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1. [Mealey's Litigation Procedure - Magistrate Judge Denies Clinic's Motion To Quash Insurer's Subpoenas On Banks](#)

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Mealey's Daily News Update

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Body

An insurer accusing a medical clinic of submitting fraudulent no-fault insurance claims can subpoena two banks the clinic does business with for records pertaining to accounts it holds because the information is relevant, a federal magistrate judge in New Jersey ruled Oct. 23 in denying the clinic's motion to quash (*Government Employees Insurance Co., et al. v. Stefan Trnovski, M.D., et al.*, No. 16-4662, [D. N.J., 2018 U.S. Dist. LEXIS 182375](#)).

(Opinion available 20-181116-013Z)

U.S. Judge James B. Clark III of the District of New Jersey noted that Stephen Trnovski, M.D., Roman Kosiborod, D.O., Aron Rovner, M.D., Albert Akkerman, M.D., and Alliance Spine Associates LLC (collectively the Alliance defendants) did not argue that the records requested from Bank of America and TD Bank were privileged.

On Aug. 2, 2016, the Government Employees Insurance Co., Geico Indemnity Co., Geico General Insurance Company, and Geico Casualty Co. (collectively GEICO) sued the Alliance defendants and New Horizon Surgical Center LLC, alleging that they were wrongfully compensated after submitting hundreds of fraudulent no-fault insurance charges to the insurer. GEICO seeks a declaration that Alliance Spine and New Horizon have no right to receive payment for any pending bills. In addition, the insurer asserts claims for fraud, aiding and abetting fraud, unjust enrichment and violations of the New Jersey Insurance Fraud Prevention Act, N.J. Stat. § 17:33A-2, and the Racketeer Influenced and Corrupt Organizations Act, [18 U.S.C. §§ 1961 et seq.](#)

New Horizon and GEICO resolved the claims in January 2018.

Requested Records

In its subpoenas to TD Bank and Bank of America, GEICO seeks production of documents related to any account that has been maintained by Alliance Spine. The Alliance defendants moved to quash the subpoenas, arguing that they are improper, overbroad, and are "wholly irrelevant to the claims of fraudulent billing and lack of medical necessity."

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GEICO countered that Alliance Spine's corporate financial records are highly relevant to the claims and defenses asserted in this action, that the subpoenas are not overbroad, and that the Alliance defendants have failed to meet their burden of establishing that the materials sought by the subpoenas are privileged and confidential.

Magistrate Judge Clark ruled that the requested records are relevant and that the Alliance defendants made "virtually no effort to establish that the materials sought by the Subpoenas are either privileged or confidential."

"In short, Plaintiffs allege that New Horizon and the Alliance Defendants were wrongfully compensated after they submitted hundreds of fraudulent no-fault insurance charges to Geico," the magistrate judge concluded. "As Plaintiffs note, the financial records may reveal the extent to which the individual defendants profited off of the alleged scheme, and, more importantly, the amount of damages that Plaintiffs suffered. In addition, the records will likely establish whether the Alliance Defendants actually received Plaintiffs' payments and may assist in determining whether any of the Defendants violated New Jersey law as Plaintiffs claim."

Counsel

Lindsay Ann Dischley, A. Ross Pearlson and Brigitte M. Gladis of Chiesa Shahinian & Giantomasi in West Orange, N.J., and Benjamin M. Pinczewski of Law Offices of Benjamin M. Pinczewski & Shpelfogel in Brooklyn, N.Y., are counsel for the defendants.

GEICO is represented by Gene Y. Kang, John J. Robertelli of Rivkin Radler in Hackensack, N.J., and Michael Vanunu of Rivkin Radler in Uniondale, N.Y.

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