

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

ACCIDENT INSURANCE COMPANY

PLAINTIFF

v.

Civil Action No. 2:11cv33-KS-MTP

CLASSIC BUILDING DESIGN, LLC, ET AL.

DEFENDANTS

ORDER

THIS MATTER is before the court on the Motion [109] to Compel Martha Pace to submit to an independent medical/physical examination filed by Defendants Classic Building Design, LLC and Robert Brewer. Having considered the submissions of the parties and the applicable law, the court finds that the Motion [109] should be granted.

Defendants Classic Building Design, LLC and Robert Brewer seek an order compelling Third-Party Plaintiff/Cross-Plaintiff Martha Pace to submit to an independent medical/physical examination (IME) pursuant to Fed. R. Civ. P. 35. Pace objects to the IME on the grounds that the Defendants' request is untimely. Specifically, Pace points out that Defendants waited until March 28, 2012, to request the IME, less than one week before their expert designation deadline of April 2, 2012.

Fed. R. Civ. P. 35(a) provides that "The court where the action is pending may order a party whose mental or physical condition--including blood group--is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. . . ." Fed. R. Civ. P. 35(a). IME issues are usually addressed during the case management conference and the parameters are established by the case management order. However, for whatever reason, an IME was not addressed in the Case Management Order [23] entered in this case.

Plaintiff's physical condition is in controversy, as this action concerns allegations of

personal injuries sustained by Plaintiff when a light fixture fell on her head. Accordingly, the court finds that Defendants' motion to compel Plaintiff to submit to an IME should be granted. While the timeliness of the IME request is a concern, no undue prejudice will result from the delay. The IME shall be limited in scope to address the Plaintiff's alleged injuries resulting from the accident at issue, including future medical treatment needed as a result of said injuries, and to allow Defendants to prepare for and defend the opinions of Dr. Yeh as set forth in Plaintiff's expert designation. Accordingly,

IT IS, THEREFORE, ORDERED:

1. That the Motion [109] to Compel Cross-Plaintiff and Third-Party Plaintiff Martha Pace to submit to an independent medical/physical examination filed by Defendants Classic Building Design, LLC and Robert Brewer is granted.

2. Martha Pace shall submit to an independent medical/physical examination by Dr. Antinnes on or before April 27, 2012.

3. Defendants Classic Building Design, LLC and Robert Brewer shall serve their independent examiner's report on or before May 14, 2012.

SO ORDERED this the 17th day of April, 2012.

s/ Michael T. Parker

United States Magistrate Judge