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When Are Defendants Entitled to an Additional Medical Examination? The Correct Interpretation of “Good Cause” in Louisiana Code of Civil Procedure Article 1464

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Introduction

For many years, Louisiana Civil Code of Procedure article 1464 has granted defendants the right to have plaintiffs submit to a physical examination, known as an additional medical examination (AME), when the plaintiff’s medical condition is a “matter in controversy” and “good cause” is shown.[1] Louisiana appellate courts, however, are split on the meaning of *good cause*. The split has been especially complicated by the Louisiana First Circuit’s recent interpretation in *Hicks v. USAA General Indemnity Co*.[2] Presently, both the Second and First circuits hold that the ability of the movant to obtain the desired information by other means determines whether good cause is shown for ordering an AME.[3] Additionally, the First Circuit requires the AME physician to review deposition testimony and medical records and then justify why good cause exists for the examination under article 1464.[4] Conversely, the Third and Fourth circuits hold that good cause exists when the plaintiff places his or her mental or physical condition in controversy and fairness dictates the defendant receive an AME in order to rebut the plaintiff’s experts at trial.[5]

The decisions of the First and Second circuits impose a legal standard for good cause under article 1464 that is unsupported by any legislative or jurisprudential basis. Because the defendant in *Hicks* recently filed a writ with the Louisiana Supreme Court challenging the First Circuit’s decision, the Court may finally provide clarity to the issue. In addressing the issue, the Louisiana Supreme Court should adopt the Third and Fourth circuits’ interpretation of good cause, which is supported by the United States Supreme Court’s holding in *Schlagenhauf v. Holder*.[6]

I. Guidance from the Supreme Court of the United States on the Interpretation of “Good Cause” in Article 1464

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When the source provisions of Louisiana Code of Civil Procedure article 1464 were enacted, they were virtually identical to subsection (a) of Rule 35 of the Federal Rules of Civil Procedure. As such, when interpreting article 1464 in *Williams v. Smith*, the Louisiana Supreme Court relied upon prior interpretations of both Rule 35(a) and article 1464.[7] Accordingly, courts may rely on jurisprudence from both Louisiana and federal courts in determining whether a plaintiff’s injuries are in controversy and whether good cause for an AME exists.

Although article 1464 does not define *good cause*, the U.S. Supreme Court provided an interpretation of Rule 35(a) in *Schlagenhauf v. Holder*.[8] In this seminal case addressing Rule 35(a)—the federal counterpart to article 1464—the Supreme Court of the United States announced that while the movant bears the burden of proving the law’s requirements of “in controversy” and “good cause,” there are “situations where the pleadings alone are sufficient to meet these requirements.”[9] A plaintiff in a negligence action who asserts a mental or physical injury has placed that mental or physical injury clearly in controversy and provided the defendant with good cause for an examination to determine the existence and extent of such asserted injury.[10]

While the U.S. Supreme Court provided an interpretation of Rule 35(a) in *Schlagenhauf v. Holder*, Louisiana courts have selectively quoted and thus misconstrued this seminal opinion over time.[11] The historical background of *Schlagenhauf* is necessary to understand the isolated quotations from court opinions leading to Louisiana’s inconsistent application of article 1464’s good cause requirement.

The first sentence of the *Schlagenhauf* opinion states, “This case involves the validity and construction of Rule 35(a) of the Federal Rules of Civil Procedure as applied to the examination of a defendant in a negligence action.”[12] In an attempt to prove the defendant driver in *Schlagenhauf* was “not mentally or physically capable” of driving a bus safely—thus causing the bus passengers’ injuries—the claimants requested the defendant driver submit to a series of physical and mental examinations pursuant to Rule 35(a).[13] Notably, the defendant driver neither placed his mental or physical condition at issue in the case nor raised it as a defense to the claims brought against him.[14]

Under this context, the United States Supreme Court analyzed Rule 35(a)’s requirements of “in controversy” and “good cause.” Louisiana courts often cite statements contained in the following excerpt from the *Schlagenhauf* Court’s opinion in isolation, creating an inconsistent and contradictory application of article 1464:

> [The ‘good cause’ and ‘in controversy’ requirements of Rule 35] are not met by mere conclusory allegations of the pleadings—nor by mere relevance to the case—but require an affirmative showing by the movant that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for ordering each particular examination. Obviously, what may be good cause for one type of examination may not be so for another. *The ability of the movant to obtain the desired information by other means is also relevant.*
> Rule 35, therefore, requires discriminating application by the trial judge, who must decide, as an initial matter in every case, whether the party requesting a mental or physical examination or examinations has adequately demonstrated the existence of the Rule’s requirements of ‘in controversy’ and ‘good cause,’ which requirements, as the Court of Appeals in this case itself recognized, are necessarily related. *This does*

> *not, of course, mean that the movant must prove his case on the merits in order to meet the requirements for a mental or physical examination.* Nor does it mean that an evidentiary hearing is required in all cases. This may be necessary in some cases, but in other cases the showing could be made by affidavits or other usual methods short of a hearing. It does mean, though, that the movant must produce sufficient information, by whatever means, so that the district judge can fulfill his function mandated by the Rule.
>
> *Of course, there are situations where the pleadings alone are sufficient to meet these requirements. A plaintiff in a negligence action who asserts mental or physical injury places that mental or physical injury clearly in controversy and provides the defendant with good cause for an examination to determine the existence and extent of such asserted injury.* This is not only true as to a plaintiff, but applies equally to a defendant who asserts his mental or physical condition as a defense to a claim, such as, for example, where insanity is asserted as a defense to a divorce action.[15]

Based on these principles, the Court in *Schlagenhauf* held that because the defendant bus driver’s condition was “sought to be placed in issue by other parties,” Rule 35(a) required those parties to make an affirmative showing that the defendant’s mental and physical condition was in controversy and that there was good cause for the examinations requested.[16]

Importantly, the Supreme Court qualified this finding by noting that, unlike the facts present in *Schlagenhauf*, there are situations in which a pleading alone meets the requirements on its face such as: (1) when a plaintiff in a negligence action asserts mental or physical injuries or (2) when a defendant asserts his mental or physical condition as a defense to a claim.[17] Based on the clear pronouncement from *Schlagenhauf*, when a plaintiff files suit placing his or her physical or mental condition in controversy, as was the case in *Hicks*, the pleadings alone are sufficient to establish good cause.[18] In this traditional tort scenario, the good cause inquiry should end at the filing of the initial pleadings. However, Louisiana courts have misconstrued this clear interpretation of the law due to the First and Second circuits’ reliance on string citations to cases presenting factually distinguished circumstances, creating a circuit split that the Louisiana Supreme Court should remedy.[19]

II. The Louisiana Circuit Split on Interpreting *Good Cause*

Louisiana appellate courts’ reliance on different parts of the *Schlegenhauf* opinion and Louisiana jurisprudence citing *Schlengenhauf* have created two different interpretations of *good cause*. The first interpretation, which comes from the First and Second circuits, provides that good cause for an AME does not exist if the defendant is able to obtain the desired information by other means.[20] The Third and Fourth circuits provide the second interpretation: that good cause is established by the plaintiff placing his or her mental or physical condition in controversy, which happens when a plaintiff files a petition.[21] These two interpretations have resulted in much uncertainty as to whether a defendant has a right to compel a plaintiff to submit to an AME.

A. The First and Second Circuits’ Misinterpretation of Good Cause

In *Hicks v. USAA General Indemnity Co.*, the First Circuit stated that the ability of a party to obtain the information through other methods is relevant to the determination of whether

there is good cause to compel the AME.[22] In support of the contention that the defendants failed to show good cause for an AME due to the ability to obtain the information sought elsewhere, the First Circuit cited to three cases: *Williamson v. Hartford*,[23] *Daigle v. City of Shreveport*,[24] and *Williams v. Smith*.[25] Significantly, these opinions build off of each other and ultimately rely on the reasoning of *Schlagenhauf* that were inapplicable in *Hicks*. For instance, the First Circuit in *Hicks* stated: “While there are no definitive guidelines as to what constitutes good cause, we recognize that in *Williamson v. Hartford Casualty Insurance Company* the ability of the party seeking to compel the AME to obtain the information through other methods is germane to the determination of good cause.”[26]

However, *Williamson v. Hartford*, like *Schlagenhauf*, involved a plaintiff’s request to have the defendant submit to a vision exam under article 1464 even though the defendant did not place his eyesight in controversy.[27] Because the circumstances in *Williamson* were factually analogous to those in *Schlagenhauf*, it was appropriate for the court to cite the earlier portion of the Supreme Court’s opinion and explain that “[m]ere relevance of the information sought in the examination is not sufficient to establish good cause, and the ability of the movant to obtain such information through other methods is germane to the determination of good cause.”[28]

But unlike in *Williamson*, the facts in *Hicks* fall under the latter portion of the *Schlagenhauf* opinion, as the plaintiff to the negligence action asserted physical injuries and therefore placed his physical condition in controversy.[29] As the Supreme Court explicitly stated, a personal-injury plaintiff in a negligence action is one of the situations in which the in controversy and good cause requirements are met by simply pointing to the petition.[30] No further analysis is necessary, and the First Circuit’s reliance on the select passage from *Williamson*—which cites *Schlagenhauf* without providing context—was misguided.

The First Circuit relied on the factually distinguishable case of *Daigle v. City of Shreveport* to conclude that because defendants’ expert was able to review plaintiff’s medical records and MRIs, no good cause was shown under article 1464.[31] In *Daigle*, the district court actually authorized an AME of the personal-injury plaintiff and granted the defendant’s motion for a continuance of trial so that the AME could be performed.[32] Because the defendants failed to timely schedule the authorized AME prior to the second trial date, the issue before the court was whether the defendants were entitled to an additional continuance.[33] The trial court noted that even though it routinely grants AMEs, in the interest of justice, it denied the motion to continue at issue.[34] The court articulated several reasons for its decision, including the fact that: (1) the case was five years old, (2) the defendants had received a six-month continuance to secure the AME, and (3) the doctor sought to perform the AME was notoriously difficult to schedule with, which was likely to delay the litigation even further.[35]

The *Hicks* court’s reliance on *Daigle* is misguided. The facts in *Hicks* were materially different than Daigle: (1) the defendants in *Hicks* filed their motion to compel less than two years into the litigation and the district court had refused to authorize an AME at the outset of litigation, (2) no continuance of trial was sought when the AME was requested, and (3) the doctor was available to perform the AME.[36] Not only are the facts in *Hicks* completely dissimilar to those in *Daigle*, but in discussing the relevance of the movant’s ability to obtain the information sought through other means, the *Daigle* opinion relied on the Louisiana Supreme Court’s decision in *Williams v. Smith*, which was superseded by a legislative amendment to article 1464(A).[37] Accordingly, the First and Second circuits erroneously

applied the earlier provisions of *Schlagenhauf* to situations involving a plaintiff in a personal-injury case, putting the ability of the movant to obtain the information by other means at the forefront of the good cause analysis.[38]

B. The Third and Fourth Circuits' Correct Application of Schlagenhauf

The Third and Fourth circuits hold that a plaintiff placing his or her mental or physical condition in controversy establishes good cause for an AME and that fairness dictates a defendant receive an AME in order to rebut the plaintiff's experts at trial.[39] Applying this standard, the Third Circuit in *Robin v. Associated Indemnity Co.* emphasized that a plaintiff can seek the advice or treatment of as many doctors of her own choosing as she wants, and she can parade any number of doctors across the witness stand to testify on her behalf.[40] Accordingly, justice demands that courts give defendants the right to require the plaintiff to submit to a reasonable medical examination in order for the defendant to prepare and present any defense that may be available regarding the alleged injuries.[41]

To balance the rights of the parties to personal-injury litigation and achieve fairness, in *Cantwell v. Garcia*, the Fourth Circuit extended an application of article 1464 to examinations by psychologists because the plaintiff in *Cantwell* sought psychological damages and underwent examinations by his own psychological expert.[42] In reversing the district court's denial of the defendant's request for an AME, the Fourth Circuit stated, "To deny defendant the opportunity to rebut plaintiff's psychologist at trial with an expert of similar status is unduly prejudicial. Simply permitting cross-examination of the proponent's expert deprives the opponent of developing his case and offering independent contradictory testimony."[43]

Further applying the latter portion of *Schlagenhauf*'s good cause analysis to a plaintiff in a negligence action, in *Williamson v. Haynes Best Western of Alexandria*, the Fourth Circuit recognized that because the plaintiff would seek damages at trial for severe and complex injuries, the defendant is entitled to any AME.[44] However, the issue before the court was whether the defendant's right to an AME under article 1464 extended to ordering the plaintiff to submit to a week-long hospitalization for the performance of a series of tests.[45] Balancing the defendant's right of defending against the plaintiff's claim for injuries with the plaintiff's competing right to not be hospitalized for a week, the Fourth Circuit remanded the issue to the district court to confect the details of the AME in accordance with article 1464.[46]

The decisions of the Third and Fourth circuits reflect the proper application of article 1464, which is designed to achieve fairness between the parties.[47] The First and Second circuits based their decisions on language from *Schlagenhauf* and other misapplied opinions.[48] The Louisiana Supreme Court should rely on the Supreme Court of the United States' conclusion that a defendant in a personal-injury negligence action requesting an examination of the plaintiff sufficiently establishes the in controversy and good cause requirements of Rule 35(a) simply by pointing to the petition for damages.

III. The Louisiana Supreme Court Should Adopt the Third and Fourth Circuits' Approach to Interpreting *Good Cause*

In July 2021, the defendants in *Hicks* filed a writ to the Louisiana Supreme Court to resolve the significant legal issue regarding the good cause requirement of Louisiana Code of Civil

Procedure article 1464, especially as it relates to plaintiffs in negligence actions who assert physical injuries. The defendants argue that the district court’s holding that the opportunity to review plaintiff’s medical records and physician testimony negated defendants’ ability to prove good cause was an erroneous interpretation of article 1464 that precluded defendants from rebutting plaintiff’s experts at trial with an expert on equal footing. The First and Second circuits’ interpretation allows a plaintiff to unfairly accomplish two things. First, it prevents a defendant’s AME physicians from having an opportunity to develop an opinion through an examination that may be adverse to a plaintiff’s treating providers. Second, it prevents the in-person examination from a defendant’s AME physicians, allowing a plaintiff to argue that the jury should not believe, or should discount, the defendant’s physician’s testimony because the defendant’s physician never physically examined the plaintiff. Going forward, the First Circuit’s opinion creates an unequal playing field for litigants by placing an insurmountable burden on defendants who seek to challenge a plaintiff’s experts at trial.

Considering the unfairness that arises under the First Circuit’s interpretation of good cause, the Louisiana Supreme Court should rectify the good cause analysis under article 1464. The court should look to the good cause framework set forth by the Third and Fourth circuits rather than using the First and Second circuits’ holdings that are based on misapplied and misconstrued language from *Schlagenhauf*.

Conclusion

As it stands, good cause under article 1464 remains an unsettled issue of law. The split amongst the circuits exists because some adopt the framework set forth in *Schlagenhauf*, yet others heighten the burden for good cause in an unduly prejudicial manner. The Louisiana Supreme Court should use the opportunity presented by the writ taken in the *Hicks* case to clarify the interpretation of good cause.

[1] La. Code Civ. Proc. art.1464.

[2] Hicks v. USAA Gen. Indem. Co., No. 2091-0552, 2021 WL 1136210 (La. Ct. App. 1st Cir. Mar. 25, 2021).

[3] Daigle v. City of Shreveport, 78 So. 3d 753 (La. Ct. App. 2d Cir. 2011); *Hicks*, 2021 WL 1136210.

[4] *Hicks*, 2021 WL 1136210.

[5] Robin v. Associated Indem. Co., 260 So. 2d 118 (La. Ct. App. 3d Cir. 1972), *rev’d on other grounds*, 297 So. 2d 427 (La. 1973); Cantwell v. Garcia, 522 So. 2d 721 (La. Ct. App. 4th Cir. 1988); *see also* Guerra v. M.P. O’Meara Oil Co., 609 So. 2d 1015 (La. Ct. App. 4th Cir. 1992); Williamson v. Haynes Best W. of Alexandria, 595 So. 2d 1201 (La. Ct. App. 4th Cir. 1992).

[6] Schlagenhauf v. Holder, 379 U.S. 104 (1964).

[7] Williams v. Smith, 576 So. 2d 448 (La. 1991); *see also* Madison v. Travelers Ins. Co., 308 So. 2d 784, 786 (La. 1975) (stating that since Louisiana’s discovery rules were obtained from the federal rules, courts may look for guidance in the federal decisions that have interpreted identical provisions).

[8] *Schlagenhauf*, 379 U.S. 104.

[9] *Id.*

[10] “This is not only true as to a plaintiff, but applies equally to a defendant who asserts his mental or physical condition as a defense to a claim.” *Id.* at 119.

[11] *Id.* at 118. “In interpreting La. Code. Civ P. Art. 1464, Louisiana courts have relied upon prior interpretations of Fed. R. Civ. P. 35(a) by the federal courts, using federal decisions as persuasive guides to the intended meaning of article 1464.” *Williams*, 576 So. 2d at 450 (citing *Madison*, 308 So.2d at 786 (stating that since Louisiana’s discovery rules were obtained from the federal rules, courts may look for guidance in the federal decisions that have interpreted identical provisions)).

[12] *Schlagenhauf*, 379 U.S. at 106.

[13] *Id.* at 120.

[14] *Id.* at 119.

[15] *Id.* at 118–19 (emphasis added) (internal citations omitted).

[16] *Id.* at 119–20.

[17] *Id.* at 119.

[18] *Id.*

[19] *See* Daigle v. City of Shreveport, 78 So. 3d 753 (La. Ct. App. 2d Cir. 2011); Hicks v. USAA Gen. Indem. Co., No. 2091-0552, 2021 WL 1136210 (La. Ct. App. 1st Cir. Mar. 25, 2021).

[20] *Id.*

[21] *See* cases cited *supra* note 4.

[22] *Hicks*, 2021 WL 1136210, at *8.

[23] Williamson v. Hartford Cas. Ins. Co., No. 2017-1073, 2017 WL 3888827 (La. Ct. App. 1st Cir. Sept. 6, 2017).

[24] *Daigle*, 78 So. 3d at 762.

[25] Williams v. Smith, 576 So. 2d 448 (La. 1991).

[26] *Hicks*, 2021 WL 1136210, at *15 (citing *Williamson*, 2017 WL 3888827, at *1).

[27] *Williamson*, 2017 WL 3888827, at *1.

[28] *Id.* (citing Schlagenhauf v. Holder, 379 U.S. 104, 118 (1964)).

[29] *Hicks*, 2021 WL 1136210, at *1.

[30] *See Schlagenhauf*, 379 U.S. at 119.

[31] Daigle v. City of Shreveport, 78 So. 3d 753, 762 (La. Ct. App. 2d Cir. 2011).

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.* at 761.

[36] *See generally* Hicks v. USAA Gen. Indem. Co., No. 2091-0552, 2021 WL 1136210 (La. Ct. App. 1st Cir. Mar. 25, 2021).

[37] Daigle v. City of Shreveport, 78 So. 3d 753, 762 (La. Ct. App. 2d Cir. 2011) (citing Williams v. Smith, 576 So. 2d 448 (La. 1991)).

[38] *See id.*; *Hicks*, 2021 WL 1136210.

[39] Robin v. Associated Indem. Co., 260 So. 2d 118 (La. Ct. App. 3d Cir. 1972) *rev’d on other grounds*, 297 So. 2d 427 (La. 1973) (holding that good cause exists where a personal-injury plaintiff’s physical condition would have to be considered in the event defendants were found liable); Cantwell v. Garcia, 522 So. 2d 721, 724 (La. Ct. App. 4th Cir. 1988) (extending article 1464 to examinations performed by psychologists because plaintiff’s emotional damages were a justiciable issue for trial and “to permit a party to have exclusive control of a witness or exhibit is inherently iniquitous and unequal”); *see also* Guerra v. M.P. O’Meara Oil Co., 609 So. 2d 1015, 1015 (La. Ct. App. 4th Cir. 1992); Williamson v. Haynes Best W. of Alexandria, 595 So. 2d 1201 (La. Ct. App. 4th Cir. 1992).

[40] *Robin*, 260 So. 2d at 121.

[41] *Id.*

[42] *Cantwell*, 522 So. 2d at 723.

[43] *Id.* at 724.

[44] *Williamson*, 595 So. 2d at 1204. This quote references an IME, which is the older version equivalent to an AME.

[45] *Id.*

[46] *Id.* at 1205.

[47] *See* cases cited *supra* note 4.

[48] *See* Daigle v. City of Shreveport, 78 So. 3d 753 (La. Ct. App. 2d Cir. 2011); Hicks v. USAA Gen. Indem. Co., No. 2091-0552, 2021 WL 1136210 (La. Ct. App. 1st Cir. Mar. 25, 2021).

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