
Texas Resident Ordered to Submit to IME in New York

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Megan A. Szeliga successfully argued for an Order compelling a Texas resident Plaintiff to submit to an Independent Medical Examination in Onondaga County, New York. Plaintiff, a prior resident of Onondaga County, selected the venue of her lawsuit based upon the location of the incident and defendants' residence. After service of the Notice of Independent Medical Examination ("IME"), plaintiff's counsel objected to the Notice based on plaintiff's current residence and, ultimately, plaintiff failed to appear at the scheduled IME. Defendants moved to compel the IME and obtain a conditional order of preclusion. Plaintiff opposed the motion alleging an inability to travel by car, due to her alleged injuries, and an inability to fly. Plaintiff then cross-moved to compel defendants to conduct the IME in plaintiff's current residence of Texas, or alternatively, conduct the IME near the time of trial, thereby requiring that plaintiff travel only once to Onondaga County. Despite the limited case law on this particular issue, the Court granted defendants motion in all respects and denied the plaintiff's cross-motion. The Court Ordered plaintiff to submit to an IME in Onondaga County. The Court's decision was based on the fact that plaintiff filed the complaint and therefore, chose the venue of the lawsuit. Further, to prevent prejudice to the defense, the IME was to be scheduled and conducted well in advance of trial.