

SUPERIOR COURT PERMITS DISCOVERY OF COMMUNICATIONS WITH EXPERT WITNESSES

The Pennsylvania Superior Court recently upheld the rights of defense counsel to obtain through the course of discovery communications between Plaintiff's counsel and Plaintiff's treating physician who had been identified as an expert witness in the case. The Court addressed this issue in Carl J. Barrick and Brenda L. Barrick v. Holy Spirit Hospital of the Sisters of Christian Charity, et al., 2010 PA. Super. 170 (September 16, 2010).

In this case, Carl Barrick was allegedly injured when a chair which he was sitting in collapsed while he was in the cafeteria at Holy Spirit Hospital. Mr. Barrick then received treatment from Dr. Thomas Green, an orthopedic surgeon. Defense counsel issued a subpoena to obtain Mr. Barrick's medical records from Appalachian Orthopedic Center where Dr. Green had his practice. The medical records were produced but Plaintiff refused to produce any documents between counsel and Dr. Green as privileged attorney work-product. After an *in camera* review of the documents, the Court ordered the production of those written communications.

This issue was a matter of first impression and the Superior Court had to balance the competing interests of protecting documents that are covered under the attorney work-product privilege versus discovery of documents and information that bear on an expert's opinions and which therefore would be subject to discovery. These two principles are codified at Pennsylvania Rules of Civil Procedure 4003.3 and 4003.5. The Court noted that "the former Rule prohibits discovery of the mental impressions of a party's representative, including an attorney, in preparation for litigation; whereas, the latter Rule requires disclosure of the substance of the facts and opinions underlying a testifying expert's conclusions, which ostensibly would include communications with an attorney."

The Court went on to hold that “if an expert witness is being called to advance a party’s case-in-chief, the expert’s opinion and testimony may be impacted by correspondence and communications with the party’s counsel; therefore, the attorney’s work-product doctrine must yield to discovery of these communications.”

If you require more information on this decision, or any other aspect of Margolis Edelstein’s litigation practices, do not hesitate to contact me.

Stephen Bruderle, Esq.
Margolis Edelstein, Philadelphia
4th Floor, Curtis Center
601 Walnut Street
Philadelphia, PA 19106-3304
215.931.5852
215.922.1772 (Fax)
sbruderle@margolisedelstein.com