

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

BOBBY DAVIS, BRENDA DAVIS,)	
and GEOFFREY DAVIS,)	
)	
Plaintiffs,)	8:11CV69
)	
v.)	
)	
BAMFORD, INC. and NANCY MARET)	MEMORANDUM AND ORDER
PACKER, Personal)	
Representative of the ESTATE)	
OF MICHAEL PACKER,)	
)	
Defendants.)	
_____)	

This matter is before the Court on defendants' motion to compel plaintiff Bobby Davis to appear for an independent neuropsychological examination, filed pursuant to Federal Rule of Civil Procedure 35(a) (Filing No. [64](#)), with supporting brief and index of evidence (Filing Nos. [65](#) and [66](#)). Plaintiffs have not filed an opposition to this motion.

Defendants want Bobby Ray Davis to submit to one independent neuropsychological examination in Omaha, Nebraska, during the same time period in which Bobby Davis will already appear for other examinations and a deposition (Filing No. [62](#)). The examination would be given by Ty Callahan, Ph.D., a neuropsychologist. Plaintiffs have already engaged an expert, Richard Fulbright, Ph.D., who examined Bobby Davis on July 21, 2010, and August 4, 2010. Dr. Fulbright prepared a neuropsychological evaluation report that summarizes his findings

as to Bobby Davis' neuropsychological deficits (Ex. 10, Filing No. [44](#)). Defendants state that Bobby Davis' mental injury, as described by Dr. Fulbright, is "'clearly in controversy and provides [defendants] with good cause for an examination to determine the existence and extent of such asserted injury'" (Filing No. [65](#), at 3, quoting *Schlagenhauf v. Holder*, 379 U.S. 104, 119 (1964)).

After considering defendants' submissions and the applicable law, and considering the fact that plaintiffs have not opposed the motion, the Court finds that defendants' motion to compel a Rule 35 examination by Dr. Callahan should be granted. The examination will be limited to one day and a maximum of eight hours, including two fifteen-minute breaks and a one-hour break for lunch. The parties will determine the date and time of the examination without the Court's involvement, but the Court finds that the examination should take place in Omaha, Nebraska, where Dr. Callahan practices and where he will testify at trial. Accordingly,

IT IS ORDERED:

1) Defendants' motion to compel plaintiff Bobby Davis to appear (Filing No. [64](#)) is granted as to the examination by Dr. Callahan, as consistent with this memorandum and order; and

2) Defendants' requests for oral argument and expedited hearing with regard to this motion are denied as moot.

DATED this 16th day of February, 2012.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court