

KEVIN McELWEE, individually as parent	:	IN THE COURT OF COMMON PLEAS OF
to JESSICA McELWEE, deceased, and as	:	LYCOMING COUNTY, PENNSYLVANIA
Administrator of the Estate of JESSICA	:	
McELWEE, deceased; KEVIN McELWEE	:	JURY TRIAL DEMANDED
and JO ANN McELWEE, parents of	:	
JESSICA McELWEE, individually,	:	CIVIL ACTION - LAW
Plaintiffs	:	
	:	
vs.	:	NO. 00-01,795
	:	
PAUL E. LEBER, M.D.; ADAM M.	:	
EDELMAN, M.D.; DONALD E.	:	
SHEARER, M.D.; JEANINE	:	
SINSABAUGH; CINDY KOONS; JUDY	:	
KERSHNER; MUNCY VALLEY	:	
HOSPITAL; SUSQUEHANNA HEALTH	:	
SYSTEM; SUSQUEHANNA PHYSICIAN	:	
SERVICES; and EM CARE and/or WEST	:	
BRANCH EMERGENCY PHYSICIANS,	:	PLAINTIFFS' MOTION TO COMPEL
Defendants	:	RESPONSE OF DONALD SHEARER

***Date: December 9, 2002***

**OPINION and ORDER**

The motion before the Court is Plaintiff's Motion to Compel Response of Donald E. Shearer, M.D. and Donald E. Shearer, M.D., P.C. to Plaintiffs' Ninth Request for Production of Documents filed October 31, 2002 (Plaintiffs' Motion). This case is a medical malpractice claim regarding the care of Plaintiff's minor child Jessica. In seeking discovery to establish that claim the present dispute arose.

The requests at issue and Defendant's objections were:

A. Plaintiffs' Request 7 states as follows:

To the extent not previously provided, any e-mails or other correspondence by any named Defendant or agent, servant or employee of any named Defendant regarding this lawsuit or any medical care provided to Jessica McElwee.

Defendants' Objection to Request 7 states as follows:

The interrogatory requests documents which are protected by the attorney/client privilege and the Attorney Work Product Doctrine. Documents not being produced are emails by and between counsel for answering Defendants and the insurance company for Donald E. Shearer.

B. Plaintiff's Request 9 states as follows:

All letters or other written documents in the possession or control of defense counsel which refer to, relate to or contain any factual information regarding this lawsuit or any medical care to Jessica McElwee.

Defendants' Objection to Request 9 states as follows:

The request seeks documents which are protected by the attorney/client privilege and/or the Attorney Work Product Doctrine. Documents not being produced are correspondence between defense counsel and Defendants, the insurance carrier for Defendant Shearer and possible expert witnesses.

*See*, Plaintiffs Motion, Exhibits 1 and 2.

The Court holds that Plaintiffs requests shall not be permitted as they are too broad and create an undue burden on Defendants. The Court also holds that the Defendants have sufficiently complied with the requirement of identifying the material not being produced. For the reasoning behind the Court's decision see this Court's opinion in *McElwee v. Leber*, No. 00-01,795 (Lyc. Cty. November 27, 2002).

**ORDER**

It is ***HEREBY ORDERED*** that Plaintiff's Motion to Compel Response of Donald E. Shearer, M.D. and Donald E. Shearer, M.D., P.C. to Plaintiffs' Ninth Request for Production of Documents filed October 31, 2002 is denied.

BY THE COURT:

William S. Kieser, Judge

cc: C. Scott Waters, Esquire  
David R. Bahl, Esquire  
C. Edward S. Mitchell, Esquire  
M. David Halpern, Esquire  
P. O. Box 2024; Altoona, PA 16601  
Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)