

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2021/CLE/GEN/001470

BETWEEN

BRINDELL PRATT

Claimant

AND

AML FOODS LIMITED

Defendant

Before: The Honourable Justice Camille Darville Gomez

Appearances: Mr. Lessiah Rolle and Mr. Cyril Morris for the Claimant
Mr. Rhyan Elliott for the Defendant

Hearing Date: 26 September, 2024

*Medical Examination — Reasonableness of Refusal - Expert Qualification — Overlap Between Disciplines -
Prior Judicial Findings — Relevance to Impartiality - Directions for Examination — Unless Order — Conditional
Stay of Proceedings*

RULING

DARVILLE GOMEZ, J

Introduction

- [1.] Mr. Brindell Pratt, the Claimant was employed by the Defendant, AML Foods and sustained injuries in the course of his employment. He has brought proceedings against the Defendant alleging negligence and breach of statutory duty under the Health and Safety at Work Act. The claim includes both special and general damages arising from the alleged injuries.
- [2.] The trial was bifurcated, with liability and quantum to be determined separately. Accordingly, the issue of quantum—including medical evidence—was not required for the trial on liability to proceed.

- [3.] Despite the fact that this action was commenced prior to the Civil Procedure Rules, 2022, it is now governed by them.
- [4.] The trial on liability was concluded in April, 2025 and the Court is presently awaiting receipt of the parties' closing submissions.
- [5.] Mr. Pratt has undergone medical examination by practitioners of his own choosing. However, he has declined to be examined by a medical practitioner nominated by AML Foods. Thus, AML Foods has sought an Order pursuant to CPR Rule 26.1(2)(v) and/or the inherent jurisdiction of the Court directing Mr. Pratt within 14 days, to provide a signed medical authorization in favour of Dr. David Barnett, Consultant Orthopedic Surgeon, or another suitably qualified practitioner nominated by AML Foods, permitting third-party disclosure of his relevant medical records and radiological materials; and further directing him to submit to a medical examination by Dr. Barnett or such nominated practitioner within 28 days of the Order.
- [6.] In view of the passage of time since the alleged accident on 30 October, 2019 and the completion of the liability trial in April, 2025, the Court considered it appropriate to address this application with dispatch, mindful of the need to ensure procedural fairness and to facilitate timely case management in the event that liability is established and the matter proceeds to the quantum stage.

The Application

- [7.] AML Foods by a Notice of Application (the "Application") filed on 25 September, 2024 sought the following reliefs:
- (i) an Order pursuant to CPR Rule 26.1(2)(v) and/or the inherent jurisdiction of the Court directing the Claimant:
 - (a) to provide a signed medical authorization form (in a form prescribed by the Defendant) in favour of Dr. David Barnett, Consultant Orthopaedic Surgeon ("Dr. Barnett") or such other suitably qualified medical practitioner as may be nominated by the Defendant, within 14 days of such an Order, to permit the disclosure by third parties of the Claimant's relevant and available medical records, including all relevant radiological images, studies and reports; and
 - (b) to submit to a medical examination by Dr. Barnett, or such other suitably qualified medical practitioner as may be nominated by the Defendant, within 28 days of such an Order.
 - (ii) Further, an Order pursuant to CPR 26.4(1) and/or the inherent jurisdiction of the Court that, unless the Claimant shall (i) provide a signed medical authorization form to Dr. Barnett to permit the disclosure by third parties of the Claimant's relevant and available medical records and (ii) submit to a medical examination by Dr. Barnett or such other suitably qualified medical practitioner nominated by the Defendant, within 28 days of the date that

such Order, as is sought at paragraph 1 above, is made, these proceedings and the Claimant's claims in this action shall be struck out, or alternatively, stayed.

- (iii) An Order that the costs of and occasioned by this application shall be paid by the Claimant to the Defendant, to be fixed, if not agreed.
- (iv) Further, the Defendant seeks case management directions for the further conduct of these proceedings pursuant to CPR Part 26.1, CPR 27.5 and/or the inherent jurisdiction of the Court.

[8.] It is supported by an Affidavit of Renai Martin also filed on 25 September, 2024.

[9.] The Claimant has objected to this application and has filed an Affidavit on 6 November, 2024.

Chronology Leading to the Application

[10.] Mr. Pratt in his List of Documents filed on 27 March, 2023 disclosed certain medical records and reports from Dr. Charles Rahming and noted that certain "Latest Medical Reports" were "Pending".

[11.] On 23 June, 2023 the Claimant filed the Witness statement of Dr. Charles Rahming which exhibited a Medical Report of Dr. Rahming dated 2 October, 2020 and a Second Medical Report of Dr. Charles Rahming dated 5 March, 2023.

[12.] The First Rahming Report details certain personal injuries alleged to have been sustained by the Claimant and is based upon consultations and medical examinations held with the Claimant on 6 January, 2020; 21 February 2020; 4 June, 2020; 21 July, 2020; and upon Magnetic Imaging Studies of the Lumbar Spine and Cervical Spine dated 9 December, 2019 and of the brain dated 18 June, 2020.

[13.] The Second Rahming Medical Report details certain further and/or additional personal injuries alleged to have been sustained by the Claimant. The Second Rahming Medical Report stated that the findings and conclusions made were based upon a consultation with and a re-assessment of the Claimant on 6 February, 2023.

[14.] On 19 July, 2023 the Defendant's attorneys issued a letter to request that the Claimant be examined by a medical expert instructed by the Defendant, namely Dr. David Barnett, Consultant Orthopedic Surgeon, Bahamas Surgical Associates Center. Further, the Defendant's attorneys requested that the Claimant confirm his agreement to (i) submit to a medical examination by Dr. Barnett and (ii) provide a signed medical authorization form.

[15.] The Claimant's attorney, Mr. Rolle by email wrote as follows:

“Client is not minded to being examined by Dr. David Barnett particularly that the incident occurred some four years ago and wonders whether the Defendant questions Dr. Rahming qualifications and or credibility.”

- [16.] The Defendant’s attorneys again wrote on 18 September, 2024 to confirm agreement to the Defendant’s requests as no substantive response had been received to each of the requests.
- [17.] By a letter from the Claimant’s attorneys dated 19 September, 2024 (the “September letter”) the Claimant provided disclosure of the further medical evidence, particularly, a report of Dr. Susheel Wadhwa dated 1 November, 2023 (“Wadhwa Medical Report”) which provides certain further details concerning the personal injuries alleged to have been sustained by the Claimant. The Wadhwa Medical Report was disclosed to the Defendant some ten (10) months after it had been issued. This report referred to consultations and examinations at Doctor’s Hospital on 15 April, 2021; 23 April, 2021; 16 June, 2023; 20 July, 2023 and evaluations of certain radiological images, reports and medical records of the Claimant including Magnetic Imaging Studies conducted in December, 2019, 7 July, 2023.
- [18.] The Claimant’s September letter reiterated that the Claimant was ‘not minded to agree’ to a medical examination by Dr. Barnett as (i) he considers that his injuries are “*neurological and spine related*” and that any such examination ought to be conducted by a Neurological Specialist and (ii) he fears that any examination by Dr. Barnett may expose him to “*unnecessary aggravation*” of his injuries.
- [19.] On 25 September, 2024 after its various attempts to obtain the Claimant’s agreement to the Examination Request and the Medical Authorisation Form Request in the usual course, AML Foods then filed the instant application.

Analysis and Decision

- [20.] The central issue before the Court is whether the Claimant, Mr. Pratt, should be compelled to undergo an independent medical examination by a practitioner nominated by the Defendant, AML Foods. The Defendant contends that such an examination is necessary to fairly assess the nature and extent of the injuries alleged, particularly in light of the bifurcation of the trial and the pending quantum phase.
- [21.] The Defendant further submitted that the Case Management Order did not provide for the admission of expert evidence and, accordingly, the medical reports disclosed by the Claimant ought not to be relied upon without the Court’s permission, pursuant to Part 32.6 of the Supreme Court Civil Procedure Rules, 2022 (“CPR”). Additionally, the Defendant alleges that the Claimant failed to disclose all relevant medical records, in breach of Part 28.4 of the CPR. A non-exhaustive list of diagnostic studies and tests referenced in the reports of the Claimant’s medical experts were omitted from the disclosed documents.

- [22.] In correspondence dated July 2023, the Claimant’s attorneys advised that they were not minded to consent to an examination by Dr. Barnett, citing the passage of time since the accident—some four years—and querying whether the Defendant doubted the qualifications or credibility of Dr. Charles Rahming, the Claimant’s treating physician.
- [23.] The Court also observed that this procedural impasse might have been avoided had the action been commenced under the CPR. Pursuant to Part 8.9, the Claimant would have been required to attach to the claim form any medical report setting out the personal injuries alleged. The absence of early disclosure deprived the Court of an opportunity to ensure transparency, procedural fairness, and the orderly conduct of the case.
- [24.] The Court is mindful that the Claimant has already been examined by medical professionals of his own choosing. However, in personal injury litigation, it is well established that both parties must have a fair opportunity to present medical evidence. The Defendant is entitled to challenge the Claimant’s medical findings and to obtain its own expert opinion, provided the expert is properly qualified and the request is reasonable.
- [25.] While there is no automatic right to a medical examination, there is a strong presumption in favour of the Defendant’s entitlement. **Clarke v Martlew [EWCA] Civ 0623-3**. Further, the Court of Appeal in **Starr v National Coal Board [1976] EWCA Civ 1008-2** held that provided that the doctor is properly qualified, the defendant is entitled to insist on their chosen expert unless, the claimant can show that this would be unfair or unreasonable in the circumstances. The court emphasized that what is unfair or unreasonable will depend on the facts of each case. This was followed in the recent case of **Mrs. Samantha Danyelle Clarke v Matthew Poole [2024] EWHC 1509 (KB)**.
- [26.] The courts have provided guidance on what may constitute a reasonable or unreasonable refusal.
- [27.] I will consider this in the context of Mr. Pratt’s objections to the independent examination.
- [28.] I refer to the affidavit of Mr. Pratt where he set out his objections as follows:

“3. I am advised by my attorneys Lessiah Rolle and verily believe that Dr. Barnett:

- 3.1 Was found negligent in the matter of Grant and another v Barnett and another (2008) 6 BHS J No. 3; in which matter he was sued for negligence in the death of Romeo Grant.
- 3.2 Testimony was rejected in the case of Ryan Stran v Raynor Russell and another (2023) 1 BHS J No. 141 @ para 47, in favour of that of Dr. Munnings. Dr. Clyde Munnings is a Consultant Neurologist and Dr. Barnett is a Consultant Orthopedic. The patient in that matter suffered *inter alia*, from “Cervical radiculopathy

secondary to multilevel herniated nucleus/bulging disc at C4-C5 among other sustained injuries” (see Ryan Stran case @ para 8)

- 3.3 Made assertions in his affidavit filed the 31 October 2024 at page 3 para 10 and page 4 para 11 and at page 16 that I have a pre-existing condition.
4. Dr. Charles Rahming in his Report dated the 2nd October 2020 at Exhibit BP1 AT PAGE 13 of my 3rd Affidavit filed the 3rd Affidavit filed the 17th October 2024 assesses my condition as *inter alia* “Subtle HNP C3-C4...”
5. I have researched Google Online for the Bahamas Surgical Association Web page which states that his Orthopedic Services are, knee injuries, hand and shoulder injuries, and fractures. A copy of the Google Document is shown to me and attached marked Exhibit BP 1. I am advised by Attorney Lessiah Rolle and verily believe that the said Exhibit BP 1 containing the statements herein were produced by a computer:
 - 5.1 At L Rolle & Associates during a period over which the said computer was used regularly to store or process information for the purpose of any activities regularly carried on by L Rolle & Associates;
 - 5.2 Over such period of time where there was regularly supplied to the said computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
 - 5.3 Which throughout the material part of that period the computer was operating properly; and
 - 5.4 Which generated the information contained in the statement that was reproduced or is derived from information supplied to said computer in the ordinary course of those activities.
6. I have never had any prior accident resulting in any injury to my back or any other part of my body.
7. Based on the aforesaid, I verily believe that if the Court accede to the Defendant’s request to have Dr. Barnett examine me and make a report that will make it more difficult to make a “just determination of the cause” than it would be, if a Neurological Specialist examined me and or do the report.
8. I verily believe that my condition is neurological and not orthopedic and that Dr. Charles Rahming or another Neurological Specialist rather than Dr. Barnett an Orthopedic Specialist, is better suited to treat, examine and make a report on my condition.”

[29.] It would be fair to say that Mr. Pratt has two major issues with being medically examined by Dr. Barnett which may be reduced as follows:

- (i) Adverse History of Dr. Barnett
- (ii) Whether injuries are neurological or orthopedic in nature

[30.] The Claimant objected to being examined by Dr. David Barnett and relied on two prior cases in which Dr. Barnett's evidence was either rejected or he was sued for negligence. The Claimant further asserted that his condition is neurological in nature and therefore more appropriately assessed by a neurological specialist.

Adverse History of Dr. Barnett

[31.] In the **Ryan Stran** case, the Court preferred the evidence of Dr. Munnings over that of Dr. Barnett, but did so in the context of a patient who had an established treatment history with Dr. Munnings, among other considerations. The Court's rejection of Dr. Barnett's evidence in that matter does not, of itself, establish bias or incompetence.

[32.] Similarly, while Dr. Barnett was found negligent in the **Grant and another** case and held liable for Mr. Grant's death, that finding does not equate to professional misconduct nor does it constitute a basis for automatic disqualification in unrelated proceedings.

[33.] The Defendant in the Martin Affidavit set out the qualifications of Dr. David Barnett who is a Consultant Orthopedic Surgeon with over thirty (30) years of clinical experience. He is a Fellow of the British Orthopedic Society and a member of the American Academy of Orthopedic Surgeons. She went onto say:

“ Dr. Barnett is exceptionally qualified to carry out a medical examination of the Claimant to enable the Defendant to assess the injuries alleged and to properly defend itself against the allegations of personal injury pleaded in this action, as Orthopedic medicine is specifically concerned with the assessment and management of conditions affecting the musculoskeletal system, including inter alia musculoskeletal injuries and trauma, spine diseases, and degenerative disorders. Moreover, the assessment and treatment of the injuries alleged by the Claimant are within Dr. Barnett's field of specialty and are not exclusive to Neurology.

35. Further in support of the Relief Sought, AML Foods hereby invites the Court to take judicial notice that Dr. Barnett has (i) often been deemed an expert in Orthopedic Surgery and (ii) his evidence has often been lead in and has been accepted by the Supreme Court of The Bahamas in many personal injuries claims including, but not limited to the following case examples (pages 46 – 127, Bundle of Authorities)

[34.] Applying the principles in **Edmeades v Thames Board Mills Ltd. [1969] EWCA Civ J10120-1**, the Court must determine whether the Claimant's objections are supported by specific and substantial reasons, or whether it amounts to mere preference or suspicion. The Court accepts that prior judicial findings may inform a party's concern about impartiality or competence, but such findings must be directly relevant and sufficiently probative.

[35.] The Court finds that the two cases relied upon by the Claimant are neither directly relevant to the present proceedings nor sufficiently probative to support the objection. As established in **Edmeades v Thames Board Mills Ltd.**, objections to expert evidence must rest on specific and substantial grounds.

Whether injuries are neurological versus orthopedic in nature

[36.] The Court acknowledged that the Defendant's attorneys wrote to the Claimant's counsel as early as July 2023 requesting that Mr. Pratt undergo an independent medical examination. In response, the Claimant's attorney, by letter dated September 2023, refused the request on the basis that the injuries were neurological and spine-related, and that an examination by Dr. Barnett, an orthopedic surgeon, might expose the Claimant to "unnecessary aggravation."

[37.] The Court is not persuaded that the Claimant's refusal to undergo examination by Dr. Barnett was justified. The assertion that such an examination would result in "unnecessary aggravation" is unsubstantiated and appears speculative in the absence of any supporting medical evidence. If the Claimant genuinely believed that an orthopaedic assessment posed a clinical risk, it was incumbent upon him to provide corroborative opinion from his treating neurologists, Dr. Rahming or Dr. Wadhwa. No such evidence was presented.

[38.] Therefore, in the absence of specific and substantial reasons—such as a documented history of adverse treatment, bias, or misconduct—the Court finds that the Claimant's refusal does not meet the threshold of reasonableness as articulated in **Edmeades v Thames Board Mills Ltd. [1969] EWCA Civ J10120-1**.

[39.] The Court is satisfied that Dr. David Barnett, Consultant Orthopaedic Surgeon, is suitably qualified to conduct such an examination. While the Claimant has raised neurological concerns and identified Dr. Rahming, a neurologist, as his expert, the Court has found that there is sufficient disciplinary alignment to permit the examination. The Court is not bound to require identical disciplines provided the expert's qualifications and scope of practice are reasonably suited to the nature of the dispute.

[40.] Further, The Defendant is entitled to select an expert of their choosing, and has done so with the benefit of prior reports from Dr. Rahming and Dr. Wadha, both neurologists. The Court may have reached a different conclusion had there been no overlap in the relevant disciplines or had the proposed expert's field been wholly unrelated to the nature of the injuries. That is not the case here. Accordingly, the Defendant's choice of an orthopaedic expert stands.

[41.] Therefore, the Court finds that the Claimant's refusal to be examined by Dr. Barnett is not reasonable within the meaning of **Edmeades**.

Conclusion

- [42.] The Case Management Conference (CMC) directions issued to date have not included provision for medical expert evidence. Should the action advance to the quantum stage, further directions will be necessary to address this omission. The Court will hear the parties on the appropriate timing for such directions.
- [43.] Accordingly, in consideration of CPR Rule 26.1(2)(v), CPR Rule 26.4(1), and the inherent jurisdiction of the Court;

IT IS HEREBY ORDERED THAT:

1. The Claimant shall, within fourteen (14) days of the date of this Order, provide a signed medical authorization form (in a form prescribed by the Defendant) in favour of Dr. David Barnett, Consultant Orthopaedic Surgeon ("Dr. Barnett"), or such other suitably qualified medical practitioner as may be nominated by the Defendant, authorizing the disclosure by third parties of the Claimant's relevant and available medical records, including all relevant radiological images, studies, and reports.
2. The Claimant shall, within twenty-eight (28) days of the date of this Order, submit to a medical examination by Dr. Barnett, or such other suitably qualified medical practitioner as may be nominated by the Defendant.
3. Unless the Claimant shall: (i) provide a signed medical authorization form to Dr. Barnett (or such other suitably qualified medical practitioner nominated by the Defendant) to permit the disclosure by third parties of the Claimant's relevant and available medical records; and (ii) submit to a medical examination by Dr. Barnett (or such other suitably qualified medical practitioner nominated by the Defendant), within twenty-eight (28) days of the date of this Order.
4. THEN these proceedings and the Claimant's claims in this action shall be struck out, or alternatively, stayed.

Dated the 20th day of October, 2025



Camille Darville-Gomez
Justice