



1996

# Recent Developments: Araiza v. Roskowinski-Droneburg: Denial of Request for Compelled Disclosure of Expert Witness's Financial Records Is Not an Abuse of Trial Court's Discretion When Party Is Given Only Three Days Notice to Comply

Kevin Barth

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>

 Part of the [Law Commons](#)

## Recommended Citation

Barth, Kevin (1996) "Recent Developments: Araiza v. Roskowinski-Droneburg: Denial of Request for Compelled Disclosure of Expert Witness's Financial Records Is Not an Abuse of Trial Court's Discretion When Party Is Given Only Three Days Notice to Comply," *University of Baltimore Law Forum*: Vol. 26 : No. 3 , Article 5.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol26/iss3/5>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

***Araiza v. Roskowinski-Droneburg:***

***DENIAL OF REQUEST FOR COMPELLED DISCLOSURE OF EXPERT WITNESS'S FINANCIAL RECORDS IS NOT AN ABUSE OF TRIAL COURT'S DISCRETION WHEN PARTY IS GIVEN ONLY THREE DAYS NOTICE TO COMPLY.***

In *Araiza v. Roskowinski-Droneburg*, 341 Md. 314, 670 A.2d 466 (1996), the Court of Appeals of Maryland held that the trial court did not abuse its discretion in denying Defendants' discovery request for financial records of an expert witness employed by the Plaintiff when the witness was given only three days to respond to a subpoena requesting such documents. The court decided against altering the common law rule which would have required the automatic disclosure of financial statements of expert witnesses. The court ruled that making such records part of "core disclosure" would be against Maryland common law. Parties seeking discovery of such records will continue to have to follow the proper rules of procedure.

On January 26, 1989, Dr. Schipper ("Schipper") performed a laparoscopy on Heather Jean Roskowinski-Droneburg ("Roskowinski"). The appellee, Roskowinski, received follow-up treatment from January 27 through January 30 from one of the appellants, Dr. Araiza ("Araiza"). After these procedures, Roskowinski developed peritonitis and loss of bowel functions which resulted in numerous other surgeries including a colostomy. Roskowinski filed a medical malpractice claim against Araiza, Schipper, and their medical corporation, Drs. Araiza and Schipper, P.A..

Dr. Marshall Klavan ("Klavan") provided expert tes-

timony on the standard of care in the medical procedures at issue for Roskowinski. Araiza and Schipper requested that Klavan produce numerous financial records at his deposition for possible impeachment use. Araiza and Schipper, however, failed to subpoena Klavan's records prior to his deposition. The requested documents were, therefore, not produced by Klavan although he did provide testimony concerning several aspects of his financial status from his work as a forensic expert. In October of 1994, the month the trial was scheduled to begin, Araiza and Schipper again requested Klavan's financial records. To effectuate this request, Araiza and Schipper obtained two subpoenas requesting these documents, one of which was served on Klavan at his offices in Pennsylvania by order of the Court of Common Pleas of Delaware County, Pennsylvania, dated October 21. On October 24, both parties filed open court motions in limine on which the court ruled in favor of Roskowinski, disallowing the requested subpoenaed materials.

A jury in the Circuit Court for Frederick County found in favor of Schipper and against Araiza and the medical corporation. Araiza filed a timely appeal with the Court of Special Appeals of Maryland, arguing that the trial court should have ordered Klavan to disclose his financial records. The Court of Appeals of Maryland grant-

---

ed certiorari on its own motion to determine whether medical experts could be required to produce financial documents to an opposing party for impeachment purposes.

The court began its analysis by outlining the trial court's rationale for its rulings on the parties' respective motions in limine. *Araiza*, 341 Md. at 321, 670 A.2d at 469. The trial court ruled that requiring Dr. Klavan to produce the requested documents on three days notice, most of which were not ordinarily kept, would be "extensively burdensome." *Id.* Furthermore, the trial court recognized that the Defendants could use financial information disclosed in Dr. Klavan's deposition for impeachment purposes. *Id.* The court of appeals ruled that this decision was an acceptable exercise of "judicial discretion" under Maryland Rule 2-510(e). *Id.* at 322, 670 A.2d at 469.

The court next addressed whether "professional witnesses" submitting to jurisdiction in Maryland should be required to supply "written documentation of their forensic activities." *Id.* at 322, 670 A.2d at 470 (quoting appellants' oral argument). The court stated that this argument assumes that attorneys who hire expert witnesses exercise some control over those witnesses which would allow the attorneys to convince their witnesses to bring such records. *Id.* The argument also assumes that "if the attorney is unable to convince the expert to do so, the

attorney would be ethically obliged to engage an expert who would produce potentially impeaching records." *Id.*

*Araiza* rested this control-based argument on *Myers v. Alessi*, 80 Md. App. 124, 560 A.2d 59, cert denied, 317 Md. 640, 566 A.2d 101 (1989), where the court of special appeals held that a party cannot introduce transcript testimony of an expert witness in Health Claims Arbitration when the expert was unavailable at trial as a result of the party failing to pay the expert's fees. *Araiza*, 341 Md. at 322-23, 670 A.2d at 470. The court of appeals recognized an attorney's duty regarding the use of expert testimony as provided by Federal Rule of Civil Procedure 26(a)(2)(B), which requires automatic disclosure of information regarding the expert's history in testifying. *Id.* The court ruled, however, that an expert's financial records are not encompassed by this rule. *Id.* These records, according to the court, are not a part of "core discovery" and will not be provided without the appropriate discovery request. *Id.* The court noted that it was unwilling to make a rule requiring automatic disclosure of expert witnesses' financial statements "in light of the history of core disclosure in the rulemaking process in this State, and particularly because any 'adjudication' in the instant matter would be dicta." *Id.*

In *Araiza v. Roskowsky-Droneburg*, 341 Md. 314, 670 A.2d 466 (1996)

the Court of Appeals of Maryland ruled that the trial court's denial of requested discovery of an expert witness's financial statements was not an abuse of discretion under Maryland Rule 2-510(e) when the witness had only been given three days notice to comply. The court once again failed to reach a determination on whether expert witnesses can be required to produce financial statements to the opposing party for the purpose of impeachment. As attorneys continue to use expert witnesses in medical malpractice claims, creating the pseudo-profession of "professional expert," the court of appeals needs to more closely define the discovery rules in terms of such financial statements to allow the factfinder to use them to determine this aspect of a witness's credibility.

- Kevin Barth