

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

YVONNE BOHLANDER, EXECUTRIX OF THE ESTATE OF MICHAEL STEFANICK, DECEASED,	:	
Plaintiff	:	NO. CV-21-0212
vs.	:	
NIPPENOSE VALLEY VILLAGE, INC., D/B/A NIPPENOSE VALLEY VILLATE,	:	
Defendants	:	CIVIL ACTION

OPINION AND ORDER

Before the Court are Preliminary Objections to Plaintiff’s Amended Complaint filed by Defendants on March 11, 2022, and a Motion to Overrule Defendant’s Objection to Plaintiff’s Subpoena Directed to the Hanover Insurance Group filed by Plaintiff on May 2, 2022. Argument on the Preliminary Objections and the Motion to Overrule Defendant’s Objection to Plaintiff’s Subpoena was held on May 6, 2022. With respect to the Motion to Overrule Defendant’s Objection to Plaintiff’s Subpoena, the Court granted the Defendant 10 days to respond in writing, and Plaintiff an additional 10 days for a response. The Defendant’s response was filed on May 17, 2022, and Plaintiff’s response was filed on May 26, 2022. The Court will address each issue individually.

Defendant’s Preliminary Objection to Plaintiff’s Amended Complaint

Plaintiff’s Amended Complaint alleges that Michael Stefanick (“Decedent”) was a resident at Nippenose Valley Village, a personal care home, from September 21, 2018, until March 16, 2019. Mr. Stefanick suffered a left hip fracture as a result of an unannounced fire drill on the evening of March 16 2019,

and Plaintiff's Amended Complaint alleges that the Decedent's acute cognitive and physical decline following his left hip fracture ultimately led to multisystemic organ failure, resulting in the Decedent's Death on April 24, 2019. Plaintiff's Amended Complaint alleges that the death of the Decedent was caused by the left hip fracture which the Decedent sustained as a result of the negligent, careless, and reckless indifference of the Defendant and its staff, employees, agents, workmen, nurses, and other healthcare professionals. Plaintiff's Amended Complaint demands judgment against the Defendant in the amount in excess of \$50,000, plus costs of suit, punitive damages, and any other relief deemed appropriate.

Defendant's Preliminary Objection is in the nature of a motion to strike all claims for punitive damages from Plaintiff's Amended Complaint pursuant to Pa.R.C.P. 1028(a)(2). Defendant argues that the allegations as pled in the Amended Complaint simply do not support a claim that Nippenose Valley acted outrageously, with an evil motive or with a reckless indifference to the rights of the Decedent and, as such, the claim for punitive damages should be stricken.

It is well settled that Pennsylvania is a fact pleading state, meaning that pleadings must put the opponent on notice of the issues and formulate those issues by summarizing the facts essential to the claim. *Catanzaro v. Pennell*, 238 A.3d 504, 507 (Pa. Super. 2020); see also Pa.R.C.P. 1019(a). Plaintiff need not plead every detail of the claim. This Court finds, looking solely within the four corners of the Amended Complaint, Plaintiff has sufficiently alleged Defendant's knowledge of the Decedent's mobility issues and issues within the Defendant's facility prior to - and at the time of - the incident to allow the claim for punitive

damages to proceed. The Defendant's objections may properly be the subject of a Motion for Summary Judgment at the conclusion of the discovery period; however, at this stage the Court finds that the Plaintiff has alleged sufficient facts in the Amended Complaint to overcome Defendant's objection.

Motion to Overrule Defendant's Objection to Plaintiff's Subpoena Directed to the Hanover Insurance Group

On February 16, 2022, Plaintiff served upon the Defendant a Notice of Intent to Issue a Subpoena to the Hanover Insurance Group seeking, among other things, the entire investigative file related to the Defendant, including but not limited to, "adjuster or claim representative logs, notes, reports, summaries, statements, interviews, identification of witnesses and persons interviewed, memoranda, and correspondence, except mental impressions, conclusions or opinions representing the value or merit of a claim or defense or respecting strategy or tactics." On March 8, 2022, Defendant filed Objections to the Notice of Intent to Serve Subpoena on Records Custodian of The Hanover Insurance Group. On May 2, 2022, Plaintiff filed a Motion to Overrule Defendant's Objection to Plaintiff's Subpoena Directed to The Hanover Insurance Group. Argument on the Motion was held on May 6, 2022, Defendant's written response was filed on May 17, 2022, and Plaintiff's memorandum in support of the Motion was filed on May 26, 2022.

Defendant first objects to the subpoena on the basis of the extensive negotiations which occurred prior to the present lawsuit being filed, and indicates that such documentation would be protected from disclosure. Defendant further asserts that Hanover had an expectation of privacy and to render a claim file

discoverable would lead to the future weakening of efforts to thoughtfully explore resolution pre-suit out of fear that such files would be discoverable. Defendant avers that Pa.R.C.P. 4003.3 does not mandate production of requested information, but rather a party “may” obtain discovery even though the matter sought to be discovered was prepared in anticipation of litigation, which requires a case-by-case assessment to determine the discoverability of the insurance claims file.

Pursuant to Pa.R.C.P. 4003.3, a party may obtain discovery of any relevant matter even though prepared in anticipation of litigation by a party’s representative, including the party’s insurer, subject to certain limitations. Plaintiff points out, and this Court agrees, that the Defendant’s interpretation of the rule is misconstrued. The word “*may*” in the rule means party serving discovery has the discretion to request discovery of information prepared in anticipation of litigation from the other party’s insurer. It does not mean that, once served with discovery requests, the other party has the discretion to provide the requested information. Instead, Pa.R.C.P. 4003.3 provides protections for that party or that party’s representative in the form of exceptions and exclusions from disclosure. Those exceptions and exclusions were included verbatim in the Plaintiff’s subpoena. Therefore, the material sought to be discovered must be disclosed upon service of the subpoena. The Defendant is free to omit or redact any references to mental impressions, conclusions or opinions regarding value or merit of a claim or defense or respecting strategy or tactics contained in their file.

ORDER

AND NOW, this 12th day of **September, 2022**, Defendants' Preliminary Objection is **OVERRULED**. Defendants shall file an Answer to Plaintiff's Amended Complaint within **twenty (20)** days of the date of this Order.

Plaintiff's Motion to Overrule Defendant's Objection to Plaintiff's Subpoena Directed to The Hanover Insurance Group is **GRANTED**. Defendant's objections are overruled and the Plaintiff shall be permitted to serve The Hanover Insurance Group with the subpoena referenced in the February 16, 2022, Notice of Intent.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

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