

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

FELIX BARRAS

CIVIL ACTION NO. 6:10-cv-1249

VERSUS

JUDGE HAIK

D & L SALVAGE AND MARINE
SERVICES, L.L.C. and D & L
SALVAGE, L.L.C.

MAGISTRATE JUDGE HANNA

RULING ON MOTION

(Rec. Doc. 15)

Pending before the Court is the motion to compel an independent medical examination (“IME”), which was filed by the defendants, D&L Salvage, L.L.C. and D&L Salvage & Marine Services, L.L.C. (Rec. Doc. 15). The motion seeks to compel the plaintiff to attend an IME by orthopedic surgeon, Dr. Christopher Cenac, Sr. For the following reasons, the motion is GRANTED.

FACTUAL BACKGROUND

The plaintiff, Felix Barras, alleges in his complaint (Rec. Doc. 1) that he was a seaman and a member of the crew of the M/V MISS DIANA, and that he was injured while in the course and scope of his employment duties when the MISS

DIANA sank on January 17, 2010. The plaintiff alleges that he suffered serious, permanent, and disabling physical and psychological injuries as a result of that incident, which he alleges was caused by the negligence of the defendants or the unseaworthiness of the vessel.

According to the materials submitted in support of the pending motion, the defendants requested that Mr. Barras submit to an IME by Dr. Christopher Cenac, Sr., an orthopedic surgeon. The plaintiff objected, arguing that Dr. Cenac is unlikely to render an unbiased opinion of Mr. Barras's physical condition.

DISCUSSION

Rule 35(a)(1) of the Federal Rules of Civil Procedure states: "The court... may order a party whose mental or physical condition... is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner." According to Rule 35(a)(2)(A), a motion to compel such an examination must be based upon "good cause." The plaintiff in this lawsuit placed his physical condition in controversy when he filed his complaint and alleged that he was injured when the vessel sank. The plaintiff has been examined by his own physicians, Dr. Ronald Woods and Dr. John Cobb. Dr. Cobb has recommended that the plaintiff undergo an anterior cervical discectomy and disc fusion. Whether that surgical recommendation

is reasonable in light of the plaintiff's injuries or causally connected to subject incident are matters that the defendants are entitled to explore by having the plaintiff undergo an IME. Therefore, the defendants have demonstrated both that Mr. Barras's physical condition is in controversy and that there is good cause for an IME. Accordingly, Mr. Barras may be compelled to submit to an IME.

The plaintiff's objection to being examined by Dr. Cenac because of the anticipated content of Dr. Cenac's report is premature. The Court cannot predict, in advance, what opinions Dr. Cenac is likely to include in his report. Therefore, the court is without recourse at this juncture to enter any type of order concerning the content of the report.

However, should Dr. Cenac's report or deposition testimony venture beyond the boundaries of legitimate opinions based on his examination of Mr. Barras's actual physical condition, or beyond Dr. Cenac's expertise as a board-certified orthopedic surgeon, an objection may be brought to the Court's attention by means of a motion in limine, motion to strike, and/or a motion to limit or exclude testimony under *Daubert v. Merrill Dow Pharmaceuticals* prior to trial.

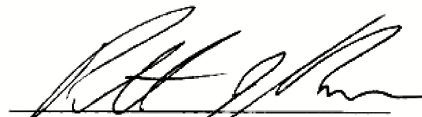
Accordingly,

IT IS ORDERED that oral argument on the pending motion to compel (Rec. Doc. 15), which was previously scheduled to be held on March 23, 2011, is CANCELLED.

IT IS FURTHER ORDERED that the defendants' motion to compel an IME with Dr. Christopher Cenac, Sr. (Rec. Doc. 15) is GRANTED.

IT IS FURTHER ORDERED that the plaintiff, Felix Barras, shall appear for a medical examination by Dr. Christopher Cenac, Sr., at a date, time, and place that is agreeable to both Mr. Barras and Dr. Cenac. In the event the parties are unable to agree on a date, time and place, counsel shall notify the Court who will select the same.

Signed at Lafayette, Louisiana, on March 15, 2011.



Patrick J. Hanna
United States Magistrate Judge
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