

XO5 CV 08 5006891S : **Superior Court**
Jane Doe, et al : **Complex Litigation**
 : **Docket at Stamford**
v.
Stamford
Marriott Hotel & Spa, et al : **March 5, 2010**

ORDER
REGARDING INDEPENDENT MEDICAL EXAMINATIONS OF PLAINTIFFS

The court has heard the parties and has considered the defendants' request for all of the plaintiffs to submit to certain examinations pursuant to Practice Book § 13-11(b) and General Statutes Sec. 52-178a (IMEs), and the plaintiffs' objections thereto. The requested examinations are of the plaintiff Jane Doe, and a separate examination/observation of her two minor children, the co-plaintiffs Boy Doe and Girl Doe. Pursuant to Practice Book § 13-11(b), the court hereby makes the following Order as is just in connection with these requests.

Jane Doe

By disclosure dated Dec. 14, 2009, the plaintiffs have disclosed as an expert witness Dr. Julia Reade, MD, a board certified general and forensic psychiatrist. Dr. Reade will offer an opinion that Jane Doe is suffering from Post Traumatic Stress Disorder as a result of a sexual assault in the Stamford Marriott Parking Garage on Oct.10, 2006.

The defendants have now moved that Jane Doe submit to a psychological interview and evaluation with Elaine Ducharme, Ph.D. The proposed examination would consist of the administration of psychological tests and a structured clinical interview. Dr. Ducharme is a psychologist, not a psychiatrist. The plaintiffs have not disclosed any psychologists as expert witnesses, nor has Jane Doe ever undergone any psychological testing in connection with this

case. Moreover, Dr. Reade's opinion is not predicated upon such testing, or the results of such tests.

As the defendants concede in their brief, "A psychiatric evaluation differs greatly from a psychological evaluation." Notwithstanding the defendants' position that they believe such psychological testing is part of the "standard of practice" (Affidavit of Dr. Spencer Eth, ¶ 2), such arguments potentially go to the weight, not the admissibility of Dr. Reade's opinion. While perhaps a proper subject for cross examination, in the absence of an initial proffer from the plaintiff in this case, the defendants' perceived need for such testing by an expert (in a different field from the plaintiff's disclosed expert) does not by itself determine the scope of an IME to be ordered in this case under this Practice Book section. Accordingly, the defendant's motion for examination and psychological testing by Dr. Ducharme is denied, and the plaintiff's objection thereto is sustained.

However, because of the plaintiff's disclosure of Dr. Reade, the defendants' motion for an examination of Jane Doe by a board certified psychiatrist is granted. Due to the nature and circumstances of the allegations in this case, and the sensitive subject matters of the examination, the plaintiff's objection to an examination by the defendant's proposed expert, Dr. Justin Schechter, MD, or any other male psychiatrist, is sustained.

The examination of Jane Doe by a female board certified psychiatrist to be chosen by the defendants is granted, with the fee for the examining psychiatrist to be paid by the defendants. The examination shall be subject to the following conditions:

- 1) The examination shall be conducted at a location in Fairfield County at a mutually agreeable time and date, but due to the trial exposure date in this case, the examination must be concluded no later than Friday, March 12, 2010.

- 2) Such examination is limited to a single session in the form of a clinical interview not to exceed two hours duration.
- 3) Jane Doe may be accompanied by her counsel as an observer during such examination. A maximum of two defense counsel may also observe the examination.¹ A room using a “two way” mirror which would allow all counsel to observe the examination unseen may be employed at the option of the defendant.
- 4) The plaintiff’s motion for one of Jane Doe’s own experts or licensed counselors to also attend and/or observe the examination is denied.
- 5) Plaintiff’s counsel is permitted to videotape or audiotape the examination, or to arrange for a stenographer to transcribe the examination. Any stenographer or technical personnel necessary to operate any audio or video recording equipment shall be located in a position outside of the examination room.
- 6) Pursuant to Practice Book § 13-11(d), within three (3) business days from the date of the examination ordered hereunder, the defendant shall hand deliver or email to counsel for the plaintiffs a copy of a written report of the psychiatrist setting out all findings, diagnoses and conclusions.

Boy Doe and Girl Doe

The defendants are also requesting an opportunity for Steven Marans, MSW, Ph.D. of the Yale Child Study Center to observe the minor children, the co-plaintiffs Boy Doe and Girl Doe, at play in his offices in New Haven. The defendants further move that the plaintiff

¹ The defendants cite cases in support of their position that counsel should be excluded from the examination, and the proceedings not be transcribed. However, both procedures have been employed in prior cases in which IMEs have been ordered in Connecticut. The cases relied upon by the defendants do not involve Connecticut General Statutes or the Connecticut Practice Book provision at issue here, as they are all federal cases construing examinations pursuant to Rule 35 of the Federal Rules of Civil Procedure. One such case frankly acknowledges that the federal rules may be different from their state counterparts as to this aspect of discovery. See *Tirado v. Erosa*, 158 F.R.D. 294, 298 (S.D.N.Y. 1994).

Jane Doe and her husband, a non-party, submit to an interview with Dr. Marans. Besides the fact, as the plaintiffs point out in their opposition, that there is no precedent for such an interview, there has already been extensive discovery conducted in this case. Both Jane Doe and her husband have been previously deposed by the defendants (and at least as to Jane Doe, at some length). Accordingly, the defendants' motion for an interview of the plaintiff mother and her non-party husband in connection with this IME is denied. The plaintiffs are ordered to complete a questionnaire submitted by Dr. Marans in order "to gather Mr. and Mrs. Doe's impressions of Boy Doe and Girl Doe's developmental and emotional status prior to and after the alleged events of October 10, 2006." (Defendants' Request for IME, Feb. 11, 2010).

This is a somewhat unusual case in that the specifics of what happened inside Jane Doe's vehicle in the Marriott garage, and the sexual assault of Jane Doe in the presence of her children are not so much contested by the defendants as is the liability of the defendants for what the defendants themselves in their brief label "a terrible and unfortunate random act of violence" visited upon the plaintiffs on October 10, 2006. The defendants also contest the extent to which the events of that day have impacted the developmental and emotional status of the minor children. That is their right. However, the court must balance the defendants' legitimate request for an IME of the children against the equally legitimate and perhaps more compelling desire to avoid inflicting any further trauma and harm to these minor children. Because Boy Doe and Girl Doe are of such tender years (ages 3 and 5 at the time of the assault; now ages 6 and 8), the court finds that it would be in the best interests of the children for them to be observed at play by Dr. Marans in an already familiar setting to the children with a person already familiar to them. That would be the New Canaan office of their therapist, Amie Anger.

The observation of Boy Doe and Girl Doe by Dr. Marans is granted, with the fee for Dr. Marans to be paid by the defendants. The observation shall be subject to the following conditions:

- 1) The observation shall be conducted at a mutually agreeable time and date at the office of Amie Anger, but it must be concluded no later than Friday, March 12, 2010.
- 2) The observation is limited to a single session of one hour.
- 3) Ms. Anger may initiate the play with the children and attend the session. Both Jane Doe and/or her husband may also attend if they wish.
- 4) Due to the nature and circumstances of the observation, and the potentially disruptive effect their presence would engender to a fair evaluation of the children, counsel are not permitted to attend, nor will cameras or audio or videotaping be allowed.
- 5) Pursuant to Practice Book § 13-11(d), within three (3) business days from the date of the observation and the completion of the questionnaire ordered hereunder, the defendants shall hand deliver or email to counsel for the plaintiffs a copy of a written report of Dr. Marans setting out all findings, diagnoses and conclusions.

SO ORDERED.

 /S/
Blawie, J.