

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ROBERT G. McCONNELL

CIVIL ACTION

VERSUS

NUMBER 11-153-BAJ-SCR

HIRSCHBACH MOTOR LINES, INC.,
ET AL

consolidated with

FREDDIE LITTLE

CIVIL ACTION

VERSUS

NUMBER 11-433-BAJ-SCR

HIRSCHBACH MOTOR LINES, INC.,
ET AL

RULING ON MOTION TO COMPEL MEDICAL EXAMINATION

Before the court is the defendants' Motion to Compel Independent Medical Examinations and Vocational Rehabilitation Evaluations. Record document number 35. No opposition has been filed.

Defendants seek to compel the plaintiffs to appear for examinations pursuant to Rule 35, Fed.R.Civ.P. By agreement of counsel, plaintiff McConnell was previously scheduled for an orthopedic evaluation on December 1, 2011 by Dr. Larry Messina in Baton Rouge, Louisiana. Without giving advance notice, or an explanation later, he failed to appear. Defendants were charged a \$500 "no-show" fee by the doctor, which they now seek to recover from the plaintiff. At a conference between counsel thereafter, counsel for the plaintiffs advised that he could not assure

defendants' counsel that plaintiff McConnell would attend any rescheduled examination or that plaintiff Freddie Little would appear for an initial examination. This motion followed.

Neither plaintiff has filed any opposition or other response to this motion. It is apparent from the allegations in the complaints that both plaintiffs have placed their physical conditions in issue. Therefore, both are subject to examinations pursuant to Rule 35.

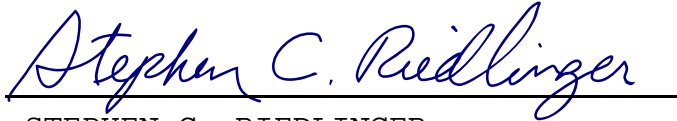
As to the \$500 fee charged by the Dr. Messina, this fee is apparently matter of contract between the defendants and Dr. Messina. Defendants have not shown that plaintiff McConnell agreed to pay this fee or any part of it, whether or not the plaintiff appeared for the evaluation. Moreover, the defendants have not shown that the fee is reasonable. See Rule 26(b)(4)(E), Fed.R.Civ.P.

Accordingly, the defendants's Motion to Compel Independent Medical Examinations and Vocational Rehabilitation Evaluations is granted, in part. Upon reasonable notice of not less than 14 calendar days, provided through counsel for the plaintiffs, the plaintiffs shall appear for medical examinations by Dr. Larry Messina and/or Dr. Kyle C. Girod, and for vocational rehabilitation examinations by Michael S. Frenzel and/or Thomas J. Meunier, at their respective offices in Baton Rouge, Louisiana. The motion is denied insofar as the defendants sought reimbursement from

plaintiff McConnell of the "no-show" fee charged by Dr. Messina.

Failure to appear for these examinations may result in the imposition of sanctions, including dismissal of the complaint, striking the claim for recovery of medical expenses and other medical-related damages, barring the introduction of medical evidence, or other appropriate sanctions.

Baton Rouge, Louisiana, January 9, 2012.



STEPHEN C. RIEDLINGER
UNITED STATES MAGISTRATE JUDGE