

SUPERIOR COURT OF NEW JERSEY
CIVIL DIVISION
MIDDLESEX COUNTY
DOCKET NO. L-6095-06

Peter Bouhlas

Plaintiff,

v.

**Motion to Permit Use of a Recording
Device and Third Party Representative to
be Present During Plaintiff's IME**

Samer Wahby

Defendants.

Return Date: November 17, 2006

Appearances: Victor Horowitz for Plaintiff Bouhlas

Linda Olsen (Ronan, Tuzzio & Giannone) for Defendant Wahby

R. Ruggiero Williams, J.S.C.:

I. BACKGROUND

This matter arises from an automobile accident. Before the Court is Plaintiff's motion to permit the use of a recording device and third party representative, a medical nurse, to be present during Plaintiff's IME.

II. PETER BOUHLAS – MOVANT'S POSITION

Plaintiff seeks to have a registered nurse accompany Plaintiff to his IME with Dr. Argagona on November 20, 2006. Plaintiff cites B.D. v. Carley, 307 N.J. Super. 259 (1998) for the proposition that a litigant may employ a recording device at a psychological as well as a physical exam.

III. AIG INSURANCE COMPANY – INTERVENER / OPPONENT’S POSITION

AIG argues that Plaintiff fails to set forth any reason justifying the need for a representative or recording device. They maintain that simply instructing the doctor not to question Plaintiff about liability is a workable accommodation. Additionally, AIG argues that deposing Dr. Aragona allows a fair forum to explore any concerns that Plaintiff’s counsel may have. Additionally, AIG takes umbrage with the insinuation that Dr. Aragona will compose an analysis that favors Defendant simply for litigation advantages. Finally, AIG contends that allowing Plaintiff to have a representative would be unfair to Defendant as Defendant was not afforded a similar opportunity.

IV. DISCUSSION

The leading case on the utilization of recording devices and third party representatives is B.D. v. Carley, 307 N.J. Super. 259 (1998). There, in analyzing the propriety of permitting a recording device to be employed during a psychological evaluation, the Appellate Division held:

We determine here that the defense psychologist does not have the right to dictate the terms under which the examination shall be held. This is a discovery psychological examination, not one in which plaintiff is being treated. Plaintiff’s right to preserve evidence of the nature of the examination, the accuracy of the examiner’s notes or recollections, the tones of voice and the like outweigh the examiner’s preference that there be no recording device.

Insofar as Stoughton v. B.P.O.E. No. 2151, *supra*, generally limits without special reasons, the presence of counsel or a representative at physical examinations (other than psychological or psychiatric examinations) and also limits the use of recording devices at psychiatric or psychological examinations, the opinion shall be deemed overruled.

Id. at 262.

AIG asserts that Plaintiff's desire to have a medical nurse present at the evaluation is insufficient because Plaintiff does not specify a specific reason. AIG points to reasons recognized in case law such as a law firm's policy to attend all IME's, clarification of conflicts during the IME and the adversarial nature of an IME. However, these cases, save for the law firm's policy, are implicit in every IME and therefore, do not appear to set a standard as to the degree of specificity required for the request. Moreover, Carley, supra, placed the burden on the opponent to demonstrate why a personal representative / recording device should not be employed. Ibid. Finally, the Court recognizes that frequently litigants will employ the alternative methods that AIG suggests and the request may be considered unusual. However, if a party seeks to employ a third party representative to be present, the law supports the conclusion the party has that right.

V. DECISION

For the foregoing reasons, Plaintiff's Motion to Permit Use of a Recording Device and Third Party Representative to be Present During Plaintiff's IME is HEREBY GRANTED. There third party representative shall not interfere with the Doctor's examination.