

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**JERRY PLATZ, SANDRA PLATZ,
ALAN CHAFFIN, and JAMES WAYNE
ROWAN**

PLAINTIFFS

v.

CASE NO. 1:09cv00014 BSM

**TERRY CARTER, BEELMAN
TRUCKING CO., and TRANSPORTATION,
INC.**

DEFENDANTS

ORDER

The motion of separate defendants, Terry Carter (“Carter”) and Beelman Trucking Co. (“Beelman”), for an order directing separate plaintiff, Alan Chaffin (“Chaffin”), to submit to physical examination [Doc. No. 70] is denied.

Carter and Beelman want Chaffin to submit to a physical examination by Dr. Earl Peeples, an orthopedic surgeon of their choosing. In the alternative, Carter and Beelman want Chaffin to submit to a physical examination by a doctor chosen by the court. Carter and Beelman maintain that it has been more than a year since Chaffin was examined by an orthopedic surgeon and that the extent of his injuries, if any, is a key issue.

The request is denied, although it is well taken that Chaffin’s injuries are a key issue. Chaffin has a right to choose his own doctor and to determine who he wants to provide his medical testimony. Indeed, if he chooses to base his damages claim on old medical evidence, that is his choice and the jury can weigh the credibility of the old medical examination and draw inferences from the fact that it is old evidence. Carter and Beelman are not prejudiced

because they can depose Chaffin's physician and they can submit Chaffin's medical records to an independent physician who can provide opposing medical testimony. This is how an adversarial judicial system normally works. Consequently, although Chaffin's physical condition is important, a court ordered physical examination is not warranted.

Accordingly, defendants' motion [Doc. No. 70] is denied.

IT IS SO ORDERED this 7th day of May, 2010.

Brian S. Miller
UNITED STATES DISTRICT JUDGE