

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

RICHARD C. KING

V.

**PATTI LABELLE A/K/A PATRICIA
EDWARDS, ZURI KYE EDWARDS,
EFREM HOLMES, AND NORMA
HARRIS**

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**CIVIL ACTION NO.
4:11-CV-02396**

DEFENDANTS' MOTION TO COMPEL NEUROPSYCHOLOGICAL EXAMINATION

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants, Patti LaBelle a/k/a Patricia Edwards, Zuri Kye Edwards, Efrem Holmes and Norma Harris (hereinafter referred to as "Defendants"), and pursuant to Rule 35 of the Federal Rules of Civil Procedure, file this Motion to Compel a Neuropsychological Examination of Plaintiff, Richard King ("King").

I.

FACTUAL BACKGROUND

King has filed suit as a result of an incident that occurred on March 11, 2011, at the Terminal C passenger pick up area at George H.W. Bush International Airport. King alleges that he was shoved and punched by Edwards, Holmes, and Harris, ultimately causing him to fall to the ground and strike his head against a concrete and stone pillar, causing him to sustain a severe head injury. King contends that Edwards, Holmes, and Harris were employed as private security guards by LaBelle and that LaBelle ordered them to physically attack King. Defendants deny King's allegations.

II.

REQUEST FOR NEUROPSYCHOLOGICAL EXAMINATION

Defendants request that Dr. Francisco Perez, a neuropsychologist, be allowed to perform a neuropsychological examination of King. Rule 35 of the Federal Rules of Civil Procedure

addresses the physical and mental examinations of persons. Rule 35 states, in pertinent part, the following:

(a)(1) ***In General.*** 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. The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(a)(2) ***Motion and Notice; Contents of the Order.*** The order:

- A. may be made only on motion for good cause and on notice to all parties and the person to be examined; and
- B. must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

FED. R. CIV. P. 35

Dr. Perez is a qualified examiner as he is board certified by both the American Board of Clinical Neuropsychology and the American Board of Psychology. *See* Exhibit “A”, C.V. of Dr. Francisco Perez. The requested examination will consist of a series of neuropsychological tests used to evaluate King’s neuropsychological condition and any impairment thereto. The proposed protocol is attached and fully incorporated herein. *See* Exhibit “B”, Proposed Protocol Dr. Francisco Perez dated March 11, 2014. The examination is requested to take place on April 3, 2014, at 9:00 a.m. at Dr. Perez’s office located at 6560 Fannin, Suite 1810, Houston, Texas 77030. The examination will be conducted in a clinical environment under normal testing conditions and should be accomplished in one eight (8) hour session, including a lunch break.

All parties have been given notice of this motion and of the requested examination.

III.
KING'S CONDITION IS IN CONTROVERSY

King's mental condition is in controversy in this litigation. A party's mental condition is in controversy when one or more of the following factors are present:

- A. plaintiff has asserted a specific cause of action for intentional or negligent infliction of emotional distress;
- B. plaintiff has alleged a specific mental or psychiatric injury or disorder;
- C. plaintiff has claimed unusually severe emotional distress;
- D. plaintiff has offered expert testimony in support of his claim for emotional distress damages;
- E. plaintiff concedes that his mental condition is "in controversy".

Ricks v. Abbott Labs., 198 F.R.D. 647 (D. Md. 2001).

In the instant case, King's mental condition is in controversy for a number of the above reasons. First, King has specific claims for intentional infliction of emotional distress. See Exhibit "C", Plaintiff's Third Amended Complaint, Count II, ¶¶6.1-6.5. In addition, King has alleged a diagnosis of post-traumatic stress disorder and post-concussive syndrome. See Exhibit "D", Robert C. Cantu's Report dated February 20, 2014. Finally, King is claiming severe emotional distress, cognitive impairment, and behavioral issues as a result of the incident in question and has retained a medical expert, Robert C. Cantu, M.D., to testify regarding the nature of King's injuries and emotional damages. *Id.* Cantu has opined, in his expert report, that King has difficulties with concentration, memory, headaches, dizziness, sleeping, sensitivity to light and noise, depression, anxiety and irritability. *Id.* Cantu further opines that King's symptoms and condition are the result of the incident in question and that the incident and resulting

symptoms are what caused King from successfully completing his final year at West Point.¹ *Id.* Based on the above, there can be no dispute that King's mental condition is in controversy.

IV.
GOOD CAUSE FOR EXAMINATION

To prove good cause, the requesting party must show that the examination could lead to the discovery of specific facts relevant to the cause of action and is necessary to the requesting party's case. *Womack v. Stevens Transp.*, 205 F.R.D. 445, 447 (E.D. Pa. 2001). Good cause exists for this Court to order a neuropsychological evaluation because the examination is relevant to genuine issues presented in this case and could lead specific facts and findings that are relevant to King's alleged damages and current condition. As stated above, King alleges he sustained a severe head injury as a result of the incident in question and that such injury resulted in behavioral, cognitive, and emotional impairment, as well as difficulties with concentration, memory, headaches, dizziness, sleeping, sensitivity to light and noise, depression, anxiety and irritability. King further has retained an expert to testify with respect to such issues. The information to be obtained from the requested examination is necessary to properly evaluate and defend this case and cannot obtain the information sought through less intrusive means.

WHEREFORE, PREMISES CONSIDERED, Defendants request that this Motion for a medical examination of Plaintiff, Richard King by Dr. Francisco Perez be granted.

¹ Cantu was allowed to conduct a Skype Interview/Examination of King on February 17, 2014. See Exhibit C.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Plaintiff's counsel regarding the requested examination and he is opposed to the same.

/s/ Philip Robert Brinson
PHILIP ROBERT BRINSON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel, through the Court's ECF system and facsimile, on this the 14th day of March, 2014 as follows:

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