

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division

ALBERT SNYDER,)
)
Plaintiff) Case No. 1:06-CV-01389-RDB
)
FRED W. PHELPS, SR., et al,)
)
Defendants.)

DEFENDANTS' UPDATE AND CORRECTION TO MOTION TO RECONSIDER
IME LENGTH LIMITATION, AND PROVISION OF DR. BLUMBERG'S
SIGNATURE PAGE

Defendants Westboro Baptist Church and Fred W. Phelps, Sr. (collectively
"Defendants") respectfully update and correct their omnibus Memorandum on IME scope and
Motion to Reconsider IME Length ("Memorandum") as follows.

1. Attached is Dr. Blumberg's signature page to his Second Declaration that
Defendants filed on June 12. Dr. Blumberg made no edits to the unexecuted Second Declaration
filed on June 12, 2007.

2. The Certificate of Service on Defendants' June 12, 2007, Memorandum
incorrectly designates the document that was served. Consequently, Defendants confirm here
that the document served was the Memorandum.

3. Defendants apologize for not providing the following caselaw earlier concerning
length of the IME. The Court placed a time limitation of June 12 for filing a memorandum on the
scope of the deposition, and did not place a time limitation for filing a Motion to reconsider the
Court's June 11 decision for the IME not to last beyond three hours. Nevertheless, Defendants
have not intended to cause an imposition on Plaintiff or the Court by presenting the following
additional caselaw; the only reason for not presenting it earlier was caused by undersigned

counsel' s obligations to other clients during the time intervening between the June 11 conference call and now. Defendants have no objection for Plaintiff to have additional time to respond to the following arguments, so long as this does not preclude Defendants from fully conducting the IME that is permitted by the Court (*e.g.*, Dr. Blumberg' s Second Declaration confirms the option to split the exam to two sessions of around three hours each, in the even the Court permits an IME longer than three hours).

a. "For the court to intervene and limit the type of examination an expert has indicated is necessary in order to analyze plaintiff's claims [of intentional infliction of emotional distress] would subvert the truth finding function inherent in Rule 35 examinations. 'Rule 35... has been described as a "powerful instrument for ascertaining the truth.'" *In re: Certain Asbestos Cases*, 112 F.R.D. at 433 citing No. 8 C. Wright & Miller, Federal Practice and Procedures 2231 at 665-666 (1970)." *Lahr v. Fulbright & Jaworski, L.L.P.*, 164 F.R.D. 196, 202 (N.D. Tex. 1995), *aff'd* 164 F.R.D. 204 (N.D. Tex. 1996). Similarly, here Dr. Blumberg' s Second Declaration swears under oath that, with a three-hour IME, he will be unable to administer any objective psychological tests.

b. In a case directly addressing the time length for a psychological IME, involving a lawsuit for inappropriate sexual contact, a federal court granted thirteen hours for a mental examination of the two plaintiffs (the minor victim and his parent) and his brother. *Nicholas v. Wyndham Int'l, Inc.*, 218 F.R.D. 122 (D.V.I. 2003). In *Nicholas*, the thirteen-hour limitation left the IME doctor free to budget his time as he saw fit, for example, to spend six hours with the minor victim, and the remaining seven hours with the parent (who apparently only was in the caption because the primary victim was a minor) and the victim' s sibling (although the opinion

does not say why the brother was being examined, perhaps it was to conduct an examination from someone coming from a related genetic and environmental background).

Similarly in Defendants' case, Dr. Blumberg has stated that he will require around six hours for the one-day examination of Plaintiff; he has not sought more than that. Consequently, Defendants have attached a proposed order concerning the timelength of the IME.

WHEREFORE, Defendants respectfully move for an Order permitting Dr. Blumberg not more than eight hours to conduct the IME.

Respectfully submitted,

/s/
Jonathan L. Katz
D.Md. Bar No. 07007
1400 Spring St., Suite 410
Silver Spring, MD 20910
Ph: (301) 495-4300
Fax: (301) 495-8815
jon@markskatz.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Update was served by the CM/ECF filing system (and by mail to the pro se defendants) on June 13, 2007, to:

Sean E. Summers, Esq.
Paul W. Minnich, Esq.
Rees Griffiths, Esq.
Craig Tod Trebilcock, Esq.

Becky Phelps-Davis
1216 Cambridge
Topeka, KS 66604

Shirley Phelps-Roper
3640 Churchill Road
Topeka, KS 66604

/s/
Jonathan L. Katz

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

ALBERT SNYDER,)	
)	
Plaintiff)	Case No. 1:06-CV-01389-RDB
)	
FRED W. PHELPS, SR., et al,)	
)	
Defendants.)	

ORDER

UPON CONSIDERATION of Defendants’ Motion to Reconsider the Court’s determination for the time length of Neil Blumberg, MD’ s examination of Plaintiff, it is this _____ day of _____, 2007, hereby

ORDERED that Defendants’ Motion is hereby GRANTED; and it is further

ORDERED that Dr. Blumberg’ s examination of Plaintiff not last longer than eight hours.

JUDGE