

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED
2008 FEB 29 PM 1:04
KATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

BEMIS BALDWIN and KATHRYN BALDWIN

Plaintiffs,

v.

Civil Action No. 03-C-3220

LINCOLN ELECTRIC COMPANY, et al.,

Defendants.

SECOND ORDER ON PET SCAN

This Court has ruled previously on the PET Scan issue. The Court heard the arguments on both sides and now has read the briefs on both sides. Essentially, the Court has before it plaintiff's motion to reconsider the Court's prior ruling ordering plaintiff to submit to a PET Scan and defendant's cross motion, if you will, to compel.

Again, plaintiff is ORDERED to undergo the PET Scan.

Plaintiffs have argued that: (1) FD-PETs are not commonly used as diagnostic tools to differentiate Parkinson's Disease and manganism; and (2) performing an FD-PET on Mr. Baldwin presents particular safety concerns because of his medical condition. Neither argument has any merit.

First, with respect to plaintiffs' arguments that FD-PETs are not commonly used as diagnostic tools to differentiate Parkinson's Disease and manganism, the reason for that appears to be this:

Parkinson's Disease is, unfortunately, a common ailment, afflicting approximately 1.5 Million Americans, regardless of profession. Manganism is an extremely rare neurological condition that has been found in miners and smelters with extreme exposure to manganese ore. Therefore, because of the rarity of the neurological condition, physicians are not regularly performing FD-PETs to determine whether individuals suffer from manganism because of the cost of the tests. Who has this much money to pay for this type of test in each case?

In any event, there appears to be no real dispute according to leading-researchers that FD-PET is an invaluable diagnostic tool to provide "information of considerable value in discriminating between PD and manganism".

Second, this Court has tried to understand and can sympathize with the difficulties of Mr. Baldwin's condition. Defendants have bent over backwards, undertaking to "make arrangements with AeroCare Air Ambulance Services to provide door-to-door transportation via ambulance and jet aircraft from the Baldwins' home to the hospital and back," and offering whatever amenities are necessary for Mr. Baldwin to be comfortable en route to and from the exam. The ambulance service is used to transport critically ill or injured patients, some of whom are on ventilators. Further, defendants represent that "there are no contraindications based on Mr. Baldwin's medical condition which would result in an increased risk of harm."

The FD-PET procedure is intended for use in patients like Mr. Baldwin who suffer from movement disorders. Dr. Eidelberg, the physician who will perform the test, confirms

in his letter to counsel that he has performed over 2,000 FD-PET scans in the last 20 years, that the 2,000 patients included people with “advanced movement disorders involving severe physical disabilities,” and that “no complications associated with this procedure have ever occurred.”

In sum, Dr. Eidelberg is the Director of the Center for Neurosciences at a major hospital and research center. Defendants have explained to him the nature of Mr. Baldwin’s disabilities, and he has verified that Mr. Baldwin’s physical condition will not undermine the results of the test or create additional risks.

CONCLUSION

For the foregoing reasons and those set forth in the Court’s prior ruling, the Defendant’s Motion to Compel PET Scan is **GRANTED** and the Plaintiff’s Motion to Reconsider is **DENIED**. Plaintiff then, shall therefore have the PET Scan performed in accordance defendant’s proposed guidelines at the earliest possible date but no later than March 17, 2008.

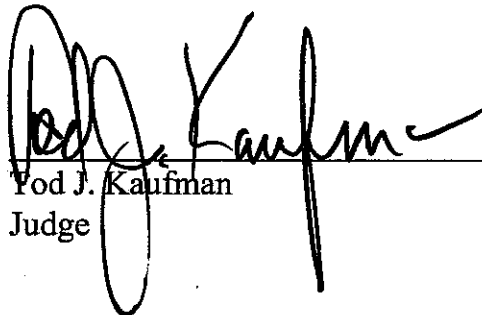
The Circuit Clerk shall send a certified copy of this Order to:

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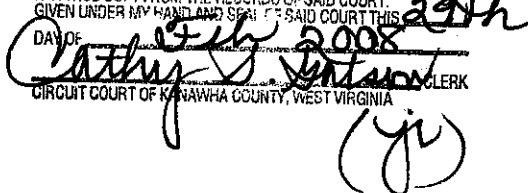
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Entered:


Rod J. Kaufman
Judge

Date: February 29, 2008

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, DC
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 29th
DAY OF Feb 2008

CATHY S. GATSON, CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
(jv)