P serving G with 26 interrogatories. Under the FRCP, a party is allowed 25 interrogatories. Therefore, the Court should strike line 26. It is unlikely that the Court will strike the whole interrogatories just because it went over by one.

Therefore, The Court should grant P's motion to compel in regards to the names and addresses of the employees who worked on construction and further deliberate on the soda company employees.

2. G's Motion to Compel

G made two discovery requests asking for P to submit to mental and physical examinations and to provide all of P's Tax returns since 1995. A request for examinations is a discovery tool and as discussed above, relevant evidence that is proportional to the case if discoverable. Additionally, whether to submit to an examination is procedural and will be governed by the rules of Civil Procedure.

Physical Examination

A party may ask another party to submit to a physical examination if the condition is in controversy and if the party shows a good cause on why the examination should be submitted. The party must serve a written notice requesting the examination including the time, place, person who will be conducting the exam, and how long it will take.

Here, because P is suing G for injuries to her head and entire body, she has put her condition at issue. For a party to win on a negligence claim, they must prove Duty, Breach, Causation, and Damage. Because Damages is an element that must be proven, in a personal injury case, a person's physical state is always in controversy. Additionally, G must show good cause. Good cause is likely shown here because P is asking for medical expenses, pain and suffering, and lost wages. A physical examination will be relevant to determine if the injuries were severe enough to warrant a person, not only acquiring medical and mental damages, but also unable to work resulting in lost wages.

Mental Examination

The rules for mental examination are the same for physical examination. The condition must be in controversy and there must be a good cause. Courts are reluctant to issue orders for mental exams because it is highly intrusive; however, if a party puts it in controversy when they file a complaint, they have opened the door for the opposing party to request an exam. Here, P is alleging that she has suffered pain and suffering due to the negligence of G. P will argue that since she is not alleging that she suffered Negligent Infliction or Emotional Distress, she should not be compelled to a mental examination. G will argue that alleging Pain and Suffering is a form of mental damages, and if a party wants to get relief for those damages, she must in fact show that there is mental pain and suffering.

There are two good arguments and if the Court agrees with G, then P will be compelled to abide by the examination.

P's Tax Returns Since 1995

G has also filed a motion to compel P to provide her tax returns since 1995. As stated above, discoverable information must be relevant and proportionate, however, not absolutely admissible, as long as the evidence is reasonably calculated to lead to relevant admissible evidence.

G will argue that P's tax returns are relevant because it can possibly show that P has been having financial problems and because of the financial problems, she now brings a claim against G for damages. The Court will likely deny this motion to compel on the grounds that it is not relevant. There is nothing in the facts that show that P has been suffering financially and ordering her to produce her tax returns will be too intrusive.

Therefore, the Court should deny G's motion to compel P to provide her tax returns.

3. G's Response to P's Interrogatory about its Expert

Under the federal rules of civil procedure, a party has the duty to initiate mandatory initial disclosures, without being asked by the other party. This includes names and addresses of individuals that are likely to have discoverable information; witnesses that will be used at trial; and expert witnesses that will be used at trial.

P's original set of interrogatories was a question seeking the names and opinions of all experts G had hired for the litigation. G objected that it is privileged. In order for a party to hold that information is privileged, that party must have served a privileged log to the opposing party.

Before P filed her lawsuit, G hired X (an expert on grocery store displays). Importantly, G has not identified X as a witness.

4. Privilege with Regard to Xavier

Whether or not information is privileged is procedural therefore, Federal Rules of Civil Procedure will apply. G has asserted privilege with regards to the findings that X made when he investigated the accident. G will argue that this is Work Product and therefore not discoverable. Work Product is any information obtained for the purpose of litigation. Here, G hired X, an expert on grocery store displays, to investigate the accident. It is clear that this is work product because it states, "to investigate the accident" which likely means that G was preparing for a likely litigation. P will argue that she hasn't filed her suit yet when G hired X. However, the court will probably rule in favor of G because it was reasonable to believe that when an invitee is hurt in your premises, a likely lawsuit will proceed.

The privilege of work product is not absolute, however. Work Product (except mental impressions, ideas, strategy) is discoverable if the moving party can show a substantial need of the information and there is no other source where they can get the information. P can argue that the information that is not favorable to G's case, is highly relevant and substantially needed. However, P could have hired her own expert. The court will probably rule in favor of G.

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