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# Transcript of Hearing

**Date:** November 15, 2019

**Case:** Depp, II -v- Heard

**Planet Depos**

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Transcript of Hearing  
Conducted on November 15, 2019

1 (1 to 4)

1	VIRGINIA:	1	A P P E A R A N C E S	3
2	IN THE CIRCUIT COURT OF FAIRFAX COUNTY	2	ON BEHALF OF PLAINTIFF:	
3	-----X	3	BENJAMIN G. CHEW, ESQUIRE	
4	JOHNNY C. DEPP, II, )	4	BROWN RUDNICK, LLP	
5	Plaintiff, )	5	581 Thirteenth Street, Northwest	
6	-vs- ) NO. CL-2019-0002911	6	Suite 600	
7	AMBER LAURA HEARD, )	7	Washington, D.C. 20005	
8	Defendant. )	8	(202) 536-1700	
9	-----X	9		
10	Hearing	10	ON BEHALF OF DEFENDANT:	
11	BEFORE THE HONORABLE BRUCE D. WHITE	11	JOSHUA R. TREECE, ESQUIRE	
12	Fairfax, Virginia	12	J. BENJAMIN ROTTENBORN, ESQUIRE	
13	Friday, November 15, 2019	13	WOODS ROGERS, PLC	
14	11:19 a.m.	14	10 South Jefferson Street	
15	Job No : 273271	15	Suite 1400	
16	Pages: 1 - 29	16	Roanoke, Virginia 24011-1319	
17	Reported by Theresa R. Hollister, CCR	17	(540) 983-7600	
18		18		
19		19		
20		20		
21		21		
22		22		
1	Hearing held at:	1	P R O C E E D I N G S	4
2		2	(Court reporter duly sworn by the Court.)	
3	Fairfax County Circuit Court	3	THE COURT: Okay, thank you all. Go	
4	4110 Chain Bridge Road	4	ahead and note your appearances. Please.	
5	Courtroom 5H	5	MR. TREECE: Good morning, Your Honor.	
6	Fairfax, Virginia 22030	6	Joshua Treece from Woods Rogers on behalf of	
7	(703) 691-7320	7	Ms. Heard. With me is Ben Rottenborn also on behalf	
8		8	of Ms. Heard.	
9	Pursuant to notice, before Theresa R.	9	THE COURT: Good morning.	
10	Hollister, Certified Court Reporter and Notary	10	MR. ROTTENBORN: Good morning, Your	
11	Public for the Commonwealth of Virginia.	11	Honor.	
12		12	MR. CHEW: Good morning, Your Honor. May	
13		13	it please the court. Ben Chew for Mr. Depp.	
14		14	THE COURT: Good morning.	
15		15	Okay, I'm ready when you all are.	
16		16	MR. TREECE: Thank you.	
17		17	Your Honor, we're here today on	
18		18	Ms. Heard's motion for an independent medical	
19		19	examination of Mr. Depp, pursuant to Virginia Rule	
20		20	4:10. As the court is aware, Rule 4:10 provides	
21		21	that when the mental condition of a party is in	
22		22	controversy, the court, on a motion by the adverse	

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2 (5 to 8)

<p>5</p> <p>1 party, so on a motion by Ms. Heard in this case, the 2 court may order the party to submit to a mental 3 examination by one or more health care providers, 4 employed by the moving party on a motion for good 5 cause.</p> <p>6 As cited in our brief, Your Honor, good 7 cause can be shown on the pleadings or on 8 affidavits. Here, we have both. Good cause is 9 demonstrated both in the complaint and in the 10 declarations that are at issue, the 2016 declaration 11 in particular.</p> <p>12 In this case, Your Honor, Mr. Depp's 13 mental condition is in controversy and good cause 14 supports an order for an independent medical 15 examination of Mr. Depp.</p> <p>16 In fact, this court already found, in 17 connection with a motion to compel, that quote, The 18 complaint is broad enough to place Mr. Depp's mental 19 condition in issue. The court's finding is 20 indisputably correct and good cause supports entry 21 of an order, Your Honor.</p> <p>22 Now, as I mentioned, good cause can be</p>	<p>7</p> <p>1 entire declaration, according to them, is a false 2 narrative -- that she is a domestic abuse victim in 3 her false 2016 affidavit.</p> <p>4 In paragraph 33, the complaint alleges 5 that Ms. Heard used her false abuse allegations in 6 her 2016 declaration to obtain a temporary 7 restraining order against Mr. Depp on May 27, 2016. 8 There is no dispute that what they're calling as 9 false is the 2016 declaration. And they make the 10 same allegations in each of their counts. So in 11 paragraph 77, they make reference to the false 12 declaration. They do that in each count. So you 13 have got paragraph 77, paragraph 88, and paragraph 14 99.</p> <p>15 Because plaintiff's entire case is based 16 on disputing the 2016 declaration, which 17 inextricably intertwines Mr. Depp's mood disorders, 18 Mr. Depp's substance abuse, with the specific 19 instances of abuse that they take issue with, and 20 they're calling all of that false, Mr. Depp's mental 21 condition is facially in controversy, Your Honor. 22 It is in controversy under Rule 4:10.</p>
<p>6</p> <p>1 demonstrated by the complaint and by affidavits or 2 declarations. So let's start with the complaint. 3 In his complaint, Mr. Depp repeatedly alleges that 4 Ms. Heard submitted a, quote, false affidavit to 5 obtain a restraining order against Mr. Depp in 2016. 6 That's in paragraph 30 of the complaint, Your Honor.</p> <p>7 As Your Honor is well aware, this is a 8 defamation by implication case. There is the 9 Washington Post op-ed. And the entire theory of 10 plaintiff's case is that this op-ed refers, by 11 implication, to the 2016 declaration or affidavit 12 that was submitted in connection with a temporary 13 restraining order in California.</p> <p>14 Throughout their complaint they say that 15 the declaration, at large, is false. That 16 declaration details allegations of abuse that are 17 inextricably intertwined with Mr. Depp's mental 18 condition, substance abuse disorders, and mood 19 disorders.</p> <p>20 Your Honor, in paragraph 30 of 21 plaintiff's complaint, plaintiff alleges that 22 Ms. Heard published her false narrative -- so the</p>	<p>8</p> <p>1 So, with that, I'd like to turn to the 2 specifics of the 2016 declaration, Your Honor. 3 Again, the 2016 declaration, just to give you a high 4 level summary of what's at issue and then I'll walk 5 through the paragraphs, so the court can see it, it 6 puts at issue plaintiff's mood disorders, substance 7 use disorders, volatility, paranoia, temper, 8 aggressive and destructive tendencies, delusional, 9 irrational, and incoherent ideations, and, quote, 10 his understanding of reality that oscillates, 11 depending upon his interactions with alcohol and 12 drugs, and his need for anger management counseling. 13 All of those relate to his mental condition. All of 14 those are tied to the allegations of abuse. All of 15 those are alleged to be false by Mr. Depp in his 16 complaint. His mental condition is in controversy 17 and it relates to the truth of Ms. Heard's 18 statements in her 2016 declaration.</p> <p>19 And with that, let's talk about what she 20 says specifically in the 2016 declaration. And 21 this, of course, the declaration is attached to our 22 motion, Your Honor.</p>

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3 (9 to 12)

9	11
1 In paragraph 5, Ms. Heard states, "Johnny	1 up like a baseball pitcher, he threw the cell phone
2 has a long-held history of drug and alcohol abuse.	2 at Ms. Heard, hit her in the face with great force
3 He has a short fuse. He is often paranoid and his	3 and caused damage to her face.
4 temper is exceptionally scary for me as it has	4 In their complaint, Your Honor, they
5 proven many times to be physically dangerous and/or	5 quote the declaration. They quote the declaration
6 life threatening to me."	6 in paragraph 33 of the complaint. So there is no
7 She attests that "Johnny's relationship	7 dispute that the complaint at large takes issue with
8 with reality oscillates, depending upon his	8 the truth of the statements in her declaration that
9 interaction with alcohol and drugs, Johnny's	9 puts his mental condition in controversy.
10 paranoia, delusions, and aggression increased	10 It is inseparably intertwined with the
11 throughout our relationship. So has my awareness of	11 abuse allegations and plaintiff's turbulent nature
12 his continued substance abuse." Because of this,	12 and substance use disorders are directly relevant to
13 she asserts she is afraid of Johnny and she says	13 what's at issue in this case, to the truth of her
14 Johnny also requires enrollment in anger management	14 2016 declaration, to the truth of the statements
15 counseling. All of those allegations in her 2016	15 therein. That is the heart of their case, assuming
16 allegation directly relate to Mr. Depp's mental	16 they have a case that can survive a demurrer.
17 condition, put it in controversy.	17 As this court is aware, in 2019,
18 In paragraph 7 of her declaration, Your	18 Ms. Heard submitted a declaration to this court.
19 Honor, she talks about an instance, an instance of	19 That declaration is consistent with her 2016
20 abuse of April 21st, 2016. She says, I celebrated	20 declaration and, likewise, puts his mood disorders
21 my birthday with friends. Johnny showed up	21 and substance use disorders in controversy.
22 inebriated and high. That is one of the triggers	22 In her 2019 declaration, which the court
10	12
1 for his aggressive conduct. Because that, in	1 has in connection with the motion to dismiss that
2 connection with his mood disorders and his paranoia,	2 was filed, she says, About a year into our
3 the being drunk and high, trigger his aggressive	3 relationship, I began witnessing Johnny abusing
4 conduct. She says, Johnny started throwing a	4 drugs and alcohol, and would notice when he was
5 magnum-size champagne bottle at the wall and wine	5 drunk or high, he frequently went in and out of drug
6 glass at me and the floor, both of which shattered.	6 and alcohol dependency medical care, including
7 Johnny then grabbed me by the shoulders, pushed me	7 24-hour, live-in medical aid in the last 3 years of
8 onto the bed. She says, he grabbed my hair and	8 the relationship.
9 violently shoved me to the floor.	9 So he has received treatment
10 In their complaint, they allege that	10 indisputably, as set forth in the declaration, for
11 these allegations are false. Paragraph 30, they	11 his mental conditions, for substance use disorders.
12 specifically allege that those allegations are	12 I realize we have a protective order, so
13 false. And that's paragraph 30 of their complaint.	13 I'm going to be careful of the other evidence we
14 In paragraph 9 through 12 of her	14 have and treatment he's received for other
15 declaration, Ms. Heard states, "On May 21st Johnny	15 conditions. But to the extent the court would like
16 showed up inebriated and high," again, the trigger	16 to hear information on those issues, we have got
17 for his aggressive conduct. He continued to rant in	17 that and we can approach the bench to present that
18 an aggressive and incoherent manner. And then he	18 in a confidential manner.
19 was talking about calling iO Tillett, one of their	19 In her 2019 declaration, Ms. Heard also
20 mutual friends, to prove a paranoid, irrational, and	20 attests that when he was using, he was often
21 delusional idea he was having. And then the	21 delusional and violent. Johnny would not remember
22 declaration says he grabbed his cell phone, he wound	22 what he did while he was drunk and high. And so

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4 (13 to 16)

<p>13</p> <p>1 what she started doing is she started documenting. 2 And so she proved to Johnny what he did, because he 3 had an inability to remember because of his mental 4 condition. 5 Thus, Your Honor, it is facially clear 6 that the complaint and the affidavits, which are two 7 of the things the court typically looks at to 8 determine good cause exists put his mental condition 9 in issue. 10 An independent mental examination here is 11 appropriate and important, Your Honor, because it 12 goes to the heart of the case. Ms. Heard made 13 allegations about his mental condition that 14 motivated his abuse. And having an examiner look at 15 that to determine whether he suffers from mental 16 conditions she alleges in the declaration, support 17 the truth of her declaration, which is directly at 18 issue. It goes to the central premise of this case. 19 Your Honor. 20 Now, I would like to hand up a couple of 21 cases that I have already provided to Mr. Chew, if 22 Your Honor would, but I will go through them</p>	<p>15</p> <p>1 Your Honor, the Virginia Supreme court reversed the 2 trial court for refusal to admit testimony from a 3 hospital rehabilitation officer, so a medical 4 officer of a hospital there, that the alleged 5 aggressor was a habitual drinker, with aggressive 6 tendencies while intoxicated. The Supreme Court of 7 Virginia in that case found the trial court should 8 have admitted evidence of the alleged aggressor's 9 turbulent nature five years before, because the jury 10 might have determined that his aggressive tendencies 11 surfaced whenever he drank to excess and the jury 12 could have used that to determine that his view of 13 the events was credible. That's what we're dealing 14 with here with the 2016 declaration. 15 Your Honor, with the next case, Gordon 16 versus Davis -- I do want to point out, Barnes is 17 not an IME case, so it's not an independent medical 18 examination case. We understand that, Your Honor, 19 but still has the same issues. 20 Gordon versus Davis is an IME case and it 21 is an IME case based on slander, and based on 22 slander related to the individual's mental</p>
<p>14</p> <p>1 quickly. 2 THE COURT: Is there new cases? 3 MR. TREECE: One of them is a new case 4 that we just found that we just provided to them. 5 The other case is, they cite a case in their brief, 6 Your Honor, it's the Jones case. What they must not 7 have done is shepardized it, because that decision 8 was entertained on a motion for reconsideration and 9 the court awarded an IME. 10 THE COURT: You've got 4 minutes left and 11 you can either use it now or you can save it. 12 That's up to you. 13 MR. TREECE: I'll be quick, Your Honor. 14 (Deputy handing to the court.) 15 MR. TREECE: Your Honor, the first case 16 that we have provided is Barnes versus Commonwealth. 17 It's a Supreme Court of Virginia case. And the 18 reason this case is important is because it talks 19 about evidence of an individual's or aggressor's 20 turbulent nature and that it's relevant and 21 admissible when determining, in an aggressive 22 encounter, who was the aggressor. In that decision,</p>	<p>16</p> <p>1 condition. And the court in that case awards -- and 2 I will note that's an appellate court decision. So 3 the lower court ordered an IME because the allegedly 4 slanderous statements related to the mental 5 condition and the court of appeals affirmed that 6 finding. So I don't need to go into that in further 7 detail. 8 I will save the Jones case -- well, I 9 will just point out, Your Honor, the Jones case, if 10 Your Honor wants to take a look at that, is the one 11 that was a renewed motion after the case that they 12 cite in their brief to try to claim that an IME is 13 not appropriate here, that was reconsidered and an 14 IME was awarded really because it turned out there 15 was evidence that the individual had seen providers 16 related to his mental condition, was prescribed 17 antidepressants. So a much lower threshold for 18 mental condition in that case and an IME was awarded 19 there. They relied on it, I guess without 20 shepardizing to look at the subsequent history. 21 With that, Your Honor, I will save time 22 for rebuttal.</p>

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5 (17 to 20)

17	19
1 THE COURT: Without considering your	1 examined both Mr. Depp and Ms. Heard. They
2 Florida case at this time, which I guess I will take	2 interviewed them both. They traded off male and
3 the time, at some point, and look at, you agree it	3 female. They found no signs of any injury on either
4 is a discretionary decision for me today?	4 one of them. That's where we get the truth. And
5 MR. TREECE: It absolutely is, Your	5 we'll have the police officers. We've asked, we've
6 Honor.	6 asked them to stipulate to that testimony, at which
7 THE COURT: Thank you.	7 Ms. Heard's counsel was present and cross-examined.
8 Mr. Chew let me hold up. I'm going to	8 They haven't told us yet, we may have to subpoena
9 call the 11:30 docket.	9 them, but we hope to use that testimony.
10 (Pause in the proceedings.)	10 So that's what is relevant here. As the
11 MR. CHEW: Good morning, again, Your	11 court is well aware, to get the rather extraordinary
12 Honor. May it please the court. Ben Chew for	12 relief of an IME, not extraordinary in a personal
13 Mr. Depp. I would like to address a couple of the	13 injury case, that's standard operating procedure,
14 things the Mr. Treece said and then get into my	14 but to get the extraordinary relief of an IME in a
15 argument.	15 defamation case, what Ms. Heard would have to
16 With respect to defendant's position,	16 establish was, A, that Mr. Depp's mental condition
17 there's really no limiting principle on what they	17 was in controversy. And, two, and this is the most
18 would have the court do. In any case, under any	18 clear prong that they fail is that there is good
19 allegation, if the defendant accuses the plaintiff	19 cause. Here Mr. Depp's mental and physical
20 of being crazy or an alcoholic, then the court would	20 condition is not sufficiently at issue and there is
21 have to enter an IME. And that's not the law and	21 certainly no good cause to do it. As to the former,
22 that's not the laws under Rule 4:10.	22 though, Mr. Depp does allege generically emotional
18	20
1 Counsel also talked about pleadings. We	1 damages. There is no freestanding claim for either
2 don't have a pleading from the defendant yet. We	2 intentional or negligent infliction of emotional
3 have a series of serial declarations in which she	3 distress. All there are are counts for defamation.
4 gives more and more information, one of which she	4 Nor is there any specific allegation of
5 told the court she'd never been into Washington,	5 particular mental injury. In fact, there was none.
6 D.C. before. Well, that's contradicted by the	6 In these circumstances, a Colorado court has held
7 Washington Post, the same vehicle which published	7 that where this is here there is only garden variety
8 her op-ed, that said she was up on Capitol Hill	8 allegation of emotional damages, the production of
9 talking about revenge porn, which is her new, which	9 medical records is appropriate, but an IME is not.
10 is her new cause, alternative cause to this. But,	10 And that's precisely what Your Honor has already
11 Your Honor, to get to the answer, so there has been	11 ordered Mr. Depp to do. And what Mr. Depp has done.
12 no pleadings. So there's not anything that she has	12 And included in the records that will be produced
13 put at issue, other than her serial declarations.	13 today, if they haven't been already, are the records
14 Your Honor, the court should deny this	14 of Dr. Kipper. Dr. Kipper is also a fact witness.
15 motion. Mr. Depp's current mental state has no	15 We expect him to testify that he saw, he personally
16 bearing on the truth or falsity of the incident	16 witnessed violence between the couple, but the
17 Ms. Heard described back in May of 2016 --	17 violence was initiated by Ms. Heard. And Mr. Depp
18 two-and-a-half years ago. For the truth of that, we	18 did not even respond physically to that violence.
19 have the depositions of the two police officers who	19 He will testify to that as a fact witness. So this
20 came to the scene that were trained in domestic	20 is a case of be careful what you wish for.
21 abuse, who were called. And they both testified	21 But more fundamentally, Your Honor,
22 under oath in the divorce proceeding, that they	22 Virginia courts and courts outside Virginia reject



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6 (21 to 24)

<p>21</p> <p>1 IMEs, whereas here a party seeks them to challenge 2 her adversary's credibility. Quoting the Richter 3 (ph) case, which is an unreported case, so we're 4 citing it as informative but not controlling, quote, 5 A party's mere assertion that a discovery tool is 6 necessary for a movant to investigate fully and 7 prepare his case is clearly insufficient as a 8 statement of good cause, unquote. That's Richter 9 versus Manning at asterisk 7. But that quote, the 10 Virginia Supreme Court, which obviously is not only 11 precedential, but it's controlling, and that's the 12 Rakes versus Fulcher case, 210 Va. 542 at 546. And 13 that Jones case cited by Mr. Treece also -- and he's 14 correct, there was subsequent, there was a 15 subsequent development in that case. It didn't 16 overrule the initial decision where the court 17 rejected a request for an equivalent of an IME where 18 it was just being used to attack the credibility. 19 There was a motion for rehearing. But the reason 20 the court reconsidered and granted was that there 21 was a new -- and this was the case handed to us at 22 10:02, which is fine, it was because the plaintiff</p>	<p>23</p> <p>1 District Court of Massachusetts denied an IME 2 request because it was, quote, not persuaded that 3 personal examination and testing conducted 4 years 4 after the fact would provide a basis for relevant 5 expert opinion concerning plaintiff's mental health 6 impairments and capacities in April 2013. 7 Now, here it's a little more proximate. 8 It's two years after the event at issue in May of 9 2016, but it's not very proximate and not relevant 10 at all. 11 Barnes and McKinn were the cases that 12 were included in Ms. Heard's brief, are completely 13 inapposite, because as Mr. Treece conceded, neither 14 of those cases involved an IME or Rule 4:10. Barnes 15 involved an involuntary manslaughter criminal case 16 and specific acts that occurred before the relevant 17 crime. McKinn also involved a prior act before the 18 incident at issue. 19 Here, what Ms. Heard is attempting to do, 20 is assess Mr. Depp's mental condition not a specific 21 act, to discredit him years after, not before the 22 alleged misconduct. So what his mental condition is</p>
<p>22</p> <p>1 in that case lied to the court. If I can just quote 2 here very briefly. "The motion is based in part on 3 subsequent deposition testimony indicating that 4 Jones was less than candid in describing his prior 5 mental health treatment." 6 So after the court had denied the motion 7 for an IME, saying it was no substitute for the real 8 evidence, the plaintiff in that case lied to the 9 court. So I would respectfully submit that that's a 10 game changer. And this is a case out of New Mexico. 11 It's not binding in any event. But that case was 12 not a defamation case. And, as Mr. Treece conceded, 13 it did not -- certainly didn't involve Rule 4:10. 14 As best as I can tell, it was an employment case in 15 which the plaintiff alleged he was a whistleblower. 16 The defendant police department said he used 17 excessive force and his mental condition was at 18 play, especially after he lied about it. So I don't 19 think that is -- changes anything. 20 We cited a number of cases where courts 21 have rejected the very same proffer that Ms. Heard 22 makes here. In Boatti (ph), for example, the</p>	<p>24</p> <p>1 today has no bearing on, on what it was and what 2 happened in May 2016. 3 Finally, Your Honor, the Gordon versus 4 Davis case, again handed to me this morning, was 5 from the Florida Court of Appeal. And as best as I 6 can tell, plaintiff alleged that defendant slandered 7 him because defendant claimed that the plaintiff was 8 psychotic. So the slander case there was, you 9 called me crazy. Well, of course, in that 10 circumstance, that's relevant. But Mr. Depp did not 11 say, you called me crazy. He said, you called me a 12 wife beater. And that's a lie. And that doesn't 13 put his medical condition at issue. Nor does her 14 serial, false declarations, that have been proven 15 false. 16 So, Your Honor, it is under the court's 17 discretion, but we respectfully submit the court 18 should exercise its discretion and deny this 19 frivolous motion. They have the medical records 20 that relate to the time at issue, so they can make 21 the argument that way. Thank you. Your Honor. 22 THE COURT: You've got a couple of</p>

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7 (25 to 28)

<p>1 minutes left.</p> <p>2 MR. TREECE: Thank you, Your Honor.</p> <p>3 Mr. Depp is in a situation of his own</p> <p>4 doing here. The complaint takes at issue with her</p> <p>5 2016 declaration at large. They contend that her</p> <p>6 2016 declaration is false. Her 2016 declaration</p> <p>7 puts at issue his mental condition. It is like the</p> <p>8 Gordon case in that they are saying, she says that</p> <p>9 he's got these mood disorders, these aggressive</p> <p>10 tendencies, substance use disorders and that conduct</p> <p>11 is what caused him to abuse me. And they say that's</p> <p>12 false. This is directly at issue in the same way</p> <p>13 and this is a circumstance of their own doing,</p> <p>14 because they are the ones that elected to allege</p> <p>15 that her 2016 declaration is false. It goes to the</p> <p>16 heart of the case.</p> <p>17 This is not -- this is somewhat of a</p> <p>18 straw man on their side, where they say, you know,</p> <p>19 cite all these garden variety emotional distress</p> <p>20 cases. We don't rely on that at all, Your Honor, as</p> <p>21 you've seen from our filings and our argument. We</p> <p>22 don't talk about his alleging garden variety</p>	<p>25</p> <p>1 2016 declaration, assertions in the 2016</p> <p>2 declaration.</p> <p>3 THE COURT: Your time is up.</p> <p>4 MR. TREECE: Thank you, Your Honor.</p> <p>5 THE COURT: Thank you.</p> <p>6 Request for an IME is denied. In this</p> <p>7 case, the medical records of Mr. Depp have been</p> <p>8 ordered to be produced. I assume will be produced</p> <p>9 if they've not already been produced. The request,</p> <p>10 in this case -- I don't want to characterize</p> <p>11 anyone's actions badly, but to some extent the</p> <p>12 request seems to me to be an effort to have a</p> <p>13 medical assessment by an expert who would then be</p> <p>14 offered as a witness to testify as to the</p> <p>15 credibility of one of the parties. And I don't find</p> <p>16 that to be appropriate or helpful. We have a jury</p> <p>17 that will be in this case and they can be the</p> <p>18 factfinders as to the credibility of the witness.</p> <p>19 So I find no good cause shown for the IME in this</p> <p>20 case and deny that request.</p> <p>21 Would you do an order and note whatever</p> <p>22 exceptions you all might have to it and pass that</p>
<p>26</p> <p>1 emotional distress damages to support this. What</p> <p>2 supports this is the truth of the statements in the</p> <p>3 declaration and their fundamental allegation that</p> <p>4 those statements are false.</p> <p>5 Then, Your Honor, they rely on a number</p> <p>6 of FMLA cases, Family Medical Leave Act cases in the</p> <p>7 employment law arena, to say, you know, 4 years</p> <p>8 later we're not going to get helpful information</p> <p>9 from an examiner. One of those was a circumstance</p> <p>10 in which an individual had a headache several years</p> <p>11 earlier when he took FMLA leave. And the court</p> <p>12 understandably says, you know, whether or not he had</p> <p>13 a headache two years ago, an IME is not going to</p> <p>14 help with that.</p> <p>15 The other one was an FMLA interference</p> <p>16 claim, so interference with right with FMLA. And</p> <p>17 the court says an IME is not going to help us in</p> <p>18 that determination.</p> <p>19 So their cases are distinguishable. We</p> <p>20 are not relying on allegations of emotional</p> <p>21 distress. We are relying on the elements of their</p> <p>22 claim and proof of truth of the allegations in the</p>	<p>27</p> <p>1 up.</p> <p>2 MR. CHEW: Yes, Your Honor.</p> <p>3 MR. TREECE: Thank you, Your Honor.</p> <p>4 THE COURT: Hope everybody has a good</p> <p>5 weekend.</p> <p>6 (The hearing was concluded at 11:48 a.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>28</p>



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8 (29 to 32)

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CERTIFICATE OF SHORTHAND REPORTER

I, Theresa R. Hollister, the court  
reporter before whom the foregoing hearing was  
taken, do hereby certify that the foregoing  
transcript is a true and correct record of the  
testimony given; that said testimony was taken by me  
stenographically and thereafter reduced to  
typewriting under my supervision; and that I am  
neither counsel for, related to, nor employed by any  
of the parties to this case and have no interest,  
financial or otherwise, in its outcome.

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Theresa R. Hollister

Theresa R. Hollister  
Court Reporter

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