

The State of Ohio

CUYAHOGA COUNTY

ss.

Duret M. Smith, M.D.
 14601 Detroit Avenue
 Suite 700
 Lakewood, Ohio 44107

COPY

You are hereby commanded to appear before me, a Notary Public in and for the County and State
afwesaid, at the office of Robert V. Housel, Esq.
 Suite 1310, 55 Public Square
 Cleveland, Ohio 44113

in the City of Cleveland, County of Cuyahoga, State of Ohio, On Wednesday the 8th day of August
A.D. 19 2001 *at* 8:00 *o'clock* A.M. *M., then and there to give evidence and*
the truth to say in a certain action pending in the
entitled John M. Seelie, et al. vs. CNA Insurance Company

being case No. 415204 in said court, on the part of the Plaintiffs.

bring with you: To the deposition - SEE ATTACHED DUCES TECUM.



This you no wise omit under the penalty of the law.

Given under my hand and official seal, this 2nd *day of* August

A.D. 19 2001

Robert J. Rua

Notary Public.

ROBERT J. RUA & ASSOCIATES

Court Reporters.

1150 THE ILLUMINATING BUILDING
 CLEVELAND, OHIO 44113

THE STATE OF OHIO

Cuyahoga County

Affidavit of Service of Subpoena by Sheriff or Officer, Attorney or Private Person

On the 3rd & 6th day of August, 20 01

I served this Subpoena on the within named:

DUKET M. Smith, M.D.

as follows:

- ① put under his office door at 2:10pm
- ② by serving to his secretary, Laura DeChant, at 12:30 pm,

SHERIFF'S FEES

Service on _____ \$ _____
_____ Copy _____
_____ Miles Travel _____
_____ Return _____
\$ _____

Witness entitled to _____ miles

By Heath Macior
Deputy Sheriff/Attorney
proctor

Subscribed and sworn to before me,

Norany Rustic
This 7th day of August, 20 01
Ronald M. Riva

RULE 45. RULES OF CIVIL PROCEDURE, Parts C & D:

(C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

(1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA

(2)(a) A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, PAPERS, DOCUMENTS, OR TANGIBLE THINGS, OR INSPECTION OF PREMISES, NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO APPEAR FOR DEPOSITION, HEARING OR TRIAL

(b) SUBJECT TO DIVISION (D)(2) OF THIS RULE A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTIONS TO INSPECTION AND COPYING OF ANY OR ALL OF THE DESIGNATED MATERIALS OR OF THE PREMISES. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO INSPECT AND COPY THE MATERIALS OR INSPECT THE PREMISES EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE INSPECTION AND COPYING COMMANDED

(3) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA, OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS. IF THE SUBPOENA DOES ANY OF THE FOLLOWING

(a) FAILS TO ALLOW REASONABLE TIME TO COMPLY,

(b) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES,

(c) REQUIRES DISCLOSURE OF AN UNRETAINED EXPERT'S OPINION OR INFORMATION NOT DESCRIBING SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTING FROM THE EXPERT'S STUDY MADE NOT AT THE REQUEST OF ANY PARTY,

(d) SUBJECTS A PERSON TO UNDUE BURDEN

(4) BEFORE FILING A MOTION PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE, A PERSON RESISTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY. A MOTION FILED PURSUANT TO DIVISION (C)(3)(d) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE SUBPOENAED PERSON OR A CERTIFICATE OF THAT PERSON'S ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN

(5) IN CASES UNDER DIVISION (C)(3)(c) OR (C)(3)(d) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED

(D) DUTIES IN RESPONDING TO SUBPOENA

(1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR SHALL ORGANIZE AND LABEL THEM TO CORRESPOND WITH THE CATEGORIES IN THE DEMAND. A PERSON PRODUCING DOCUMENTS PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING

(2) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIALS, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONTEST THE CLAIM

ROBERT J. RUA & ASSOCIATES

Court Reporters

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CLEVELAND, OHIO 44113

241-5500

DUCES TECUM

Please produce at the deposition for the past **10** years the following:

1. Any and all documents listing every insurance company retaining him to do defense examination.
2. Any and all examinations performed for each insurance company.
3. Any and all lists of defense law firms that have retained him.
4. Any and all documents that lists the number of exams performed for each law firm.
5. Any and all documents that lists the amount of money he has earned each year from the exams.
6. Any and all documents that lists the entities that issues his checks.
7. Any and all copies of all appointments books that reflect scheduling of independent medical exams for the past 10 years.

