

GLEND A WALKER

Plaintiff

v.

CHRISTOPHER P. BEATTY

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No.: C-06-113681 MT

MOTION TO COMPEL INDEPENDENT MEDICAL EXAMINATION

Christopher P. Beatty, Defendant, by Council, Baradel, Kosmerl & Nolan, P.A. and Edwin H. Staples, II, his attorneys, requests this Honorable Court, pursuant to Rule 2-423, to order the Plaintiff, Glenda Walker, to submit to an independent medical examination, and in support thereof, states the following:

1. Plaintiff has alleged that she suffered personal injuries arising from a motor vehicle accident on or about April 25, 2003 as a result of actions taken by Defendant.
2. The physical condition of the Plaintiff is a matter in controversy in this case.
3. At the request of the Defendant, an appointment was made for Plaintiff to be examined on May 29, 2007 by Dr. Donald Saltzman, who is a competent and qualified physician, specializing in orthopedics.
4. On or about May 9, 2007, Plaintiff's counsel was notified of the scheduled independent medical examination.
5. On or about May 10, 2007, Rodney M. Gaston, Esquire, attorney for the Plaintiff, wrote undersigned counsel conditioning Plaintiff's independent medical examination on onerous and burdensome stipulations, none of which are supported by

case law or the Rules of Procedure. Quite the contrary, the conditions seem nothing more than “bullet points” from the Maryland Trial Lawyers Association Handbook. See Exhibit A.

6. On or about May 10, 2007, undersigned counsel called Rodney M. Gaston, Esquire on the telephone and to this date has yet to receive a response from Mr. Gaston.

7. On or about May 16, 2007, a reminder regarding the independent medical examination of May 29, 2007 was mailed to Plaintiff’s counsel; counsel was advised that if Plaintiff did not undergo the scheduled examination, and did not cancel the previously-scheduled appointment, then Plaintiff would be billed for the missed examination. See Exhibit B.

8. On May 29, 2007, Plaintiff did not present herself at Dr. Saltzman’s office for her scheduled independent medical examination and Plaintiff was forwarded a bill by undersigned counsel in the amount of \$150 for the missed independent medical examination appointment. This is the amount of the charge rendered by Dr. Saltzman for a missed independent medical examination.

9. On May 30, 2007, undersigned counsel wrote Plaintiff’s counsel (again) and provided a copy of Dr. Saltzman’s bill for the missed appointment. See Exhibit C.

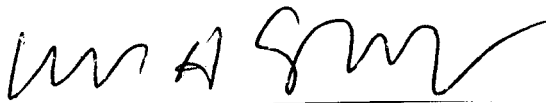
10. Plaintiff’s counsel has never responded.

11. That the Plaintiff’s failure to undergo an independent medical examination has prejudiced the Defendant’s ability to prepare his case for trial because such examination is essential to determine the nature and extent of the physical injuries plaintiff allegedly suffered.

WHEREFORE, Christopher P. Beatty, Defendant, pursuant to Md. Rule 2-423, requests this Honorable Court to order that the Plaintiff undergo an independent medical examination without conditions proposed by Rodney G. Gaston, Esquire; that Plaintiff pay the \$150 bill for failing to appear at the previously-scheduled independent medical examination; that Plaintiff compensate Defendant's counsel for one hour of his time taken to prepare this Motion; and for such other relief as the Court may deem proper.

COUNCIL, BARADEL,
KOSMERL & NOLAN, P.A.

By:

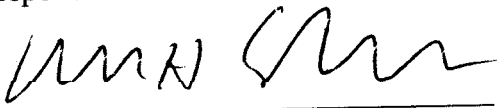


EDWIN H. STAPLES, II
125 West Street, Fourth Floor
Post Office Box 2289
Annapolis, Maryland 21404-2289
(410) 268-6600

Attorneys for Defendant

RULE 2-432 CERTIFICATION

I HEREBY CERTIFY under penalties of perjury that, on the below-listed dates, undersigned attempted informally to secure the Plaintiff's compliance with the discovery rules but that not responses have been received to date. See letters dated May 16 and 30, 2007 attached as Exhibit B and C. Undersigned has also called Plaintiff's counsel with regard to this issue and has never received a response.

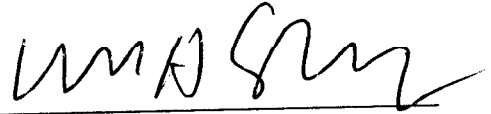


EDWIN H. STAPLES, II

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 21 day of June, 2007, a copy of the foregoing Motion to Compel Independent Medical Examination was mailed, first class postage prepaid, to:

Rodney M. Gaston, Esquire
Miller & Zois, LLC
Empire Towers, Suite 1001
7310 Ritchie Highway
Glen Burnie, Maryland 21061

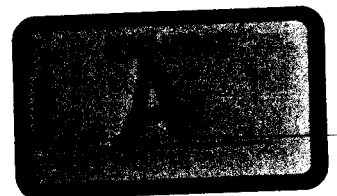


EDWIN H. STAPLES, II

PLAINTIFF'S CONDITIONS FOR CONSENTING TO DEFENSE MEDICAL EXAMINATION

In response to a defense request for the plaintiff to consent to a medical examination, plaintiff, through counsel, presents the following preliminary conditions. These are presented in a good faith effort to avoid the need for the defense to have to file a motion for an examination. Plaintiff reserves the right to seek additional conditions as information concerning the proposed examining doctor and examination becomes available.

1. The defense pays the cost of the examination and reimburses plaintiff in advance for any lost wages or mileage expense.
2. The proposed examining doctor's C.V. is provided to the plaintiff at least two weeks prior to the scheduled exam.
3. A written report from the examining physician is provided to plaintiff's counsel within two weeks of the date the examination takes place which contains all of the doctor's opinions and conclusions with the factual basis for same supplied. That any failure to provide such written report will, at the plaintiff's option, disqualify the doctor from testifying in any way shape or form in the case now pending before the court and the results and findings will not be utilized by the defendant in any way shape or form.
4. At the same time the examination date is agreed upon, a discovery deposition of the examining physician will be scheduled, a reasonable fee rate for the doctor for his deposition is set and agreed upon by the doctor (which shall be along the lines of the fee rate charged to the defense by the Plaintiff's expert medical witness), and defense counsel agrees to accept service of a subpoena to the doctor for the deposition and agrees to accept service of a subpoena for the doctor to also appear at the trial. This fee will be paid to the doctor at the conclusion of the deposition providing that the doctor answer all questions regarding his income fully. It will be the obligation of defense counsel to obtain dates for this discovery deposition from the doctor which fall within the discovery deadlines.
5. Any proposed x-rays or other tests which the examining physician anticipates utilizing will be disclosed in advance of the scheduling of the examination and will be subject to approval by plaintiff and plaintiff's counsel. Plaintiff and plaintiff's counsel will cooperate in making existing medical records, radiological films, and other materials available for the examining physician's review.
6. At the time of the examination, the examining doctor will not question the plaintiff concerning liability issues, the examination will not be recorded (audio or video) by the examining doctor and the plaintiff will not be required to complete any written questionnaires.
7. At the time of examination, the plaintiff has the option of being accompanied by a nurse, friend, or relative whose role will be limited solely to observation.
8. In cases with multiple defendants, all of the defendants agree to utilize the same examining doctor within any given practice area.



9. This exam is the only medical exam to which the Plaintiff will be required to submit.

10. At least three weeks prior to the examination the doctor will provide to the Plaintiff's counsel all of the doctor's income tax records for the last three years to include all 1099 forms, W-2 forms, and any all other attachments, and all other income tax records which pertain to any related employment and ownership interest he/she has with any medical concern which receives monies from insurance companies or defense law firms for the purpose of conducting medical examination on injured persons who are pursuing claims for personal injuries.

11. That neither the defense counsel nor the doctor will refer to this examination as an "independent medical examination".

12. That at least three weeks prior to the exam date the doctor will also provide plaintiff counsel with copies of all medical examination reports reflecting the last 25 medical examinations he/she has conducted on behalf of any defense law firm/defense attorney, that involved examinations of plaintiffs who were pursuing personal injury claims (excluding worker's compensation claims.)

13. The doctor will also provide the Plaintiff with a list of any and all depositions the doctor has attended and any and all times he has testified at trial within the last three years to include the name of the case, case number, name of the patient examined, name, address and phone number of the attorneys involved, and the amount of compensation he was paid, and by whom. This information shall be provided to the plaintiff at least two weeks prior to the scheduled Insurance Medical Exam.

14. That once defense counsel agrees to the terms herein a Stipulation reflecting the agreement will be prepared, executed by the parties' attorneys, and filed with the court at least two weeks prior to the examination.

May 16, 2007

Rodney M. Gaston, Esquire
Miller & Zois, LLC
Empire Towers, Suite 1001
7310 Ritchie Highway
Glen Burnie, Maryland 21061

Re: Walker v. Beatty
In the Circuit Court for Anne Arundel County
Case No.: C-06-113681 MT
Our File No.: 5500.1573

Dear Mr. Gaston:

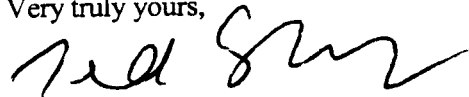
I am in receipt of your May 10, 2007 letter with regard to the "conditions" you are placing on your client's independent medical examination with the Defendant's designated orthopedic expert, Dr. Donald I. Saltzman. Your "conditions" are ridiculous and I do not, and will not, play from the MTLA handbook.

Further, you can provide absolutely no legal support in the Rules of Civil Procedure that back up your bizarre requests. If you want to force me to file a Motion to Compel, I will do so.

Please consider this correspondence and my earlier phone call (which you did not have the courtesy to respond to) as an attempt to resolve a discovery dispute. If your position is that you are refusing to have your client examined by Dr. Saltzman, then either you or your client need to call Dr. Saltzman's office and cancel the previously-scheduled May 29, 2007 IME appointment. Failure to do so will result in your firm being billed for Dr. Saltzman's time. Once my Motion to Compel is resolved, the issue can be revisited.

Also, please bear in mind that any delay in having your client examined by a doctor of the Defendant's choosing will impact the discovery schedule in this case to your client's detriment.

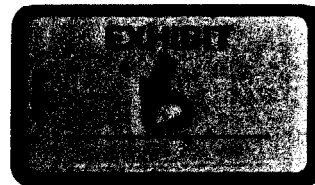
Very truly yours,



Ted Staples

EHS:mcp

cc: Mr. Leonard Taube, State Farm (w/ enc.; Claim No.: 20-5640-950)



May 30, 2007

Rodney M. Gaston, Esquire
Miller & Zois, LLC
Empire Towers, Suite 1001
7310 Ritchie Highway
Glen Burnie, Maryland 21061

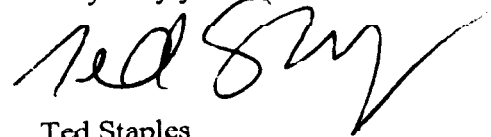
Re: Walker v. Beatty
In the Circuit Court for Anne Arundel County
Case No.: C-06-113681 MT
Our File No.: 5500.1573

Dear Mr. Gaston:

Enclosed please find a bill from Dr. Donald Saltzman for your client's failure to appear for his IME with Dr. Saltzman on May 29, 2007. As I indicated in my letter of May 16, 2007, if your client did not intend to appear for her IME, either your office or your client needed to contact Dr. Saltzman's office directly to cancel and/or reschedule the appointment for another date. I specifically stated that failure to do this would result in your client being billed for Dr. Saltzman's time in this regard. As it appears that neither you nor your client canceled the appointment, this bill is your responsibility. If in fact you claim you did cancel the appointment before May 29, 2007, please contact Dr. Saltzman's office at 410-484-8088 to discuss the matter with his secretary, Ms. Betty Re, who can correct any billing errors.

Your anticipated cooperation in this matter is appreciated.

Very truly yours,



Ted Staples

EHS:mcp
Enclosure

cc: Mr. Leonard Taube, State Farm (w/ enc.; Claim No.: 20-5640-950)





ATTENTION: PLEASE SEND A COPY OF THIS SHEET WHEN REMITTING YOUR CHECK. THANKS

EDWIN H. STAPLES, II
Writer's E-Mail: estaples@cbknlaw.com
Writer's Telephone Extension: 3411

May 9, 2007

Dr. Donald Saltzman
10 Crossroads Drive, Suite 210
Owings Mills, Maryland 21117

FEE FOR SERVICES RENDERED

Dr. Saltzman
TAX ID # 52-1180875
5/29/07
SERVICE: No show / IME
CHARGE: \$150

Re: Glenda Walker/IME
Our File No.: 5500.1573

Dear Dr. Saltzman:

Glenda Walker will be coming to your office on May 29, 2007 at 10:00 a.m. for a medical examination. Ms. Walker was involved in a motor vehicle accident on April 25, 2003. I have previously forwarded medical records regarding the medical treatment rendered to Glenda Walker following the April 25, 2003 accident. I am enclosing a copy of your records review dated February 20, 2007 for your reference.

Please examine this patient and prepare a supplemental report outlining your findings. I would like you to set forth your opinions in this case, stated to within a reasonable degree of medical probability, as follows:

- > Please set forth your opinion regarding what, if any, injuries Glenda Walker sustained in the April 25, 2003 motor vehicle accident and the nature and duration of any injuries you may find she sustained.
- > Please set forth your opinion regarding whether or not the medical treatment rendered to Glenda Walker following the motor vehicle accident of April 25, 2003 and as outlined in the enclosed medical records is treatment which was fair, reasonable and necessary for injuries sustained in the April 25, 2003 accident. If you find any of the treatment to be unreasonable, unnecessary, excessive or unrelated to injuries sustained in the motor vehicle accident of April 25, 2003, please indicate which treatment or treatments you find to be unreasonable, unnecessary, excessive or unrelated. If there came a point in time when treatment was, in your opinion, no longer indicated for injuries sustained in the April 25, 2003 accident, please indicate the date after which treatment was no longer indicated or necessary.
- > Please set forth your opinion regarding whether or not Glenda Walker has any permanent or residual physical injury, impairment or disability as a result of the motor vehicle accident of April 25, 2003.
- > Please set forth your opinion regarding whether or not Glenda Walker was disabled from employment for any period of time as a result of injuries suffered in the April 25, 2003

125 West Street, 4th Floor, Post Office Box 2289, Annapolis, Maryland 21404

Annapolis: 410.268.6600 Baltimore: 410.269.6190 Washington: 301.261.2247 Fax: 410.269.8409 www.cbknlaw.com

*WALK
05/29/07*

GLEND A WALKER

Plaintiff

v.

CHRISTOPHER P. BEATTY

Defendant

* IN THE
 * CIRCUIT COURT
 * FOR
 * ANNE ARUNDEL COUNTY
 * Case No.: C-06-113681 MT

ORDER

It is this ____ day of _____, 2007 by the Circuit Court for Anne Arundel County

ORDERED that the Defendant's Motion to Compel Physical Examination of the Plaintiff, Glenda Walker, having been considered and for good cause shown, the Motion shall be and is hereby GRANTED; and it is

FURTHER ORDERED that the Plaintiff, Glenda Walker, shall appear at the office of Dr. Donald Saltzman, located at 10 Crossroads Drive, Suite 210, Owings Mills, Maryland 21117 on _____, 2007 at _____ a.m./p.m. and at that time, submit to a physical examination of her person to be conducted by Dr. Donald Saltzman; and it is

FURTHER ORDERED that the Plaintiff or her counsel pay, directly to Dr. Donald Saltzman's office, the missed appointment fee of \$150.00; and it is

FURTHER ORDERED that Plaintiff's counsel pay sanctions in this matter of \$300.00 for one hour of Defendant's counsel's time to prepare this Motion.

JUDGE

Copies to:

Edwin H. Staples, II, Esquire
Council, Baradel, Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
Post Office Box 2289
Annapolis, Maryland 21404-2289

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