IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO.: ~~85,063~~ 85053

THIRD DCA CASE NOS. 93-02606
93-02613

DINA R. CHUNG, M.D. and
DINA R. CHUNG, M.D., P.A.,

Petitioners,

vs.

MALKA FINK, etc.,

Respondents.
_____/

APPLICATION FOR DISCRETIONARY REVIEW OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA

BRIEF OF PETITIONERS ON THE MERITS

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INTRODUCTION

The Petitioners, DINA R. CHUNG, M.D. and DINA R. CHUNG, M.D., P.A. (hereinafter collectively referred to as "DR. CHUNG"), were one of the several defendant health care providers in the trial court and one of the respondents before the district court. The Respondent, LAWRENCE FORMAN (hereinafter "Forman"), is a "certified rehabilitation administrator" and was the petitioner before the district court. The parties will be referred to by the position they hold in this Court and, in the alternative, by proper name.

The designation "App. Forman" followed by a number refers to the correspondingly numbered item/document attached to the Appendix to Petition for Writ of Certiorari filed by Respondent Forman in the district court. The designation "App. Chung" followed by a number refers to the correspondingly numbered item/document attached to the Appendix to the Response to Petition for Writ of Certiorari filed by Petitioners, DR. CHUNG, in the district court. The letter "A." followed by a number refers to the particular item/document attached to the Appendix to this Brief of Petitioners on the Merits.

All emphasis is supplied by undersigned counsel unless otherwise noted.

STATEMENT OF THE CASE AND OF THE FACTS

Petitioners, DR. CHUNG, seek review of a decision of the District Court of Appeal, Third District, filed on October 26, 1994, rehearing denied on January 4, 1995. [A. 1, 2]. The Third District quashed the trial court's order "compelling discovery of all medical and legal evaluations [Respondent Forman] conducted from 1990 through 1993, and evidence of income received on matters in which he was retained by an attorney during those years." Forman v. Fink, 646 So. 2d 236 (Fla. 3d DCA 1994). The Third District based its decision on the authority of Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994) (en banc) which is currently before this Court. This Court accepted jurisdiction *sub judice* and issued a briefing schedule on May 18, 1995. [A. 3].

At the trial level, Respondent Forman was subpoenaed for deposition duces tecum and asked to produce the following documents:

> 1. Any and all appointment books for 1990, 1991, 1992 and 1993 to date, which reflect any medical/legal evaluations, testimony or other work at the request of attorneys representing the patient/client.
>
> 2. Any and all copies of reports and bills (individual names of patients/clients can be whited out) for each of the aforesaid /examinations and/or reviews.
>
> 3. Any and all evidence of payments, including but not limited to IRS Form 1099, from attorneys for examinations and/or reviews performed in the calendar years of 1990, 1991, 1992 and 1993 to date.

[App. Forman 1].

Respondent Forman testified, during his March of 1993 deposition, that his 1993 appointment book "just list[s] the client's name." [App. Forman 2, p. 72]. Respondent implied that he could not determine whether he gave "medical/legal evaluations, testimony or any other work at the request of attorneys representing the patient/client," as required by the subpoena duces tecum. [App. Forman 1, p. 1; App. Forman 2, p. 72]. However, one month later, Respondent Forman testified that his 1993 appointment book noted attorneys' names next to his clients' names. [App. Forman 3, pgs. 17, 19-20].

During the April of 1993 continuation deposition, Respondent Forman also admitted that he had his 1993 appointment book and some of the subpoenaed bills with him but was not producing them "because they don't contain the information that you have asked for in the form that you want it." [App. Forman 3, p. 17]. In furtherance of Respondent Forman's "semantics" games, he stated the following on two other occasions during his April deposition: (1) "I don't keep that in the format or in the way that you want it", [App. Forman 3, p. 19]; and, (2) "I don't keep my book that way, I don't", [App. Forman 3, p. 21].

Defense counsel subsequently advised Respondent Forman that the information sought pursuant to the subpoena could, contrary to Respondent Forman's contention, be ascertained. [App. Forman 3, p. 21].

> [Mr. Minno]: We can decipher that information from what you are telling us.

> [Mr. Forman]: How can you decipher that?
>
> [Mr. Minno]: You told us you had a meeting with a client and the attorney.

[App. Forman 3, p. 21]. Respondent Forman agreed and proceeded to identify entries in his 1993 appointment book which were related to any medical-legal evaluations or litigation-type services that he performed. [App. Forman 3, pgs. 21-65]. Those entries took the form of meeting references which included the client and the client's attorney's names; references to deposition or trial testimony; and, references to litigation-related telephone conferences. [App. Forman 3, pgs. 21-65]. Respondent Forman further conceded that he was retained either by the plaintiff or the plaintiff's attorney in each of his litigation cases. [App. Forman 3, pgs. 66, 69].

> Q. In all cases, were you retained by counsel for the plaintiff?
>
> A. Yes.
>
> . . .
>
> Q. Yes, hired by the plaintiffs or plaintiffs' counsel is what I'm talking about.
>
> A. Yes, yes. That is a fair assessment. (emphasis added)

[App. Forman 3, pgs. 66, 69].

Respondent Forman's April deposition was adjourned due to Respondent's "crisis" and rescheduled for September 7, 1993. [App. Forman 3, p. 73; App. Forman 4]. Respondent Forman failed to appear for his September deposition and instead sent a letter to Plaintiffs' counsel stating: "As I have already stated on the

depositions I gave in relation to this case, I do not maintain any of the information which was requested in this subpoena duces tecum." [App. Forman 4, Exhibit A]. Respondent Forman's said letter signaled the continuation of his "semantics" games and was contrary to his testimony almost five (5) months earlier. [App. Forman 3; App. Forman 4].

At the hearing on Petitioners/Defendants' Motion for Order to Show Cause why Respondent Forman should not be held in contempt, Plaintiffs' counsel and Respondent Forman's personal counsel stated:

> MS. SCHNEIDER [Plaintiffs' counsel]: [Mr. Forman] has indicated he does not have the documents . . . designated as [Defendants] have requested.

[App. Forman 5, pg. 5].

> MR. SOBEL [Respondent Forman's personal counsel]: [Mr. Forman] brought some bills, as he said, but he wouldn't turn them over, because they don't contain the information you asked for in the form you wanted.
>
> . . . .
>
> He has an appointment book, but it's not set up the way the Defendants would want it.
>
> . . . .
>
> . . .[H]is appointment book [and] bills . . . simply don't provide the information in the manner that the Defendants require. (emphasis added)

[App. Forman 5, pgs. 6-7]. The trial court responded as follows:

> The defense is entitled to know what the bias is and whatever form it is that Mr. Forman has within the next

> ten days, or I'm going to strike Mr. Forman as a plaintiff's witness.
>
> . . . .
>
> Which way do you keep your records, so that we know how in the world you know what your bookkeeping is, and they will pay for all the costs of bookkeeping, and he can give a bill to the defense, and they have to pay it[.]
>
> . . . .
>
> So, without playing semantics, since you do represent Mr. Forman, please explain to him that what I want is to be able to have discovery.
>
> Whatever form that it happens in, I don't know, I don't care.
>
> . . . .
>
> . . .He knows where his income comes from. (emphasis added)

[App. Forman 5, pgs. 8-9].

In response to the trial court's above ruling, Respondent Forman filed an affidavit purporting to comply with the subject subpoena duces tecum. [App. Forman 6]. The trial court rejected the affidavit and entered the October 12, 1993 Order on Discovery Motions, which the district court quashed. [App. Forman 7]. The trial court ruled, in pertinent part, as follows:

> . .
>
> 7. Defendants' motion for order to show cause as to why Larry Forman, Ph.D. has not complied with Defendants' subpoena duces tecum be and the same is hereby granted. Dr. Forman shall provide to the Defendants all information

> requested in the subpoena duces tecum. This Court will not excuse Dr. Forman from the subpoena, notwithstanding Dr. Forman's assertion that he does not have the information requested, consisting of all medical and legal evaluations performed by Dr. Forman at the request of attorneys for the years 1990 through 1993. Dr. Forman shall provide evidence of income received on each matter where he was retained by an attorney, for the years 1990 through 1993, by producing 1099's, W-2 forms, or doing whatever is necessary to obtain that information.

[App. Forman 7, pgs. 2-3].

The above-quoted Order was, however, prepared by Plaintiffs' counsel, submitted without prior review by opposing counsel, and did not accurately reflect the trial court's rulings and intent. [App. Chung 1]. At the hearing to clarify the Order, the trial court stated:

> I am not requiring him to create records.
>
> At the hearing, the lawyer for this witness came in and said he doesn't have it in the form that they are seeking it, so my intent of this order was to get it in whatever form he does have it. I can't believe that he doesn't keep some sort of income record.
>
> So the record is clear, I'm going to leave that part of the order the same. He still is going to have the assertion that he doesn't have in the neat format that you wanted. Well, finish taking his depo and finish going through hour by hour or day by day on his calendar, and get him to give you income tax returns and W-2 forms.
>
> . . . .
>
> I think my statement on the record this morning is clear as far as intent. I don't know which format this witness has the information in. Therefore, I am not compelling him to

> create anything that he does not now have. (emphasis added)

[App. Chung 1, pgs. 5-6].

The Order reviewed below, in the words of the Third District Court of Appeal, compelled Respondent Forman to produce "all medical and legal evaluations [Forman] conducted from 1990 through 1993, and evidence of income received on matters in which he was retained by an attorney during those years." Forman v. Fink, 646 So. 2d 236, 237 (Fla. 3d DCA 1994). The Third District, in a per curiam decision, quashed the trial court's Order on the authority of its *en banc* decision in Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994). Id. The district court expressed no other basis for quashing the Order below -- other than Syken -- which is currently pending before this Court as a result of the Third District's certification that Syken was in conflict with other decisions of Florida district courts of appeal on the same issue. Syken v. Elkins, Florida Supreme Court case number 84,649.

QUESTION PRESENTED

WHETHER THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW BY REQUIRING RESPONDENT FORMAN TO PRODUCE EVIDENCE OF INCOME RECEIVED FROM MEDICAL/LEGAL EVALUATIONS HE PERFORMED AND COPIES OF THOSE EVALUATIONS DURING A THREE-YEAR PERIOD.

SUMMARY OF THE ARGUMENT

This Court should quash the Third District's decision quashing the trial court's Order compelling Respondent Forman to produce evidence of income received from medical/legal evaluations he performed and copies of those evaluations. The Third District predicated its ruling upon its prior decision in Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994) (en banc), which enunciated certain "guidelines" pertaining to expert discovery. The Syken decision should be disapproved and the trial court's Order reinstated for the following reasons:

Syken creates an unconstitutional constraint upon a party's right to discovery enabling the party to challenge the impartiality of its opponent's expert. The Syken parameters also divest the trial court of the broad discretion it enjoys in discovery matters. Litigants are consequently forced to accept an expert's "approximations" or "estimates" without any guidance as to how they may gather "the information necessary to expose the miscreant expert." No other witnesses are clothed with this per se impartiality.

The Third District's "guidelines" are contrary to the uniformly recognized need for and relevancy of discovery concerning an expert's sources of income and professional associations with plaintiffs or defendants. Such discovery is permitted to enable a party to uncover an expert's biases. However, the Syken "guidelines" improperly usurp a party's right to information during the discovery process and the trial court's authority to regulate that process.

ARGUMENT

THE TRIAL COURT DID NOT DEPART FROM THE ESSENTIAL REQUIREMENTS OF LAW BY REQUIRING RESPONDENT FORMAN TO PRODUCE EVIDENCE OF INCOME RECEIVED FROM MEDICAL/LEGAL EVALUATIONS HE PERFORMED AND COPIES OF THOSE EVALUATIONS DURING A THREE-YEAR PERIOD.

The Third District Court of Appeal quashed the trial court's Order compelling discovery of income and expert services information from Respondent Forman, Plaintiffs' "certified rehabilitation administrator," on the authority of its prior decision in Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994) (en banc). The Syken decision is currently pending before this Court. Petitioners, DR. CHUNG, respectfully submit that this Court should disapprove the discovery "guidelines" enunciated in Syken and affirm the trial court's Order in this case.

The Syken decision, applied below by the district court, creates an unprecedented and virtually unconstitutional limitation upon a litigant's right to conduct discovery in order to challenge the impartiality of an opponent's expert. Moreover, the Syken parameters divest the trial court of the broad discretion it has enjoyed in expert-discovery matters for decades. See Lay v. Kremer, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982). Under Syken, a party is prohibited from discovering how much money the expert earns for expert services or how much the expert's total professional income is annually. Syken, 644 So. 2d at 544, 546. An expert is instead

only required to "give an approximation of the portion of [his/her] professional time or work devoted to service as an expert." Id., at 546. "The production of the expert's business records, files, and 1099's may be ordered produced only upon the most unusual or compelling circumstance." Id. Litigants must consequently hope that experts, who are paid by the opposing party for their opinions, "testify on a reasonable basis, truthfully, fully and freely." Id., at 547.

The Third District's so-called "guidelines" are really an attempt to emasculate a party's ability to unearth the biases of an adversary's expert. They further impermissibly deprive trial courts of the authority and discretion needed to formulate the scope of discovery on a case-by-case basis. Moreover, the "guidelines" provide no guidance as to how a party can obtain information which may contradict an expert's required disclosure. Litigants are resigned to accept the veracity of an expert's subjective "approximations" and representations. No other type of witness in the history of litigation has been given this aura of truthfulness and impartiality.

All of Florida's district courts until Syken uniformly recognized the need for and relevancy of discovery concerning an expert's sources of income and professional proclivities. Such discovery has been allowed to enable a party to challenge an expert's impartiality. See, e.g., Trend South, Inc. v. Antomarchy, 623 So. 2d 815 (Fla. 3d DCA) (information regarding income generated by physician's performance of IME's for insurance companies and law firms relevant and discoverable to prove bias), review denied, 630 So. 2d 1103 (Fla. 1993); Abdel-Fattah v. Taub, 617 So. 2d

429 (Fla. 4th DCA 1993) (information regarding defense-requested examinations performed by non-party medical expert discoverable); Young v. Santos, 611 So. 2d 586 (Fla. 4th DCA 1993) (doctor ordered by trial court to produce copies of bills, checks and payment records regarding medical exams done at request of insurance companies and law firms, as well as tax returns, for three-year period); Bissell Brothers, Inc. v. Fares, 611 So. 2d 620 (Fla. 2d DCA 1993) (IRS 1099 forms of independent medical examiners subject to discovery as reasonably calculated to lead to relevant evidence concerning bias); Crandall v. Michaud, 603 So. 2d 637 (Fla. 4th DCA 1992) (independent medical examiner's 1099 forms or records of payment from insurers or defense law firms relevant to issue of bias); Wood v. Tallahassee Memorial Regional Medical Center, Inc., 593 So. 2d 1140 (Fla. 1st DCA) (trial court properly ordered independent medical examiners to produce, for in-camera inspection, tax returns for previous five years to extent they reflected income from involvement in medical malpractice cases), review denied, 594 So. 2d 1281 (Fla. 1992); McAdoo v. Ogden, 573 So. 2d 1084 (Fla. 4th DCA 1991) (bills to companies or persons for whom witness served as a defense expert examiner relevant and discoverable to demonstrate witness' potential bias).[1] In fact, experts are deemed to have relinquished their privacy rights by agreeing "to testify for remuneration." Wood, 593 So. 2d at 1142. In other words, experts waive their privacy rights concerning their income and professional services when they voluntarily inject themselves into

[1]The Third District in Syken acknowledged conflict with these decisions. 644 So. 2d at 544 n. 2.

litigation for financial gain. The Third District's decision in Syken thus constitutes a radical and unjustified departure from long-standing precedent. Stated differently, the Syken "guidelines" are an improper usurpation of a party's rights to information during the discovery process and the trial court's authority to regulate that process.

The Syken "guidelines" also infringe upon and curtail a litigant's constitutionally protected right to cross-examine experts to show bias and partiality. See Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974). "[I]f cross-examination is limited... an expert's views and the soundness thereof may go largely untested." Dempsey v. Shell Oil Co., 589 So. 2d 373, 378 (Fla. 4th DCA 1991). Cross-examination is "not confined to the identical details testified to in chief, but extends to its entire subject matter, and to all matters that may modify, supplement, contradict, rebut or make clear the facts testified to in chief...." Id. The right to cross-examine an expert to extract biases and challenge his/her credibility therefore includes the ability to elicit evidence that the expert has a history of testifying in the same fashion and rendering similar opinions. See Secada v. Weinstein, 563 So. 2d 172, 173 (Fla. 3d DCA 1990). Moreover, confronting an expert such as Respondent Forman with evidence that the overwhelming majority of his income is derived from the Plaintiffs' bar is extremely relevant on the issue of the expert's biases and credibility. See Trend South, supra; Abdel-Fattah, supra; Bissell Brothers, supra; Young, supra; Crandall, supra; Wood, supra. However, the Syken "guidelines"

preclude discovery of the information necessary to conduct an adequate and effective cross-examination in order to disclose the expert's true loyalties and opinions.

The information discoverable under Syken - (i.e., an expert's self-serving "approximations" or "estimates" concerning the time devoted to expert services; the expert's self-serving "approximations" or "estimates" regarding percentage of expert work performed for plaintiffs as opposed to defendants) - does not remotely permit a litigant to achieve the goals of effective cross-examination. An expert's testimony virtually remains inviolate for all intents and purposes. A party is not permitted to test the accuracy or veracity of the responses to the authorized inquiry. For example, an expert is not required to disclose how much money he or she earns as an expert or how much the expert earns annually. Syken v. Elkins, 644 So. 2d at 546. Nor is an expert required to produce "business records, files, and 1099's" except "upon the most unusual or compelling circumstance." Id. The party challenging the expert's credibility is instead forced to accept the expert's representations unless the party is fortunate enough to stumble upon information indicating that the expert has not been forthright and honest. Moreover, Syken does not remotely suggest how a litigant may embark on the task of "gathering the information necessary to expose the miscreant expert." Syken, 644 So. 2d at 547.

This Court has, unlike the Third District in Syken, recognized the inherent unreliability of a witness' self-serving testimony concerning his/her income and

finances.[2] For example, this Court in Tennant v. Charlton, 377 So. 2d 1169 (Fla. 1979), did not accept the defendant's affidavit of his current assets in lieu of tax returns where the defendant's assets were at issue. This Court indicated that since witnesses tend to minimize or exaggerate their income when convenient, "it is the height of naivete to suggest that a sworn statement of one's net worth must be accepted as the final word on that important subject." Id., at 1170 (quoting Donahue v. Hebert, 355 So. 2d 1264 (Fla. 4th DCA 1978)); see Orlowitz v. Orlowitz, 199 So. 2d 97, 98 (Fla. 1967) ("'The adversary and the court are entitled to the whole factual picture to the end that an independent complete understanding and evaluation may be had.'" (citation omitted)); cf. Rojas v. Ryder Truck Rental, Inc., 641 So. 2d 855 (Fla. 1994) (party may be compelled to authorize production of medical records because merely permitting the opponent to issue a Rule 1.350 request for records "would place [the requesting party] in the position of depending on the veracity of its adversary in furnishing the records."). Therefore, the scales of justice in this and all cases involving experts are balanced **only** if this Court does **not** adopt the discovery exemptions set forth in Syken and instead permits, as the trial court did, independent verification of an expert's "approximations" and "estimates" via primary financial and expert services documentation.

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[2]This unreliability is evidenced by Respondent Forman's "semantics" games during the discovery process. For example, Respondent Forman refused to produce appointment books and bills because they "don't contain the information that [Defendants] asked for in the form that [Defendants] wanted." [App. Forman 3, p. 17].

CONCLUSION

WHEREFORE, the Petitioners, DINA R. CHUNG, M.D. and DINA R. CHUNG, M.D., P.A., respectfully submit that this Court should reverse the Third District's opinion below (and disapprove the "guidelines" enunciated in Syken v. Elkins, 644 So. 2d 539 (Fla. 3d DCA 1994)), and affirm the trial court's Order.

Respectfully submitted,

By _____

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the above Brief of Petitioners on the Merits was served by mail this 9th day of June, 1995 to: **Steven E. Stark, Esq.**, Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., Courthouse Center, 11th Floor, 175 N.W. First Avenue, Miami, Florida 33128-1835; **Frederick E. Hasty, III, Esq.**, Wicker, Smith, Blomqvist, Tutan, O'Hara, McCoy, Graham & Lane, P.A., 2900 Middle Street, 5th Floor, Miami, Florida 33133; **Henry A. Seiden, Esq.**, Henry A. Seiden, P.A., 7280 West Palmetto Park Road, Suite 304, Boca Raton, Florida 33433; **Mary Margaret Schneider, Esq.**, **Susan Rosenblatt, Esq.**, Stanley M. Rosenblatt, P.A., Concord Building, 12th Floor, 66 West Flagler Street, Miami, Florida 33130, **Stuart H. Sobel, Esq.**, Sobel & Sobel, P.A., Penthouse, 155 South Miami Avenue, Miami, Florida 33130-1609, and **The Honorable Gisela Cardonne**, Dade County Courthouse, 73 West Flagler Street, Room 1500, Miami, Florida 33130.

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IN THE SUPREME COURT
STATE OF FLORIDA

CASE NO.: 85,063

THIRD DCA CASE NOS. 93-02606
93-02613

DINA R. CHUNG, M.D. and
DINA R. CHUNG, M.D., P.A.,

Petitioners,

vs.

MALKA FINK, etc.,

Respondents.
_____/

APPLICATION FOR DISCRETIONARY REVIEW OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT OF FLORIDA

APPENDIX TO BRIEF OF PETITIONERS ON THE MERITS

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A. 1

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1994

19 FLW D2268

LAWRENCE FORMAN,

Petitioner,

vs.

MALKA FINK, a minor, by and through her parents and natural guardians, DANIEL FINK and MONIQUE FINK, DANIEL FINK and MONIQUE FINK, individually, UNIVERSITY OF MIAMI, INC., NORTH SHORE MEDICAL CENTER, STUART GROSS, ANTHONY LAI, THOMAS A. QUETEL, DINA CHUNG and DINA CHUNG, M.D., P.A.,

Respondents.

CASE NO. 93-2606

MALKA FINK, a minor, by and through her parents and natural guardians, DANIEL FINK and MONIQUE FINK, and DANIEL FINK and MONIQUE FINK, individually,

Petitioners,

vs.

UNIVERSITY OF MIAMI, INC. d/b/a UNIVERSITY OF MIAMI HOSPITAL & CLINICS a/k/a NATIONAL CHILDREN'S CARDIAC HOSPITAL, NORTH SHORE MEDICAL CENTER, ANTHONY LAI, M.D., THOMAS A. QUETEL, M.D., DINA CHUNG, M.D., and DINA R. CHUNG, M.D., P.A.,

Respondents.

CASE NO. 93-2613

Opinion filed October 26, 1994.

Writs of Certiorari to the Circuit Court for Dade County, Gisela Cardonne, Judge.

Sobel & Sobel, and Stuart H. Sobel, for petitioner, Lawrence Forman.

Stanley M. Rosenblatt, and Susan Rosenblatt, for petitioner, Malka Fink.

George, Hartz, Lundeen, Flagg & Fulmer, and Esther E. Galicia, for respondents, Dina Chung, M.D. and Dina R. Chung, M.D., P.A.

Wicker, Smith, Tutan, O'Hara, McCoy, Graham & Lane, and Frederick E. Hasty, III for respondent, North Shore Medical Center.

Fowler, White, Burnett, Hurley, Banick & Strickroot, and Christopher L. Kurzner, for respondent, University of Miami.

Before BASKIN, JORGENSON, and GERSTEN, JJ.

PER CURIAM.

In this consolidated case, petitioner, Lawrence Forman, a certified rehabilitation administrator, seeks review of that portion of a trial court order compelling discovery of all medical and legal evaluations petitioner conducted from 1990 through 1993, and evidence of income received on matters in which he was retained by an attorney during those years. We grant the petition and quash this portion of the order on the authority of Syken v. Elkins, Nos. 93-1299 and 92-2317 (Fla. 3d DCA Oct. 5, 1994)(en banc).

Petitioner, Malka Fink, seeks review of another portion of the order compelling "full and complete discovery from Plaintiffs' former medical expert Joan Pehta, M.D.," an expert witness who had been withdrawn by petitioner. Because no exceptional circumstances were shown to compel discovery of an expert not expected to testify at trial, we grant the petition and quash this part of the trial

court's order. See Fla. R. Civ. P. 1.280(b)(4)(B); Lift Systems, Inc. v. Costco Wholesale Corp., 636 So. 2d 569 (Fla. 3d DCA 1994); Morgan v. Tracy, 604 So. 2d 15 (Fla. 4th DCA 1992); Gilmor Trading Corp. v. Lind Elec., Inc., 555 So. 2d 1258 (Fla. 3d DCA 1989); Ruiz ex rel. Ruiz v. Brea, 489 So. 2d 1136 (Fla. 3d DCA 1986)(opinion on rehearing).

Petitions for writ of certiorari granted; order quashed in part.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1994

WEDNESDAY, JANUARY 4, 1995

LAWRENCE FORMAN,

Petitioner,

vs.

MALKA FINK, a minor, by and through her parents and natural guardians, DANIEL FINK and MONIQUE FINK, DANIEL FINK and MONIQUE FINK, individually, UNIVERSITY OF MIAMI, INC., NORTH SHORE MEDICAL CENTER, STUART GROSS, ANTHONY LAI, THOMAS A. QUETEL, DINA CHUNG and DINA CHUNG, M.D., P.A.,

Respondents.

CASE NO. 93-2606

MALKA FINK, a minor, by and through her parents and natural guardians, DANIEL FINK and MONIQUE FINK, and DANIEL FINK and MONIQUE FINK, individually,

Petitioners,

vs.

UNIVERSITY OF MIAMI, INC. d/b/a UNIVERSITY OF MIAMI HOSPITAL & CLINICS a/k/a NATIONAL CHILDREN'S CARDIAC HOSPITAL, NORTH SHORE MEDICAL CENTER, ANTHONY LAI, M.D., THOMAS A. QUETEL, M.D., DINA CHUNG, M.D., and DINA R. CHUNG, M.D., P.A.,

Respondents.

CASE NO. 93-2613

Upon consideration, Dina Chung, M.D. and Dina R. Chung, M.D., P.A.; University of Miami; Anthony Lai and Thomas A. Quetel's motions for certification and to stay issuance of mandate pending discretionary review by the Supreme Court are hereby denied. Baskin, Jorgenson and Gersten, JJ., concur.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of
Appeal of Third District

By _____
Deputy Clerk

cc: Esther E. Garcia
Frederick E. Nasty, III
Mary Margaret Schneider
Stuart H. Sobel
Christopher E. Knight
Henry A. Seiden
Susan Rosenblatt
Steven E. Stark

/NB

Supreme Court of Florida

THURSDAY, MAY 18, 1995

UNIVERSITY OF MIAMI, INC., ETC., ET AL.,	*	
Petitioners,	*	ORDER ACCEPTING JURISDICTION & DISPENSING WITH ORAL ARGUMENT
v.	*	CASE NO. 85,117
MALKA FINK, ETC., ET AL.,	*	District Court of Appeal, 3rd District - No. 93-2606
Respondents.	*	93-2613

* * * * * * * * * * * * * * * *

The Court has accepted jurisdiction and dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Petitioner's brief on the merits shall be served on or before June 12, 1995; respondent's brief on the merits shall be served 20 days after service of petitioner's brief on the merits; and petitioner's reply brief on the merits shall be served 20 days after service of respondent's brief on the merits. Please file an original and seven copies of all briefs.

Please send to the Court, either in Word Perfect format or ASCII text format, a 3-1/2" diskette of the briefs filed in this case. This procedure is voluntary. PLEASE LABEL ENVELOPE TO AVOID ERASURE.

The Clerk of the District Court of Appeal, Third District, shall file the original record on or before July 17, 1995.

OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

By: Betsy Deputy Clerk

BH

cc: Hon. Louis J. Spallone, Clerk
Mr. Steven E. Stark
Ms. Esther E. Galicia
Mr. Christopher E. Knight
Ms. Mary Margaret Schneider
Mr. Frederick E. Hasty, III
Mr. Henry A. Seiden
Ms. Susan Rosenblatt
Mr. Stanley M. Rosenblatt
Mr. Stuart H . Sobel