

The Honorable Barbara J. Rothstein

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VIRGILIJUS CINCYS, an individual,

Plaintiff,

v.

ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY, a foreign
insurance company, licensed to do, and doing
business in the State of Washington,

Defendant.

No. 2:23-cv-01914-BJR

**STIPULATION AND ORDER RE:
PHYSICAL EXAMINATION OF
PLAINTIFF VIRGILIJUS CINCYS**

I. STIPULATION

COMES NOW, Plaintiff Virgilijus Cincys (“Plaintiff”) and Defendant Allstate Fire & Casualty Insurance Company (“Allstate”), and hereby agree and stipulate that Plaintiff shall submit to a physical examination with the following manner, conditions, and scope under Federal Rules of Civil Procedure Rule 35:

Physical Examination

- 1. The date and time for the **physical examination** will be **March 11, 2024, at 12:30 p.m. Pacific Time.**

1 2. The physical examination will be performed by Dr. James Harris, MD. Attached to
2 this Stipulation as “**Exhibit A**” is a true and correct copy of Dr. Harris’s Curriculum
3 Vitae setting forth his qualifications and background as well as a copy of his fee
4 schedule.

5 3. The location of the examination will be **1138 Poplar Place South, Seattle, WA,**
6 **98144.**

7 4. The manner for the physical examination will be a two-part examination consisting
8 of:

9 a. An interview in the medical examiner’s office, consisting of a history of
10 Plaintiff’s injury(s) and treatment for her injury(s);

11 i. The Examiner(s) may ask the Plaintiff questions about the
12 mechanisms of injuries, current complaints, symptoms, and
13 communication necessary to conduct the Examination(s).

14 ii. The Examiner(s) may review the deposition transcript of the
15 Plaintiff, if available, as well as medical records for further
16 information.

17 b. A physical examination of Plaintiff;

18 i. The Examination will not include any diagnostic test or procedure
19 that is painful, protracted, or intrusive.

20 ii. No person other than the Examiner(s) and his/her administrative staff
21 shall participate in any way in the examination or in the evaluation or
22 diagnosis of Plaintiff.

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1 iii. Dr. Harris will perform an examination consistent with his area of
2 expertise (i.e., Orthopedic).

3 5. The conditions and scope of the physical examination will be a two-part
4 examination, consisting of an interview and physical examination, with a total
5 duration of no longer than three (3) hours.

6 a. Plaintiff shall have the right to have a representative person present at the
7 examination provided they shall not interfere with nor obstruct the
8 examination.

9 b. Plaintiff shall have the right to make an audio and/or video recording of the
10 examination, which shall be made in an unobtrusive manner and at the
11 expense of Plaintiff. If Plaintiff elects to make such recording, a true and
12 correct copy of the audio and/or video recording must be provided to defense
13 counsel within seven (7) days of the Examination. All recording will further
14 be required to be done on a fixed tripod.

15 6. The Examiner(s) shall make a written report of the examination, setting out all the
16 Examiner's findings, including results of all tests made, and all diagnosis and
17 conclusions. Counsel for Defendant shall cause a copy of the report to be delivered
18 to Counsel for Plaintiff within forty-five days (45) of the examination, unless there
19 is good cause shown for any delay. However, Defendant retains the right to prevent
20 the depositions of the Examiner(s) or use of the Examiner's report, should the
21 Examiner(s) be made consulting expert(s) in this matter. *Mothershead v. Adams*, 32
22 Wn. App. 325, 647 P.2d 525 (1982).

1 7. After the delivery of the Examiner(s) report, Plaintiff's Counsel shall have the right
2 to take the discovery deposition of the Examiner(s), unless Defendant's attorneys
3 decide not to call the Examiner(s) as a witness at trial, said determination to be
4 made and written notice provided to Plaintiff's attorneys pursuant to the case
5 scheduling order. The Examiner(s) shall make themselves available for deposition
6 no later than sixty (60) days prior to trial or, if a discovery deadline is set by the
7 Court, no later than thirty (30) days prior to that deadline, or as agreed to by the
8 Parties.

9 8. If the Examiner(s) is deposed by Plaintiff's attorney, Plaintiff will not be
10 responsible for Examiner's preparation time.

11 9. Fees to be charged by the Examiner(s) to the Plaintiff's attorneys for time spent at
12 the deposition shall be per the fee schedule. The fee schedule for the Examiner is
13 included herewith. If the fees are reduced by the court, defense counsel will pay the
14 difference.

15 10. A copy of this Stipulation shall be given to the Examiner(s) before the examination.

16 11. Should any dispute arise during the examination regarding the terms and conditions
17 of the examination, the Examiner(s) agrees to contact the undersigned attorneys
18 promptly so that they can attempt to work out a solution to any perceived problem.

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1 DATED this 23rd day of February 2024.

2 **WATHEN | LEID | HALL | RIDER, P.C.**

3 *s/ Rory W. Leid*

4 Rory W. Leid, III, WSBA #25075

5 *s/ Dylan R. Knapp*

6 Dylan R. Knapp, WSBA #58394

7 *Attorneys for Defendant*

8 222 Etruria Street

9 Seattle, WA 98109

10 Tel: (206) 622-0494 | Fax: (206) 587-2476

11 rlaid@wlhr.legal | dknapp@wlhr.legal

12 DATED this 23rd day of February 2024.

13 **DRIGGS, BILLS, & Day PLLC**

14 *s/ Stefanie Collins (Via email approval 2/22/24)*

15 Stefanie Collins, WSBA #23080

16 *Attorney for Plaintiffs*

17 2125 Western Ave. Suite 500

18 Seattle, WA, 98121

19 scollins@advocates.com

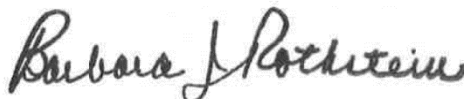
20 Phone: 206-607-9098

21 Fax: 206-641-3214

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2 **II. ORDER**

3 Pursuant to Plaintiff Virgilijus Cincys and Defendant Allstate's Stipulation, and for
4 good cause shown, the above Stipulation is accepted, adopted and made the Order of the Court.

5 Dated: February 28, 2024.

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Barbara Jacobs Rothstein
U.S. District Court Judge

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10 *Presented by:*

11 **WATHEN | LEID | HALL | RIDER, P.C.**

12 *s/ Rory W. Leid, III*

13 Rory W. Leid, III, WSBA #25075

14 *s/ Dylan R. Knapp*

15 Dylan R. Knapp, WSBA #58394

16 *Attorneys for Defendant Allstate*

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18 *Approved by:*

19 **DRIGGS, BILLS, & Day PLLC**

20 *s/ Stefanie Collins (Via email approval 2/22/24)*

21 Stefanie Collins, WSBA #23080

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