

1 ROBERT W. FREEMAN
 Nevada Bar No. 3062
 2 PRISCILLA L. O'BRIANT
 Nevada Bar No. 10171
 3 JENNIFER A. TAYLOR, ESQ.
 Nevada Bar No. 6141
 4 LEWIS BRISBOIS BISGAARD & SMITH LLP
 6385 S. Rainbow Boulevard, Suite 600
 5 Las Vegas, Nevada 89118
 Telephone: (702) 893-3383
 6 Fax: (702) 893-3789
 E-Mail: Robert.Freeman@lewisbrisbois.com
 7 E-Mail: Priscilla.Obriant@lewisbrisbois.com
 E-Mail: Jennifer.A.Taylor@lewisbrisbois.com
 8 Attorneys for USAA CASUALTY
 INSURANCE COMPANY
 9

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA, NORTHERN DIVISION

12 KEITH FINKELSTEIN,

13 Plaintiff,

14 vs.

15 USAA CASUALTY INSURANCE
 COMPANY; JOHN DOES I-XX, inclusive;
 16 ABC CORPORATIONS 1-X, inclusive; and
 17 BLACK AND WHITE COMPANIES 1-X,
 inclusive,

18 Defendants.

CASE NO.: 3:20-cv-411-MMD-CLB

**STIPULATION FOR PHYSICAL
 EXAMINATION OF PLAINTIFF
 PURSUANT TO RULE 35 OF THE
 FEDERAL RULES OF CIVIL
 PROCEDURE AND [PROPOSED] ORDER
 THEREON**

Date: November 24, 2020

Time: 4:00 p.m.

Place: USC Spine Center
 1450 San Pablo Street, Suite 5400,
 Los Angeles, CA 90033

20 TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
 21 RECORD:

22 Plaintiff KEITH FINKELSTEIN ("Plaintiff") and Defendant USAA CASUALTY
 23 INSURANCE COMPANY, ("Defendant") by and through their respective counsel of record,
 24 hereby agree and stipulate as follows:

25 1. Pursuant to Rule 35 of the Federal Rule of Civil Procedure, the Court may order a
 26 party whose physical condition is in controversy to submit to a physical examination by a suitably
 27 licensed or certified examiner.

1 2. On April 27, 2020, Plaintiff filed his First Amended Complaint in the Second
2 Judicial District Court, Washoe County, State of Nevada against Defendant, USAA CASUALTY
3 INSURANCE COMPANY (“Defendant”). On July 7, 2020 Defendant removed this action to the
4 Federal Court, District of Nevada, Northern Division. Plaintiff’s Complaint alleges causes of
5 action for breach of contract for underinsured motorist coverage and medical payments benefits
6 from his insurer, USAA CASUALTY INSURANCE COMPANY, following an automobile
7 accident on January 24, 2019. Plaintiff alleges he suffered injuries to his neck, low back, both
8 shoulders, biceps pain, both knees, and right ankle. as a result of the January 24, 2019 automobile
9 accident. Plaintiff contends his injuries include future medical treatment of bilateral shoulder
10 surgery, pain management and a lumbar fusion surgery at L4-L5 as a result of the accident.
11 Defendant disputes the nature and extent of Plaintiff’s alleged injury.

12 3. In this case, as there is a present controversy regarding the physical condition of
13 Plaintiff, good cause exists for a physical examination (“Examination”) of Plaintiff to evaluate and
14 assess Plaintiff’s alleged injuries resulting from the 2019 automobile accident.

15 4. The Examination of Plaintiff will be conducted by Jeffrey C. Wang, M.D., a
16 licensed board certified orthopedic spine surgeon, on November 24, 2020, commencing at 4:00
17 p.m. until completed, but only for that day.

18 5. The Examination of Plaintiff will take place at 1450 San Pablo Street, Suite 5400,
19 Los Angeles, CA 90033.

20 6. The cost of the Examination will be borne by Defendant. If Plaintiff is unable to
21 attend the Examination without a 48-hour notice, or otherwise refuses to attend the
22 Examination without sufficient notice, Plaintiff will be responsible for the payment of the
23 cancellation fee.

24 7. The purpose and scope of the Examination is to obtain an evaluation and
25 assessment of Plaintiff’s current and future medical condition and/or future prognosis, which are
26 the subject of this litigation, from Jeffrey C. Wang, M.D.’s standpoint based upon his background,
27 experience and training. The Examination may include procedures and tests routinely used by a
28 specialist in orthopedics and neurology when examining patients to complete a diagnosis,

1 assessment of past and future treatment, prognosis, and the need for any costs of future
2 treatment(s) relating to Plaintiff's alleged injuries in the above-captioned action.

3 8. Plaintiff will not provide a written medical history relating to his alleged injuries
4 and no x-rays or other imaging studies will be taken for purposes of this Examination.

5 9. The Examination will not be invasive, painful, or protracted.

6 10. All reports generated by Jeffrey C. Wang, M.D. in connection with this
7 Examination will be provided to Plaintiff, through his attorney within 30 days upon Defendant's
8 receipt of same.

9 **IT IS SO STIPULATED.**

10 DATED: November 19, 2020

TERRY FRIEDMAN AND JULIE THROOP, PLLC

11

12

13

By: /s/ Julie McGrath Throop
TERRY FRIEDMAN, ESQ, ESQ.
Nevada Bar No. 1975
JULIE McGRATH THROOP, ESQ.
Nevada Bar No. 11298
300 South Arlington Avenue
Reno, NV 89501
Attorneys for Plaintiff
Keith Finkelstein

14

15

16

17

18

19

DATED: November 19, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

20

21

22

By: /s/ Jennifer A. Taylor
ROBERT W. FREEMAN, ESQ.
Nevada Bar No. 3062
PRISCILLA L. O'BRIANT, ESQ.
Nevada Bar No. 10171
JENNIFER A. TAYLOR, ESQ.
Nevada Bar No. 6141
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant
USAA Casualty Insurance Company

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[PROPOSED] ORDER

IT IS SO ORDERED:

GOOD CAUSE appearing, the Court orders as follows:

Plaintiff Keith Finkelstein shall submit to a physical examination before Jeffrey C. Wang, M.D., at 1450 San Pablo Street, Suite 5400, Los Angeles, CA 90033, on November 24, 2020, at 4:00 p.m.

DATED this 19th day of November, 2020



UNITED STATES MAGISTRATE JUDGE

Archived: Thursday, November 19, 2020 10:43:46 AM

From: jthroop@friedmanthroop.com

Sent: Tuesday, November 17, 2020 12:02:10 PM

To: [Taylor, Jennifer](#)

Cc: [Cordell, Anne](#); mary@friedmanthroop.com; specorino@friedmanthroop.com; [O'Briant, Priscilla](#)

Subject: RE: FW: [EXT] RE: Finkelstein, Keith v. USAA - 3:20-cv-00411 - Requesting Rule 35 Examination

Sensitivity: Normal

okay thanks

Sincerely,

Julie McGrath Throop, Esq.
Personal Injury Attorney
Licensed in Nevada: SBN 11298
NEVADA LAW.NEVADA LAWYERS
Terry Friedman and Julie Throop, PLLC
300 S. Arlington Ave.
Reno, NV 89501
(775)322-6500 (work)
(775)322-6502 (fax)
(775)848-5816 (cell)

***** PLEASE NOTE ***** This E-Mail/telefax message and any documents accompanying this transmission may contain privileged and/or confidential information and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this E-Mail/telefax information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents. Thank you.*****

----- Original Message -----

Subject: RE: FW: [EXT] RE: Finkelstein, Keith v. USAA - 3:20-cv-00411 - Requesting Rule 35 Examination

From: "Taylor, Jennifer" <Jennifer.A.Taylor@lewisbrisbois.com>

Date: Tue, November 17, 2020 12:27 pm

To: "jthroop@friedmanthroop.com" <jthroop@friedmanthroop.com>

Cc: "Cordell, Anne" <Anne.Cordell@lewisbrisbois.com>, "mary@friedmanthroop.com" <mary@friedmanthroop.com>, "specorino@friedmanthroop.com" <specorino@friedmanthroop.com>, "O'Briant, Priscilla" <Priscilla.Obriant@lewisbrisbois.com>

Thanks Julie

It looks like we may need to replace the December 1, 2020 Rule 35 date with November 24, 2020. I am waiting to hear back from Dr. Wang's office on if Nov. 24th is still available. If so, I will replace the Dec. 1 date in the draft stipulation with Nov. 24th. Jennifer

Jennifer Taylor
Attorney



Jennifer.A.Taylor@lewisbrisbois.com

T: 702.830.9028 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

From: jthroop@friedmanthroop.com <jthroop@friedmanthroop.com>
Sent: Tuesday, November 17, 2020 9:17 AM
To: Taylor, Jennifer <Jennifer.A.Taylor@lewisbrisbois.com>
Cc: Cordell, Anne <Anne.Cordell@lewisbrisbois.com>; mary@friedmanthroop.com;
specorino@friedmanthroop.com; O'Briant, Priscilla <Priscilla.Obriant@lewisbrisbois.com>
Subject: RE: FW: [EXT] RE: Finkelstein, Keith v. USAA - 3:20-cv-00411 - Requesting Rule 35 Examination

Hi, Jennifer. You may use my e-signature. Thank you.

Sincerely,

Julie McGrath Throop, Esq.
Personal Injury Attorney
Licensed in Nevada: SBN 11298
NEVADA LAW.NEVADA LAWYERS
Terry Friedman and Julie Throop, PLLC
300 S. Arlington Ave.
Reno, NV 89501
(775)322-6500 (work)
(775)322-6502 (fax)
(775)848-5816 (cell)

***** PLEASE NOTE ***** This E-Mail/telefax message and any documents accompanying this transmission may contain privileged and/or confidential information and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this E-Mail/telefax information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents. Thank you.*****

----- Original Message -----

Subject: RE: FW: [EXT] RE: Finkelstein, Keith v. USAA - 3:20-cv-00411 - Requesting Rule 35 Examination

From: "Taylor, Jennifer" <Jennifer.A.Taylor@lewisbrisbois.com>

Date: Mon, November 16, 2020 2:07 pm

To: "jthroop@friedmanthroop.com" <jthroop@friedmanthroop.com>

Cc: "Cordell, Anne" <Anne.Cordell@lewisbrisbois.com> ,

"mary@friedmanthroop.com" <mary@friedmanthroop.com> ,

"specorino@friedmanthroop.com" <specorino@friedmanthroop.com> ,

"O'Briant, Priscilla" <Priscilla.Obriant@lewisbrisbois.com>

Julie

Attached is a draft Stipulation and Order for Rule 35 Exam that we have to file in Fed Court. **Please note**, I just inserted December 1, 2020 as the Rule 35 exam date but of course if that date does not work for your client we can change it to another date. However, if December 1, 2020 does work for your client and you don't have any edits to the Stip please authorize your e-signature so we can get this filed with the Court. Thank you.

Jennifer



Jennifer Taylor
Attorney
Jennifer.A.Taylor@lewisbrisbois.com
T: 702.830.9028 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

[Representing clients from coast to coast. View our locations nationwide.](#)

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

From: jthroop@friedmanthroop.com <jthroop@friedmanthroop.com>

Sent: Friday, November 13, 2020 2:37 PM

To: Taylor, Jennifer <Jennifer.A.Taylor@lewisbrisbois.com>

Cc: Cordell, Anne <Anne.Cordell@lewisbrisbois.com> ;

mary@friedmanthroop.com; specorino@friedmanthroop.com

Subject: RE: FW: [EXT] RE: Finkelstein, Keith v. USAA - 3:20-cv-00411 - Requesting Rule 35 Examination

This will work. I included Mary who does my scheduling. We will get back to you. Thank you and have a good weekend.

Sincerely,

Julie McGrath Throop, Esq.
Personal Injury Attorney
Licensed in Nevada: SBN 11298
NEVADA LAW.NEVADA LAWYERS
Terry Friedman and Julie Throop, PLLC
300 S. Arlington Ave.
Reno, NV 89501
(775)322-6500 (work)
(775)322-6502 (fax)
(775)848-5816 (cell)

***** PLEASE NOTE ***** This E-Mail/telefax message and any documents accompanying this transmission may contain privileged and/or confidential information and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this E-Mail/telefax information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents. Thank you.*****

----- Original Message -----

Subject: FW: [EXT] RE: Finkelstein, Keith v. USAA - 3:20-cv-00411 -
Requesting Rule 35 Examination
From: "Taylor, Jennifer" <Jennifer.A.Taylor@lewisbrisbois.com>
Date: Fri, November 13, 2020 2:27 pm
To: "jthroop@friedmanthroop.com" <jthroop@friedmanthroop.com>
Cc: "Cordell, Anne" <Anne.Cordell@lewisbrisbois.com>

Hi Julie

I am working with Priscilla on this case and we would like to have a Rule 35 examination of your client, Mr. Finkelstein by our medical doctor, Jeff Wang in Los Angeles, Ca. Last time I looked I thought your client lived in So. California so we selected a physician in LA for your client's convenience. Dr. Wang does IME on Tuesdays. His office has provided me the following dates/time for the examination.

The address for that is 1450 San Pablo Street, Suite 5400, Los Angeles, CA 90033.

Dates:

- 11/24 at 4:00pm
- 12/1 at 4:00pm
- 12/15 at 4:00pm

Please advise if you will stipulate to the Rule 35 examination pertaining to your client's lumbar spine related issues so that I can prepare the paperwork required by the Federal Court and so that we can meet the January 1, 2020 expert disclosure deadline. If you have any questions or concerns please let me know.

Kind regards,

Jennifer



Jennifer Taylor
Attorney
Jennifer.A.Taylor@lewisbrisbois.com

T: 702.830.9028 F: 702.366.9563

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | LewisBrisbois.com

[Representing clients from coast to coast. View our locations nationwide.](#)

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

From: specorino@friedmanthroop.com <specorino@friedmanthroop.com>
Sent: Thursday, November 12, 2020 1:54 PM
To: Cordell, Anne <Anne.Cordell@lewisbrisbois.com>
Cc: tfriedmanlaw@gmail.com; celewski@friedmanthroop.com;
jthroop@friedmanthroop.com; mary@friedmanthroop.com; Taylor, Jennifer
<Jennifer.A.Taylor@lewisbrisbois.com>; O'Briant, Priscilla

<Priscilla.Obriant@lewisbrisbois.com> ; Freeman, Robert
<Robert.Freeman@lewisbrisbois.com> ; Freeman, Kristen
<Kristen.Freeman@lewisbrisbois.com>

Subject: [EXT] RE: Finkelstein, Keith v. USAA - 3:20-cv-00411 -
Requesting Dates for Plaintiff's Deposition

External Email

Dear Ms. Cordell:

Mary will get back to you regarding availability and logistics for depositions, but I wanted to let you know we are working on answering his written discovery and may need an extension to finalize. Just want to make sure that there will be enough time between discovery responses finalized and the deposition. Please advise if you are amenable to an extension. Thank you.

Sincerely,

Susanne Pecorino
Office Administrator and Certified Paralegal
NEVADA LAW.NEVADA LAWYERS
Law Office of Terry Friedman and Julie Throop, PLLC
300 S. Arlington Ave.
Reno, NV 89501
(775) 322-6500 Telephone
(775) 322-6502 Facsimile

***** PLEASE NOTE ***** This E-Mail/telefax message and any documents accompanying this transmission may contain privileged and/or confidential information and is intended solely for the addressee(s) named above. If you are not the intended addressee/recipient, you are hereby notified that any use of, disclosure, copying, distribution, or reliance on the contents of this E-Mail/telefax information is strictly prohibited and may result in legal action against you. Please reply to the sender advising of the error in transmission and immediately delete/destroy the message and any accompanying documents. Thank you.*****

----- Original Message -----

Subject: Finkelstein, Keith v. USAA - 3:20-cv-00411 - Requesting Dates for Plaintiff's Deposition

From: "Cordell, Anne" <Anne.Cordell@lewisbrisbois.com>

Date: Thu, November 12, 2020 11:29 am

To: "specorino@friedmanthroop.com" <specorino@friedmanthroop.com>

Cc: "tfriedmanlaw@gmail.com" <tfriedmanlaw@gmail.com> ,

"celewski@friedmanthroop.com" <celewski@friedmanthroop.com> ,

"jthroop@friedmanthroop.com" <jthroop@friedmanthroop.com> ,

"mary@friedmanthroop.com" <mary@friedmanthroop.com> , "Taylor, Jennifer"

<Jennifer.A.Taylor@lewisbrisbois.com> , "O'Briant, Priscilla"

<Priscilla.Obriant@lewisbrisbois.com> , "Freeman, Robert"

<Robert.Freeman@lewisbrisbois.com> , "Freeman, Kristen"

<Kristen.Freeman@lewisbrisbois.com>

We are seeking dates for the setting of Keith Finkelstein's deposition, via Zoom.

December 9, 10 or 11, 2020 at either 9:30 a.m. or 1:30 p.m. are currently available.

Please advise which of those dates work for you and your client so that we may proceed with the

notice of Keith Finkelstein's deposition. Thank you.



Anne Cordell, Assistant to
Priscilla L. O'Briant, Esq.
Jennifer A. Taylor, Esq.
Tara U. Teegarden, Esq.
Anne.cordell@lewisbrisbois.com
T: 702.693.4324 F: 702.893.3789
6385 S. Rainbow Blvd., Ste. 600, Las

Vegas, NV 89118 | LewisBrisbois.com

Representing clients from coast to coast. View our nationwide locations.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

This email (including any attachments) is intended for the designated recipient(s) only, and may be confidential, non-public, proprietary, and/or protected by the attorney-client or other privilege. Unauthorized reading, distribution, copying or other use of this communication is prohibited and may be unlawful. Receipt by anyone other than the intended recipient(s) should not be deemed a waiver of any privilege or protection. If you are not the intended recipient or if you believe that you have received this email in error, please notify the sender immediately and delete all copies from your computer system without reading, saving, printing, forwarding or using it in any manner. Although it has been checked for viruses and other malicious software ("malware"), we do not warrant, represent or guarantee in any way that this communication is free of malware or potentially damaging defects. All liability for any actual or alleged loss, damage, or injury arising out of or resulting in any way from the receipt, opening or use of this email is expressly disclaimed.