

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DAVID PAYNE and SHERRIE PAYNE,)	
)	
Plaintiffs,)	
)	
vs.)	CIVIL NO. 09-559-GPM
)	
SCHNEIDER NATIONAL CARRIERS,)	Consolidated with:
INC., JEFF FOSTER TRUCKING, INC.,)	CIVIL NO. 10-258-GPM
and TETON TRANSPORATION, INC.,)	
)	
Defendants/Cross-Claimants.)	
)	
JEFF FOSTER TRUCKING, INC.,)	
)	
Third-Party Plaintiff,)	
)	
vs.)	
)	
E.T. SIMONDS CONSTRUCTION)	
COMPANY and DALE STUMBO,)	
)	
Third-Party Defendants.)	

MEMORANDUM AND ORDER

MURPHY, District Judge:

This Court previously granted the renewed motion for a physical examination of Plaintiff David Payne brought by Defendant/Cross-Claimant/Cross-Defendant/Third-Party Plaintiff Jeff Foster Trucking, Inc. (“Jeff Foster”), and thereby ordered that David Payne submit to an independent medical examination (“IME”) by Michael P. Nogalski, M.D., a licensed and board-certified orthopedic surgeon. The Court directed counsel for David Payne and Jeff Foster to meet and confer for the purpose of determining the specific time, place, manner, conditions, and scope of the physical examination of David Payne. The parties having now come to an agreement

for the specific time, place, manner, conditions, and scope of the examination ordered by this Court, it is hereby **ORDERED** that:

1. The examination will take place at 11:05 a.m. on February 16, 2011, at Dr. Nogalski's office, Orthopedic Associates, LLC, 1050 Old Des Peres Rd., Suite 100, St. Louis, Missouri 63131.

2. The examination will be confined to the scope of the physical injuries and symptoms set forth in David Payne's Complaint at Law, made to his treating physicians, and expressed during his deposition testimony, specifically the bilateral shoulder injuries.

a. Dr. Nogalski has been provided with the following medical records, sent on or about July 7, 2010, regarding David Payne: (1) Medical records from St. Mary's Good Samaritan Hospital (and DVD of Radiographic Films); (2) Medical records from Dr. Joon Ahn at Orthopedic Center of Southern Illinois (and DVD of Radiographic Films); (3) Medical records from Dr. Richard Lehman at Webster Surgery Center and U.S. Center for Sports Medicine (and DVD of Radiographic Films); (4) Medical records from Dr. Bradley Drake; (5) Medical records from Dr. Elizabeth Cox; (6) Medical records from MidAmerica Radiology; and (7) Medical records from Dr. Christopher Modert.

b. Dr. Nogalski has been provided with the following deposition transcripts regarding David Payne: (1) Transcript of David Payne, sent on or about July 7, 2010; (2) Transcript of Dr. Lehman's February 18, 2010 deposition, sent on or about July 7, 2010; (3) Transcript of Sherrie Payne, sent on or about September 30, 2010; and (4) Transcript of Dr. Lehman's December 9, 2010 deposition, sent on or about

December 22, 2010.

c. Counsel for Jeff Foster Trucking, Inc., and support staff for said counsel, has additionally had conversations with Dr. Nogalski and/or his office assistants on various dates regarding Dr. Nogalski's receipt of information pertaining to the subject matter, as well as the scheduling of the subject IME.

3. Initially, David Payne's history will be taken by way of a form, which has been provided to David Payne and his counsel in advance of the subject physical examination, to evaluate the mechanism and sequelae of the injuries. This form may be prepared by David Payne prior to appearing for his IME. Additionally, examination and physical testing Dr. Nogalski deems necessary or desirable to effect a complete examination of the injuries and symptoms alleged by David Payne, specifically bilateral shoulder injuries, will be completed, as well as the making of such films and other radiographic studies Dr. Nogalski deems advisable in order to make a proper evaluation concerning issues of permanency and prognosis.

IT IS SO ORDERED.

DATED: February 17, 2011

/s/ G. Patrick Murphy
G. PATRICK MURPHY
United States District Judge