

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

NORMAN GRAY	*	CIVIL ACTION
VERSUS	*	NUMBER: 06-7130
AMERITECH CONSTRUCTION, LLC, ET AL.	*	SECTION "L" (2)

ORDER

Before the Court is the Defendants' Motion to Strike Evidence (Rec. Doc. 27). For the following reasons, the Defendants' motion is now DENIED.

Norman Gray, a resident of North Carolina, injured his left ankle in an accident that occurred in Mandeville, Louisiana on October 10, 2005. Gray was initially treated and underwent surgery at Lakeview Medical Center in Covington, Louisiana. He then returned to North Carolina, where he underwent a second surgery on June 29, 2006. On December 3, 2007, Gray's counsel informed the Defendants that Gray was scheduled for a third surgery in February, 2008. However, this third surgery was performed ahead of schedule on December 5, 2007. The Defendants had previously requested notification of any surgical procedures so that they could decide whether to arrange an independent medical examination in advance of any such procedure.

In the instant motion, the Defendants ask the Court strike all evidence related to this third surgery because they did not have time to request an independent medical examination before the procedure. In support of their motion, the Defendants rely on Rule 35 of the *Federal Rules of Civil Procedure*, which states that a court may order a party to undergo a physical

examination. Rule 35 does not require the court to order an examination, nor does it preclude the parties from independently arranging for such an examination.

The Court finds that precluding the Plaintiff from introducing evidence related to the third surgery is too harsh a remedy in this situation. But the Court will also allow the Defendants to present evidence that they were unable to obtain an independent medical examination before this surgery occurred, and to make any related arguments at trial. Accordingly, IT IS ORDERED that the Defendants' Motion to Strike Evidence (Rec. Doc. 27) is DENIED.

New Orleans, Louisiana, this 10th day of March, 2008.


UNITED STATES DISTRICT JUDGE