

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

ANTHONY ALLEN JORDAN,

Plaintiff,

Case Number: 2017-CA-001913

v.

GAUDENCIA HERNANDEZ, TRINITY
SERVICES GROUP, INC. a Florida Profit
Corporation, and RYDER TRUCK RENTAL
LT, a Florida Trust d/b/a RYDER TRUCK
RENTAL, INC., a Florida Profit Corporation,

Defendants.

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' CME EXPERTS
DR. MICHAEL HERKOV, DR. JOHN RUSSELL AND DR. RONALD TOLCHIN

Plaintiff, ANTHONY ALLEN JORDAN, moves this Honorable Court for an order striking Defendants, TRINITY SERVICES GROUP, INC. and GAUDENCIA HERNANDEZ's ("Defendants") experts who performed compulsory medical examinations on Plaintiff, including Dr. Michael Herkov, Dr. John Russell, and Dr. Ronald Tolchin. In support thereof, Plaintiff states as follows:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1. This action pertains to injuries suffered by Plaintiff, ANTHONY ALLEN JORDAN ("Mr. Jordan"), as the result of a motor vehicle crash which occurred on October 7, 2015 ("Crash") when the vehicle driven by Defendant, TRINITY SERVICES GROUP, INC.'s ("Trinity"), employee, Defendant GAUDENCIA HERNANDEZ ("Hernandez"), rear-ended Mr. Jordan's vehicle. As a result of the Crash, Mr. Jordan suffered serious injuries.

2. On September 14, 2018, this Court entered an Order on Plaintiff's Motion for

Protective Order Regarding Plaintiff's Criminal History. The Order regarding Plaintiff's Motion for Protective Order indicates: "Defendants *shall not reference or ask questions related to Plaintiff's criminal history or ask questions regarding the same in any depositions or trial.*" (emphasis added). This Order is attached hereto as **Exhibit A**.

MICHAEL HERKOV, PH.D

3. On September 14, 2018, Defendants submitted their Amended Witness and Exhibit List, specifically naming Dr. Michael Herkov, a clinical neuropsychologist, who is "expected to testify on the subject matter of causation and damages within his specialty, including but not limited to neurocognitive injuries, TBI, cognitive deficits, damages, and/or treatment; and a rebuttal of Plaintiff's experts addressing these issues."

4. On October 10, 2018, this Court entered an "Order on Rule 1.360 Examination" pertaining to Dr. Herkov's examination of Mr. Jordan for neuropsychological testing. The CME Order for Dr. Hekov is attached hereto as **Exhibit B**. This order, *inter alia*, required "Defense counsel must provide [Dr. Herkov] with a copy of this Order and explain the need for the examiner's compliance."

5. The following day, on October 12, 2018, Dr. Herkov performed his examination of Plaintiff. Not only was the Order specifically pertaining to his examination not followed, but the Order on Plaintiff's Motion for Protective Order regarding Plaintiff's criminal history was disregarded. It became clear that these Orders were either never discussed with Dr. Herkov or they were willfully disregarded.

6. Dr. Herkov not only asked questions pertaining to fault (or liability) of the instant crash, but he also questioned Mr. Jordan pertaining to his criminal history at nauseam. Dr. Herkov violated the CME and Criminal History Orders at least 30 times throughout his examination.

7. On October 12, 2018, Dr. Herkov prepared a report consistent with his improper questioning that he intends to present at trial in violation of several this Court's Orders. Dr. Herkov's deposition was taken on March 4, 2019 and was rampant with illegal testimony pertaining to Mr. Jordan's criminal history, again, in willful violation of this Court's Order. See Plaintiff's Notice of Filing in Support of Plaintiff's Pre-Trial Motions the deposition transcript of Michael Herkov, Ph.D., filed March 15, 2019.

8. Because Dr. Herkov's opinions are so inextricably intertwined with violations of this Court's Orders, he has essentially expropriated his opinions because those illegal opinions cannot be extricated. In other words, without the opinions related to criminal history, there is no opinion that Dr. Herkov can provide at trial.

JOHN H. RUSSELL, PH.D.

9. In Defendants' initial Witness and Exhibit List, they identified John H. Russell, Ph.D., as their vocation rehab/life care planner. Later, in Defendants' Amended Witness List, he was disclosed as "expected to testify on the subject matter of damages within his specialty, including but not limited to the claimed damages, past and future employment, earning capacity, functional capability, and/or future services and expenses; and/or rebuttal of Plaintiff's."

10. On October 10, 2018, this Court entered "Order on Rule 1.360 Examination" pertaining to Dr. Russell's vocational examination of Plaintiff. This Order is attached hereto as **Exhibit C.**

11. On November 12, 2018, Dr. Russell performed his assessment of Plaintiff. Like Dr. Herkov's examination, Dr. Russell's examination was also littered with impermissible questioning pertaining to Mr. Jordan's criminal history. It appears there were over 74 violations of this Court's Orders during Dr. Russell's examination.

12. On December 3, 2018, Dr. Russell prepared a report and life care plan that includes many comments and impermissible assertions based upon this Court's Orders. Defendants intend to use this impermissible report at trial.

13. On February 12, 2019, Plaintiff deposed Dr. Russell, where he continued this pattern and testified exactly to what this Court has ordered is prohibited.

14. Such flagrant violations once again indicates that Dr. Russell's violations were likely willful disregard to this Court's Orders. Like Dr. Herkov's opinions, Dr. Russell's opinions are so heavily reliant upon impermissible issues, that his opinion cannot be extricated from the improper assertions.

RONALD B. TOLCHIN, D.O.

15. On January 14, 2019, Defendants filed their Second Amended Witness List specifically identifying Ronald B. Tolchin, D.O., FAAPM&R as an expert in "physical medicine and rehabilitation medicine – Dr. Tolchin will review the medical records and studies in this case, he has performed a physical examination of the Plaintiff, will issue a report documenting the medical treatment, if any, the Plaintiff will require in the future as a result of the claimed injuries, and is expected to testify on the subject matter of causation and damages within his specialty, including but not limited to the claimed physical injuries, neurological injuries, TBI, functional deficits, future care and treatment, and/or damages; and rebuttal of Plaintiff's experts addressing these issues."

16. On November 15, 2018, Defendants filed a Request for Rule 1.360 Examination of Plaintiff to be evaluated by Dr. Tolchin. Amongst other issues, Defendants' counsel included a scope that was redundant and duplicative of the other examinations performed in this case, and Defendants did not provide sufficient notice of the dates of examination. Plaintiff filed a Motion

for Protective Order.

17. After negotiations between the parties, Defendants agreed to limit the scope of Dr. Tolchin's examination – specifically limiting the history to be obtained by Mr. Jordan so that no information covered in Mr. Jordan's prior examinations would happen again. Plaintiff specifically voiced concern about doing any additional MMSE testing that was already performed.

18. On January 4, 2019, this Court entered an Order on Dr. Tolchin's examination including these specific limitations. This Order is attached hereto as **Exhibit D**.

19. On the same day, January 4, 2019, Dr. Tolchin performed his assessment of Plaintiff. Like Dr. Herkov's and Dr. Russell's examinations, Dr. Tolchin violated different orders of this Court on at least 14 occasions.

20. On January 26, 2019, Dr. Tolchin also prepared a report that includes information that violates this Court's Orders. On February 8, 2019, Dr. Tolchin's deposition was also taken wherein he testified to items that have already been rendered impermissible in this case.

21. As with Defendants' other CME experts, such flagrant violations once again indicates that Dr. Tolchin's violations were likely willful disregard to this Court's Orders.

22. With all of the opinions so heavily reliant upon Mr. Jordan's criminal history, their opinions have been entangled wherein the opinion cannot survive without the improper basis. Accordingly, Dr. Herkov, Dr. Russell and Dr. Tolchin's testimony must be stricken.

23. Dr. Herkov, Dr. Russell, and Dr. Tolchin's willful disregard of the Court's orders was approved and performed at the request of Defendants. As the case law shows, such willful and severe violations of Court Orders should be remedied with a correspondingly severe sanction of striking these experts.

ARGUMENT

24. Under Florida law, “[t]he exclusion of evidence is ‘a drastic remedy which should pertain in only the most compelling circumstances.’” Nash v. AMR Corp., 937 So. 2d 1205, 1211 (Fla. 1st DCA 2006) (citing Med. Logistics, Inc. v. Marchines, 911 So. 2d 823, 824 (Fla. 1st DCA 2005)). Florida Courts have consistently held that the exclusion of evidence is only permissible if the party ***has willfully violated a court order***. State v. Nemeth, 581 So. 2d 627, 629 (Fla. 2d DCA 1991) (Sanction of striking a witness or his or her testimony should be reserved for instances of extreme misconduct not remediable by other, less drastic means).

25. Defendants’ experts Dr. Herkov, Dr. Russell and Dr. Tolchin violated Orders of this Court on over 100 occasions when taken together. These violations are willful and so severe that they are fundamentally intertwined in those expert’s opinions that limitation of their testimony would not remedy those violations.

26. For these reasons, Plaintiff requests this Court enter an ordering striking these experts for their willful violations of this Court’s Orders.

WHEREFORE, Plaintiff, ANTHONY ALLEN JORDAN, respectfully requests that this Court enter an Order Striking Defendants, TRINITY SERVICES GROUP, INC. and GAUDENCIA HERNANDEZ’s (“Defendants”) experts who performed compulsory medical examinations, including Dr. Michael Herkov, Dr. John Russell, and Dr. Ronald Tolchin. Plaintiff requests the above relief, together with such other and further relief as the Court deems appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail via the Florida E-filing Portal to: **Michael E. Reed, Esq., Christopher A. Cazin, Esq.**, tpacrtpleadings@wickersmith.com; Wicker Smith O’Hara McCoy & Ford, P.A. (Counsel

for the Defendants); **Jeffrey S. Glassman, Esq. and William G.K. Smoak, Esq.**,
courtdocuments@flatrialcounsel.com; Smoak, Chistolini & Barnett, PLLC (Co-Counsels for
Trinity Service Group, Inc.); **Lisa Ann Kalo, Esq.**, lkalo@kvpalaw.com, (Co-Counsel for
Plaintiff), on this **15th** day of **March, 2019**.

/s/Marc Matthews

MARC MATTHEWS, ESQ.

Florida Bar No. 0711098

Email: Marc@mcintyrefirm.com

McIntyre Thanasides Bringgold

Elliott Grimaldi Guito & Matthews, P.A.

500 E. Kennedy Blvd., Suite 200

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LISHA BOWEN, ESQ.

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Lisha@bowentrials.com

LISHA BOWEN, P.A.

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Service of Court Documents:

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Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
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ANTHONY ALLEN JORDAN,

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SERVICES GROUP, INC. a Florida Profit
Corporation, and RYDER TRUCK RENTAL
LT, a Florida Trust d/b/a RYDER TRUCK
RENTAL, INC., a Florida Profit Corporation,

Defendants.

ORDER ON PLAINTIFF'S MOTION IN LIMINE
REGARDING PLAINTIFF'S PAST CRIMINAL HISTORY

This cause having come before the Court on *Plaintiff's Motion in Limine Regarding Plaintiff's Past Criminal History*, dated June 12, 2018, and the Court having heard argument on the premise, IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff's Motion is GRANTED. Defendants and their counsel shall not make reference to, enter into evidence or elicit testimony regarding Plaintiff's criminal history or any records related thereto.

DONE AND ORDERED in Chambers at Manatee, Florida, this ____ day of

_____, 2018.

ORIGINAL SIGNED

SEP 14 2018

Honorable Gilbert Smith, Jr. **GILBERT A. SMITH, JR.**
CIRCUIT JUDGE

Copies furnished to:
Counsel of Record

EXHIBIT A

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
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LT, a Florida Trust d/b/a RYDER TRUCK
RENTAL, INC., a Florida Profit Corporation,

Defendants.

ORDER ON RULE 1.360 EXAMINATION

Pursuant to Florida Rule of Civil Procedure 1.360 ("Examination of Person"), Defendants, GAUDENCIA HERNANDEZ and TRINITY SERVICES GROUP, INC.'s, counsel has notified Plaintiff's counsel that Plaintiff, ANTHONY ALLEN JORDAN, is requested to present for a noninvasive medical examination as follows:

Examiner: Michael John Herkov, Ph.D. (Neuropsychologist)

Address: McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews, P.A.
1800 2nd St #757
Sarasota, FL 34236

Date: October 12, 2018

Time: 8:00 a.m. - 5:00 p.m. with a 1-hour lunch break.

Scope: *The neuropsychological evaluation will include a diagnostic interview with psychosocial history. The evaluation will also consist of psychological testing. Dr. Herkov utilizes a flexible battery approach where the tests administered will be based, in part, upon results from the interview.*

THE FOLLOWING CONDITIONS ARE TO BE OBSERVED BY ALL PARTIES INVOLVED:

1. This examination is not a deposition so the examiner shall be limited to that information reasonable necessary to conduct the specialty-appropriate examination and evaluation of an individual, including a brief medical history as well as present complaints. The examination is to be limited to the specific medical or psychological conditions in controversy and unless modified by another court order, such examinations will be the only exam for the specific condition(s) or issues in controversy (without limiting the possibility of multiple specialties). No invasive testing shall be performed without informed consent by the Plaintiff/examinee, or further Order of court.
2. The examinee will not be required to complete any lengthy information forms upon arrival at the examiner's office. The examinee will furnish the doctor with name, address, and date of birth. Questions pertaining to how the Plaintiff was injured, and where and how the Plaintiff sustained the injuries complained of, are permitted. Questions pertaining to "fault," when the Plaintiff hired his attorney, who referred the Plaintiff to any doctor, and what the Plaintiff told his attorney or any investigators are NOT permitted.
3. It shall be the defense attorney's responsibility to provide the examiner with all medical records, imaging studies, test results, and the like, which the defense wants the examiner to review and rely upon as part of the examination. Unless he or she has exclusive control of any original records or imagining studies, Plaintiff shall not be required to bring anything to the exam other than valid identification (e.g. Driver's License, Official Florida Indemnification Card or government-issued Passport).
4. Plaintiff is permitted to have his attorney (and spouse, or parent, or other representative) present for the examination, provided that only one of these listed non-attorney

persons may attend. Such person(s) may unobtrusively observe the examination, unless the examiner or defense counsel establishes a case-specific reason why such person's presence would be disruptive, and that no other qualified individual in the area would be willing to conduct the examination with such person present. In the case of a neuropsychological exam, all observers shall watch and listen from an adjacent room if available, or by live video feed set up by Plaintiffs videographer. If the examination is to be recorded or observed by others, the request or response of the examinee's attorney shall include the number of people attending, their role, and the method(s) of recording. Dr. Herkov will not obstruct the view of the camera or audio.

5. Plaintiff's counsel may also send a court reporter and/or a videographer to the examination, provided that claimant's counsel notifies defense counsel at least 10 days in advance of the identity, either by proper name or by title (e.g., videographer from XYZ Reporting Service). It is the duty of defense counsel to relay this information to the examiner's office personnel. Any video recording must be done without the videographer in the room and with the camera situated so that it is not in direct view of the examinee or examiner. Any transcription must be by remote audio feed without the court reporter present in the room.

6. Neither Defendant's attorney nor any of Defendant's representatives may attend, or observe, record or video the exam. Only if the video is identified as impeachment material for use at trial may the defense counsel obtain a copy. The medical examiner shall not be entitled to any payment of an additional or accommodation fee from the Plaintiff or his counsel, simply because of the presence of a legally permitted third party. The court shall reserve ruling as to whether such costs, if imposed by an examiner, may be recoverable by the Defendant as a taxable cost, or otherwise awarded by the court.

7. If a videotape or digital recording or transcription by court reporter is made of the examination by counsel for Plaintiff, it is considered work-product, and neither the defense nor the

examiner is entitled to a copy, unless and until same is designated as (or reasonably expected to become) trial evidence, subject to discovery only upon a showing of need and undue hardship. Since the videotape of the testing creates an electronic record of the raw test data, the videotape and/or transcription of the testing shall be forwarded directly to Plaintiff's treating or retained psychologist or neuropsychologist, in accordance with Rules 64B19-18.004, F.A.C.¹ and 64B19-19.005, F.A.C.² The videotape and/or transcription of the portion containing Plaintiff's interview, which does not involve testing, will be forwarded directly to Plaintiff's counsel. Use of the video or DVD or transcription is limited specifically to the instant litigation. At the close of litigation, including any appeal, all copies of the DVD and transcription shall be destroyed — unless counsel convinces the court (and an order is entered) that there is some compelling reason for either party, or the examiner, to retain a copy.

8. Neither Plaintiff's counsel, nor anyone else permitted to be present, shall interject themselves into the examination unless the examiner seeks information not permitted by this Order. If Plaintiff's counsel speaks openly or confers privately with the examinee, and this disrupts the exam or causes the examiner to terminate the examination, counsel may be subject to sanctions.

9. The report of the examiner shall be sent to Plaintiff's counsel no later than Wednesday, November 7, 2018. Unless a Plaintiff's treating or retained expert has revised or supplemented an opinion after his report or deposition, the examiner shall not change, amend, or

¹ Fla. Admin. Code r. 64619-18.004(3) A psychologist who uses test instruments may not release test data, such as test protocols, test questions, assessment-related notes, or written answer sheets, except (1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or (2) after complying with the procedures set forth in Rule 641319-19.005, F.A.C., and obtaining an order from a court or other tribunal of competent jurisdiction, or (3) when the release of the material is otherwise required by law... Psychologists are expected to make all reasonable efforts to maintain the integrity of the test protocols, modalities and instruments when releasing information as provided herein. (emphasis added).

² Fla. Admin. Code r. 64B19-19.005(3) The psychologist's notes pertaining to psychological services rendered may be considered raw data as provided by subsection 64919-18.004(3), F.A.C., at the discretion of the psychologist and therefore can be released only (1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or (2) when the release of the material is otherwise required by law.

supplement the opinions set forth in said report during any testimony (deposition or trial) he may give in reference to his examination of the Plaintiff, without providing a supplemental report, which must be provided to Plaintiff's counsel at least 15 days before trial. Violation of this provision may result in the limitation or striking of the examiner's testimony.

9(a). If the examination involves neuropsychological testing: In addition to the report, the examiner shall provide all raw data, including copies of all notes, tests, test results, scoring and test protocols no later than Wednesday, November 7, 2018 to Plaintiff's treating or retained psychologist or neuropsychologist and Plaintiff's counsel, who must return them to the defense examiner at the conclusion of this case, in conformity with Rules 64B19-18.004, F.A.C.³ and 64B19-19.005, F.A.C.⁴ The parties shall adhere to the Confidentiality Order executed by this Court on August 14, 2018.

10. All protected health information generated or obtained by the examiner shall be kept in accordance with HIPPA requirements and shall not be disseminated by the examiner or defense counsel to any other person or entity not a party to this case without specific order from this Court.

11. Defense counsel must provide the examiner with a copy of this Order and explain the need for the examiner's compliance. As a condition of performing the examination, the examiner shall agree to provide responses to FRCP 1.280(b)(4)(A) inquiries, once such interrogatories or Request to Produce are propounded by Plaintiff.

12. Pursuant to Suarez-Burgos v. Morhalm, 745 So. 2d 368 (4th DCA 1999), the Plaintiff will rely on the report of the physician. Should the physician change, alter, or amend the opinions set forth in his expert report prior to any discovery cut-off set forth in the Court's Pre-

³ See FN 1, *supra*.

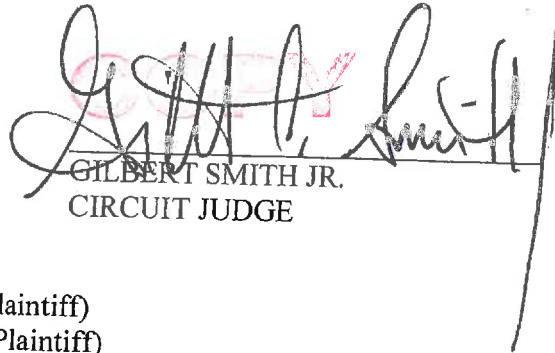
⁴ See FN 2, *supra*.

trial Order, he will immediately furnish the change to Defense counsel who will immediately furnish this to Plaintiff's counsel.

13. Plaintiff agrees to execute an informed consent permitting Dr. Herkov to conduct the examination on the scheduled dates. Defendants agree not to use the informed consent as evidence in this case in anyway whatsoever.

14. Jurisdiction is retained to enforce this Order and to enter such further orders and judgments as may be necessary and proper.

DONE AND ORDERED at Bradenton, Manatee County, Florida, this 10 day of October, 2018


GILBERT SMITH JR.
CIRCUIT JUDGE

Copies furnished to:

Marc Matthews, Esquire (counsel for Plaintiff)

Elizabeth Munro, Esquire (counsel for Plaintiff)

~~Lisha Bowen, Esquire (counsel for Plaintiff)~~

Christopher Cazin, Esquire (counsel for Defendants)

Michael Reed, Esquire (counsel for Defendants)

1 William Smock Esq. / Jeffrey Glassman, Esq.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

ANTHONY ALLEN JORDAN,

Plaintiff,

v.

Case Number: 2017-CA-001913

GAUDENCIA HERNANDEZ, TRINITY
SERVICES GROUP, INC. a Florida Profit
Corporation, and RYDER TRUCK RENTAL
LT, a Florida Trust d/b/a RYDER TRUCK
RENTAL, INC., a Florida Profit Corporation,

Defendants.

ORDER ON RULE 1.360 EXAMINATION

Pursuant to Florida Rule of Civil Procedure 1.360 ("Examination of Person"), Defendants, GAUDENCIA HERNANDEZ and TRINITY SERVICES GROUP, INC.'s, counsel has notified Plaintiff's counsel that Plaintiff, ANTHONY ALLEN JORDAN, is requested to present for a noninvasive medical examination as follows:

Examiner: John H. Russell, Ph.D. (Vocational)

Address: McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews, P.A.
1800 2nd St #757
Sarasota, FL 34236

Date: November 12, 2018

Time: 12:00 p.m.

Scope: *Vocational Evaluation to assess the residual employment capabilities of the individual with disabilities using skill, situational, standardized assessments in order to provide recommendations as to residual wage earning capacity, educational programming or other appropriate vocational rehabilitation services. In addition, a life care planning will be addressed. A life care plan constitutes a comprehensive assessment, data*

analysis, and research, which provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic healthcare needs.

THE FOLLOWING CONDITIONS ARE TO BE OBSERVED BY ALL PARTIES INVOLVED:

1. This examination is not a deposition so the examiner shall be limited to that information reasonable necessary to conduct the specialty-appropriate examination and evaluation of an individual, including a brief medical history as well as present complaints. The examination is to be limited to the specific medical or psychological conditions in controversy and unless modified by another court order, such examinations will be the only exam for the specific condition(s) or issues in controversy (without limiting the possibility of multiple specialties). No invasive testing shall be performed without informed consent by the Plaintiff/examinee, or further Order of court.

2. The examinee will not be required to complete any lengthy information forms upon arrival at the examiner's office. The examinee will furnish the doctor with name, address, and date of birth. Questions pertaining to how the Plaintiff was injured, and where and how the Plaintiff sustained the injuries complained of, are permitted. Questions pertaining to "fault", when the Plaintiff hired his/her attorney, who referred the Plaintiff to any doctor, and what the Plaintiff told his/her attorney or any investigators are NOT permitted.

3. It shall be the defense attorney's responsibility to provide the examiner with all medical records, imaging studies, test results, and the like, which the defense wants the examiner to review and rely upon as part of the examination. Unless he or she has exclusive control of any original records or imagining studies, Plaintiff shall not be required to bring anything to the exam other than valid identification (e.g. Driver's License, Official Florida Indemnification Card or government-issued Passport).

4. Plaintiff is permitted to have his/her attorney (and spouse, or parent, or other representative) present for the examination, provided that only one of these listed non-attorney persons may attend. Such person(s) may unobtrusively observe the examination, unless the examiner or defense counsel establishes a case-specific reason why such person's presence would be disruptive, and that no other qualified individual in the area would be willing to conduct the examination with such person present. If the examination is to be recorded or observed by others, the request or response of the examinee's attorney shall include the number of people attending, their role, and the method(s) of recording.

5. Plaintiff's counsel may also send a court reporter and/or a videographer to the examination, provided that claimant's counsel notifies defense counsel at least 10 days in advance of the identity, either by proper name or by title (e.g., videographer from XYZ Reporting Service). It is the duty of defense counsel to relay this information to the examiner's office personnel.

6. Neither Defendant's attorney nor any of Defendant's representatives may attend, or observe, record or video the exam. Only if the video is identified as impeachment material for use at trial may the defense counsel obtain a copy. The medical examiner shall not be entitled to payment of an additional or accommodation fee from the Plaintiff or his/her counsel, simply because of the presence of a legally permitted third parties. The court shall reserve ruling as to whether such costs, if imposed by an examiner, may be recoverable by the Defendant as a taxable cost, or otherwise awarded by the court.

7. If a videotape or digital recording is made of the examination by counsel for Plaintiff, it is considered work-product, and neither the defense nor the examiner is entitled to a copy, unless and until same is designated as (or reasonable expected to become) trial evidence, subject to discovery only upon a showing of need and undue hardship. Use of the video or DVD is limited to specifically to the instant litigation. At the close of litigation, including any appeal,

all copies shall be destroyed – unless counsel convinces the court (and an order is entered) that there is some compelling reason for either party, or the examiner, to retain a copy.

8. Neither Plaintiff's counsel, nor anyone else permitted to be present, shall interject themselves into the examination unless the examiner seeks information not permitted by this Order. If Plaintiff's counsel speaks openly or confers privately with the examinee, and this disrupts the exam or causes the examiner to terminate the examination, counsel may be subject to sanctions.

9. The report of the examiner shall be sent to Plaintiff's counsel within 21 days after the CME (no later than Monday, December 3, 2018). Unless a Plaintiff's treating or retained expert has revised or supplemented an opinion after his/her report or deposition, the examiner shall not change, amend, or supplement the opinion set forth in said report during any testimony (deposition or trial) he may give in reference to his examination of the Plaintiff, without providing a supplemental report, which must be provided to Plaintiff's counsel at least 15 days before trial. Violation of this provision may result in the limitation or striking of the examiner's testimony.

10. All protected health information generated or obtained by the examiner shall be kept in accordance with HIPPA requirements and shall not be disseminated by the examiner or defense counsel to any other person or entity not a party to this case without specific order from this court.

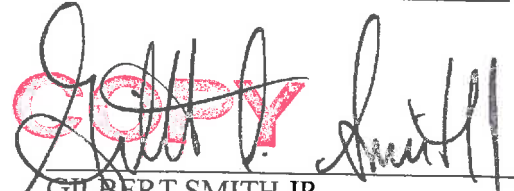
11. Defense counsel must provide the examiner with a copy of this Order and explain the need for the examiner's compliance. As a condition of performing the examination, the examiner shall agree to provide responses to FRCP 1.280(b)(4)(A) inquiries, once such interrogatories or Request to Produce are propounded by Plaintiff.

12. Pursuant to Suarez-Burgos v. Morhalm, 745 So.2d 368 (4th DCA 1999), the Plaintiff will rely on the report of the physician. Should the physician change, alter, or amend the opinions set forth in his expert report prior to any discovery cut-off set forth in the Court's Pre-

trial Order, he will immediately furnish the change to defense who will immediately furnish this to Plaintiff's counsel.

13. Jurisdiction is retained to enforce this Order and to enter such further orders and judgments as may be necessary and proper.

DONE AND ORDERED at Bradenton, Manatee County, Florida, this 10 day of October 2018


GILBERT SMITH JR.
CIRCUIT JUDGE

Copies furnished to:

Marc Matthews, Esquire (counsel for Plaintiff)

Elizabeth Munro, Esquire (counsel for Plaintiff)

~~Lisha Bowen, Esquire (counsel for Plaintiff)~~

Christopher Cazin, Esquire (counsel for Defendants)

Michael Reed, Esquire (counsel for Defendants)

William Smock, Esq. / Jeffrey Glassman, Esq.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

ANTHONY ALLEN JORDAN,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO. 2017ca1913

v

TRINITY SERVICES GROUP, INC., a
Florida Profit Corporation,
GAUDENCIA HERNANDEZ, and
RYDER TRUCK RENTAL, a Florida
Profit Corporation,

Defendants.

ORDER ON RULE 1.360 EXAMINATION

Pursuant to Florida Rule of Civil Procedure 1.360 ("Examination of Persons"), Defendants, TRINITY SERVICES GROUP, INC. and GAUDENCIA HERNANDEZ's counsel has notified Plaintiff's counsel that the Plaintiff, Anthony Allen Jordan, is requested to present for a noninvasive medical examination as follows:

Examiner: Ronald B. Tolchin, D.O., FAAPM&R

Location: McIntyre Thanasides P.A.

Address: 1800 2nd St #757
Sarasota, FL 34236

Date: January 4, 2019

Time: 12:30 p.m.

Scope: Dr. Tolchin will perform a comprehensive physical exam, and will conduct a limited history as needed to obtain information not covered by Mr. Jordan's prior CMEs and deposition. The exam will focus on, but will not be limited to, the musculoskeletal and neurological systems. Dr. Tolchin's exam will involve listening to the heart, lungs, abdomen, and examining and checking the function of extremities. Dr. Tolchin will have Mr. Jordan walk to examine Mr. Jordan's ambulation, gait, and balance. Mr. Jordan will not have to fill out any forms, surveys, or any

other paperwork. There will not be any x-rays, imaging, or special testing.

THE FOLLOWING CONDITIONS ARE TO BE OBSERVED BY ALL PARTIES INVOLVED:

1. This examination is not a deposition so the examiner shall be limited to that information reasonably necessary to conduct the specialty-appropriate examination and evaluation of an individual, including a brief medical history as well as present complaints. The examination is to be limited to the specific medical or psychological conditions in controversy and unless modified by another court order, such examination will be the only exam for the specific condition(s) or issues in controversy (without limiting the possibility of multiple specialties). No invasive testing shall be performed without informed consent by the Plaintiff/examinee, or further Order of court.

2. The examinee will not be required to complete any information forms upon arrival at the examiner's office. The examinee will furnish the doctor with name, address, and date of birth. Questions pertaining to how the Plaintiff was injured, and where and how the Plaintiff sustained the injuries complained of, are permitted. Questions pertaining to "fault," when the Plaintiff hired his attorney, who referred the Plaintiff to any doctor, and what the Plaintiff told his attorney or any investigators are NOT permitted.

3. It shall be the defense attorney's responsibility to provide the examiner with all medical records, imaging studies, test results, and the like, which the defense wants the examiner to review and rely upon as part of the examination. Unless he or she has exclusive control of any original records or imaging studies, Plaintiff shall not be required to bring anything to the exam other than valid identification (e.g., Driver's License, Official Florida Identification Card or government-issued Passport).

4. Plaintiff is permitted to have his attorney (and spouse, or parent, or other representative) present for the examination, provided that only one of these listed non-attorney persons may attend. Such person(s) may unobtrusively observe the examination,

unless the examiner or defense counsel establishes a case-specific reason why such person's presence would be disruptive, and that no other qualified individual in the area would be willing to conduct the examination with such person present. In the case of a neuropsychological exam, all observers shall watch and listen from an adjacent room if available, or by live video feed set up by Plaintiff's videographer. If the examination is to be recorded or observed by others, the request or response of the examinee's attorney shall include the number of people attending, their role, and the method(s) of recording.

5. Plaintiff's counsel may also send a court reporter and/or a videographer to the examination, provided that claimant's counsel notifies defense counsel at least 10 days in advance of the identity, either by proper name or by title (e.g., videographer from XYZ Reporting Service). It is the duty of defense counsel to relay this information to the examiner's office personnel.

6. Neither Defendant's attorney nor any of Defendant's representatives may attend, or observe, record or video the exam. Only if the video is identified as impeachment material for use at trial may the defense counsel obtain a copy. The medical examiner shall not be entitled to any payment of an additional or accommodation fee from the Plaintiff or his counsel, simply because of the presence of a legally permitted third party. The court shall reserve ruling as to whether such costs, if imposed by an examiner, may be properly recoverable by the Defendant as a taxable cost, or otherwise awarded by the court.

7. If a videotape or digital recording or transcription by court reporter is made of the examination by counsel for Plaintiff, it is considered work-product, and neither the defense nor the examiner is entitled to a copy, unless and until same is designated as (or reasonably expected to become) trial evidence, subject to discovery only upon a showing of need and undue hardship. Use of the video or DVD or transcription is limited specifically to the instant litigation. At the close of litigation, including any appeal, all copies shall be destroyed — unless counsel convinces the court (and an order is entered) that there is some compelling reason for either party, or the examiner, to retain a copy.

8. Neither Plaintiff's counsel, nor anyone else permitted to be present, shall interject themselves into the examination unless the examiner seeks information not permitted by this Order. If Plaintiff's counsel speaks openly or confers privately with the examinee, and this disrupts the exam or causes the examiner to terminate the examination, counsel may be subject to sanctions.

9. The report of the examiner shall be sent to Plaintiff's counsel within 28 days of the examination (by February 1, 2019). Unless a Plaintiff's treating or retained expert has revised or supplemented an opinion after his report or deposition, the examiner shall not change, amend, or supplement the opinions set forth in said report during any testimony (deposition or trial) he may give in reference to his examination of the Plaintiff, without providing a supplemental report, which must be provided to Plaintiff's counsel at least 15 days before trial. Violation of this provision may result in the limitation or striking of the examiner's testimony.

10. All protected health information generated or obtained by the examiner shall be kept in accordance with HIPAA requirements and shall not be disseminated by the examiner or defense counsel to any other person or entity not a party to this case without a specific order from this Court.

11. Defense counsel must provide the examiner with a copy of this Order and explain the need for the examiner's compliance. As a condition of performing the examination, the examiner shall agree to provide responses to FRCP 1.280(b)(5)(A) inquiries, once such interrogatories or Requests to Produce are propounded by Plaintiff.

12. Pursuant to Suarez-Burgos v. Morhalm, 745 So.2d 368 (4th DCA 1999), the Plaintiff will rely upon the report of the physician. Should the physician change, alter, or amend the opinions set forth in his expert report prior to any discovery cut-off set forth in the Court's pre-trial order, he will immediately furnish this change to Defense counsel who will in turn immediately furnish this to Plaintiff's counsel.

14. Jurisdiction is retained to enforce this Order and to enter such further orders and judgments as may be necessary and proper.

DONE AND ORDERED at Bradenton, Florida, this _____ day of ~~December~~,
2018.

ORIGINAL SIGNED

JAN - 4 2019

GILBERT A. SMITH, JR.
CIRCUIT JUDGE

Honorable Gilbert A. Smith, Jr.
CIRCUIT JUDGE

Copies furnished to:

Marc Matthews, Esquire (counsel for Plaintiff)
Elizabeth Munro, Esquire (counsel for Plaintiff)
Lisha Bowen, Esquire (co-counsel for Plaintiff)
Christopher Cazin, Esquire (counsel for Defendants)
Michael Reed, Esquire (counsel for Defendants)
William Smoak, Esquire (co-counsel for Defendant Trinity)
Jeffrey Glassman, Esquire (co-counsel for Defendant Trinity)