

**MINUTE ENTRY  
KNOWLES, M.J.  
MARCH 23, 2011**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE: RAINBOW MARINE  
CONTRACTORS, INC., ET AL.**

**CIVIL ACTION**

**NO. 09-4516**

**SECTION "I" (3)**

On this date, Rainbow Marine's and Gulf Oceanic's Motion to Compel Christopherloc Nguyen to Submit to a Defense Functional Capacity Evaluation [Doc. #96] came on for oral hearing before the undersigned. Present were Larry Dyess on behalf of petitioners-in-limitation and Edward Koehl and William Neumann on behalf of claimant Christopherloc Nguyen. For the reasons stated on the record,

**IT IS ORDERED** that Rainbow Marine and Gulf Oceanic's Motion to Compel Christopherloc Nguyen to Submit to a Defense Functional Capacity Evaluation [Doc. #96] is DENIED. While petitioners-in-limitation may have timely requested the functional capacity evaluation ("FCE") and timely filed their motion on the date of the discovery deadline, the Court can not order an FCE on the date of the pre-trial conference (today). Such an order would certainly jeopardize the trial date and would almost positively necessitate the re-opening of discovery. Should

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circumstances change, however, this Minute Entry reserves the right to petitioners-in-limitation to re-urge the motion.

Petitioners-in-limitation cite *Bergeron v. Beverly Dredging, L.L.C.*, Civ. A. No. 08-3753, 2009 WL 1140414 (E.D. La. Apr. 27, 2009), as support for the argument that they are entitled to an FCE performed by someone of their choosing. But there, the Court explicitly noted that allowing an FCE would not jeopardize the trial date, set two months after the grant of the motion. *Id.* at \*2. Here, the circumstances are different: The pre-trial conference is today, and the trial is set on April 11, 2011, less than three weeks from now. This Court can not jeopardize the dates set in the District Court's Scheduling Order.

A handwritten signature in black ink that reads "Daniel E. Knowles, III". The signature is written in a cursive style with a horizontal line underneath the name.

**DANIEL E. KNOWLES, III**  
**UNITED STATES MAGISTRATE JUDGE**