

FILED IN OFFICE
CLERK STATE COURT
GWINNETT COUNTY, GA

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

2016 JUN 25 PM 12:21

Adam Rangel,

Plaintiff,

v.

Discount Tire Company of Georgia,
Inc.,

Defendant.

Case No.
18C01959-3

RICHARD ALEXANDER, CLERK

Plaintiff's Motion to Compel and for
Attorney's Fees

Defendant Discount Tire inexplicably refuses to provide the names and contact information of important witnesses. Despite Plaintiff's efforts to obtain this information without Court intervention, Discount Tire has regrettably forced Plaintiff to file this Motion. The Court should order Discount Tire to provide the names and contact information for certain witnesses.

1. Background: how we got here.

On July 30, 2016, Plaintiff hired Discount Tire to install and attach tires on his car. On August 14, 2016, Plaintiff was driving down the road when his right front tire flew off his car. Plaintiff crashed and sustained severe injuries.

Discount Tire has admitted each of the following allegations:

- 14. Defendant owed a duty to install and attach tires on Plaintiff's vehicle.**
- 15. Defendant breached its duty to install and attach tires on Plaintiff's vehicle.**
- 16. Defendant had a duty to act as a reasonable person would under the circumstances, and accordingly, to properly install and attach tires on Plaintiff's vehicle.**
- 17. Defendants breached its duty to act as a reasonable person would under the circumstances, by failing to properly install and attach tires on Plaintiff's vehicle.**

(Discount Tire's Amended Answer).

After the Crash, doctors diagnosed Plaintiff with a complete right rotator cuff tear. Doctors recommended, and he underwent, surgery to repair his right rotator cuff. He also underwent injections to his spine as a result of the Crash. While these procedures helped relieve Plaintiff's symptoms, he continues to have pain. To date, Plaintiff has incurred more than \$150,000.00 in medical treatment.

Plaintiff served 27 narrowly-tailored interrogatories ("ROGs"). By Plaintiff's count, Discount Tire asserted 97 objections to the 27 ROGs, and almost all of the objections were improper. For example, ROG 20 asked Discount Tire to "identify all witnesses who saw any part of the crash." Discount Tire asserted 8 inapplicable objections:

20 Identify all witnesses who saw any part of the Crash.

ANSWER: DT-GA objects to this Interrogatory because it is overly broad, unduly burdensome, not reasonably limited in time or scope, and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. DT-GA also objects to this Interrogatory because it is premature as discovery and investigation have just begun. DT-GA further objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, attorney work-product doctrine, and/or consulting expert privilege. Subject to and without waiving these objections, DT-GA is presently not aware of any witnesses to the subject incident. DT-GA reserves the right to supplement its Answer as discovery progresses.

After an initial 6.4(b) letter that discussed the overwhelming number of improper objections, as well as Discount Tire's failure to fully and completely respond to the ROGs, Discount Tire agreed to amend its responses. (Discount Tire's Amended ROG responses are attached as Exhibit 1).

In its amended responses, Discount Tire still failed to provide the names and contact information of important witnesses. Plaintiff asked Discount Tire to identify witnesses by providing each person's name, contact information, and brief description of the person's connection with the case:

3. "Identify"

- 3.1. With respect to any person, "identify" means to provide that person's last known contact information for personal and work (phone, postal address, and email address), and a description of the person's connection with the events in question.**

In ROG 18, Plaintiff asked Discount Tire to identify every person who worked at the Discount Tire location on the date Plaintiff's vehicle was serviced:

18. Identify every person who was employed to work at your location at 3418 Cobb Pkwy North, in Acworth, Georgia on July 30, 2016, regardless of whether they were on duty on that day. Please include each person's title and whether they still work for you.

AMENDED ANSWER: DT-GA presently believes the following current/former employees of DT-GA store GAA 13 were involved in the sales process or service of the subject vehicle on July 30, 2016:

- 1. Phillip Adler - former employee**
- 2. Dion Lewis - former employee**
- 3. Matthew DeThomas - former employee**
- 4. Nathan Demattels - current employee**

DT-GA presently believes 14 additional current/former employees worked at GAA 13 on July 30, 2016, but were not involved in the sales process or service of the subject vehicle.

Discount Tire provided the names of 4 witnesses, but it did not provide any contact information. Further, Discount Tire did not provide the names or contact information for the 14 current/former employees who worked at the location that day.

In ROG 7, Plaintiff asked how Discount Tire first learned of Plaintiff's Crash.

Discount Tire said the "store manager" first learned:

7. Please describe how you first learned of the Crash by stating when you first learned, what you learned, who specifically from your company first learned, and what the initial contact did (if anything) to alert others and who was alerted.

AMENDED ANSWER: DT-GA presently believes the Store Manager at GAA13 was

informed of the subject accident by Plaintiff within two days after the subject accident occurred. The Store Manager reported it to Claims.

Discount Tire, though, did not provide the name or contact information of the store manager.

In ROG 23, Plaintiff asked Discount Tire to identify who helped prepare Discount Tire's ROG responses. Discount Tire responded by generally stating that "various representatives, agents, and employees" helped:

23. Identify the person or persons who assisted in any way in responding to these Interrogatories, by stating the person(s) full name, residential address, current employer, telephone number(s) and specify the particular response or responses to which each person responded.

ANSWER: These are the responses of DT-GA which have been prepared by and under the supervision of DT-GA's counsel and with the assistance of various representatives, agents, and employees of DT-GA. The answers stated herein are verified on DT-GA's behalf by a duly authorized agent as required by the applicable discovery rules.

As such, Discount Tire failed to provide the names and contact information for the specific people who helped respond.

On May 22, 2018, Plaintiff sent Discount Tire an email, pursuant to USCR 6.4(b), asking Discount Tire to properly and fully identify the witnesses. Plaintiff sent a follow-up email on June 18, 2018. (Email chain attached as Exhibit 2). Discount Tire has not responded, so Plaintiff has no other option but to file this Motion.

2. The Court should order Discount Tire to properly identify witnesses.

A party may discover any non-privileged matter that is reasonably calculated to lead to the discovery of admissible evidence. O.C.G.A. § 9-11-26. When a party provides an evasive or incomplete answer, the Court may enter an order compelling discovery. O.C.G.A. § 9-11-37.

The names and contact information of witnesses who may have information about relevant issues in the case are discoverable. Specifically, the contact information of the employees who worked at the Discount Tire on the day Discount Tire failed to safely and correctly install Plaintiff's tire (ROG 18) is likely to lead to the discovery of admissible evidence, and thus, is discoverable. The same is true for the names and contact information for the store manager who first learned of Plaintiff's crash (ROG 7) and those who helped Discount Tire respond to the ROGs (ROG 23). Further, Plaintiff is entitled to know the names and contact information of the 14 employees who worked at the Discount Tire on the day Discount Tire failed to properly attach Plaintiff's tire (ROG 7)—these witnesses may have discoverable information regarding liability and potential punitive damages.

The Court should order Discount Tire to identify the following individuals by providing full names, personal and work addresses, phone numbers, and emails:

1. Phillip Adler (ROG 18)
2. Dion Lewis (ROG 18)
3. Matthew DeThomas (ROG 18)
4. Nathan Dematteis (ROG 18)
5. The store manager (ROG 7)
6. All representatives, agents, and employees who assisted in responding to Plaintiff's Interrogatories to Discount Tire (ROG 23)
7. 14 current/former employees working at the Discount Tire location on July 30, 2016. (ROG 7)

3. The Court should award attorney's fees against Discount Tire.

When a Motion to Compel is successfully granted:

... the Court *shall*, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such

conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.


O.C.G.A. § 9-11-37(a)(4)(A) (emphasis supplied).

The Court should award attorney's fees against Discount Tire for the time and effort Plaintiff has expended in connection with this issue. There is no valid justification for why Discount Tire has refused to produce obviously discoverable information. There is also no valid justification for why Discount Tire refused to respond to Plaintiff's 6.4(b) communications. And ultimately, there is no valid justification for why Discount Tire forced Plaintiff to file this Motion.

Plaintiff's Counsel hourly rate is \$400.00 per hour. Plaintiff's Counsel has spent more than 4 hours on this issue: reviewing Discount Tire's initial discovery responses and drafting a first 6.4(b) letter; reviewing Discount Tire's amended discovery responses and drafting a second 6.4(b) letter; and research for and drafting this Motion. The Court should, after the opportunity for a hearing, award Plaintiff at least \$1,600.00 for needless time and energy spent on this issue, which was directly and solely caused by Discount Tire's unjustifiable position to not share discoverable information.

Submitted on June 20, 2018, by:

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