

January 24, 2001

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***Re: Kelly v. McHaddon, et al.
C.A. No. 98C-12-176-JRS***

Dear Counsel:

Plaintiff has moved *in limine* to exclude the testimony of Catherine M. Ford, Ph.D., a biomechanical engineer who has been proffered to testify regarding the biomechanics of human injury generally, and causation with respect to plaintiff's injury specifically. Plaintiff was involved in an automobile accident with defendant, Michael McHaddon, on December 13, 1997. Defendants contend that the impact of the accident was minor and that plaintiff's vehicle sustained little, if any, damage. Dr. Ford has opined that such a minor impact could not have caused the injuries claimed by the plaintiff.

Plaintiff's motion implicates the Court's "gatekeeping" function with respect to the admissibility of evidence. *See*, D.R.E. 702; *Daubert v. Merrell Dow*

Pharm., Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993); *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999)(extending *Daubert* to expert testimony relating to “scientific, technical or other specialized matters”); *Bell Sports, Inc. v. Yarusso*, Del. Supr., 759 A.2d 582 (2000)(adopting the holdings in *Daubert* and *Kumho Tire Co.*). When conducting an analysis under *Daubert* and its progeny, the Court must determine the “reliability” of the expert’s proffered testimony, a process which includes a review of both the expert’s qualifications to opine on a particular issue, and the methodology employed by the expert to reach his opinions. *Bell Sports*, 759 A.2d at 588-89.

Plaintiff has challenged Dr. Ford’s expertise to render an opinion regarding the cause of plaintiff’s alleged injuries. According to the plaintiff, only a medical doctor can offer an opinion that a particular automobile accident did or did not cause a particular injury. It is undisputed that Dr. Ford is not a medical doctor.¹ For their part, defendants contend that Dr. Ford’s training and experience qualifies her to render an opinion with respect to the cause of plaintiff’s injuries. Defendants also note that their medical expert, Errol Ger,

¹ The Court notes that Dr. Ford does have an advanced degree in “medical engineering.” In this regard, she received what she characterized as the equivalent of 1 ½ years of medical school training. She acknowledged, however, that her “medical engineering” degree is not equivalent to a medical degree.

M.D., relied upon Dr. Ford's opinion in reaching his own opinion regarding causation. Dr. Ger has opined that the plaintiff's injury was not caused by the automobile accident of December 13, 1997.

The Court's analysis here focuses on the first prong of the *Daubert* analysis, namely, whether Dr. Ford is qualified to offer the opinions she has rendered in this case. There has been no challenge to Dr. Ford's methodology, and a review of her detailed report indicates that she employed a sound scientific approach to her work. She reviewed relevant information regarding the accident, including the police report, photographs of the vehicles after the accident, damage estimates with respect to the plaintiff's vehicle, and plaintiff's interrogatory answers. She also referred to crash tests and other similar tests performed by peer reviewed organizations. Moreover, as noted, the plaintiff has not challenged Dr. Ford's methodology. Thus, the Court will focus solely on her qualifications to render what, in the Court's view, amounts to a medical opinion.

The parties have not directed the Court to any written decision from a Delaware court directly on point. The parties have referenced bench rulings from judges of this Court with respect to this issue, but have not provided the Court with transcripts of these rulings. Accordingly, from the Court's perspective, the issue before the Court is one of first impression in Delaware. The Court, therefore, has referred to decisions from other jurisdictions for

guidance. The decisions reviewed by the Court differ in their analytical approach and ultimate conclusions.²

The Court finds the reasoning in one line of decisions to represent the most prudent approach to this issue. In these cases, the courts conclude that a biomechanical engineer may testify regarding the forces created by an impact and the general effects on the human body caused by such forces. The expert may not, however, testify regarding the cause of the plaintiff's particular medical problems. *See, Smelser v. Norfolk Southern Railway Company*, 105 F. 3d 299, 305 (6th Cir. 1997)(faced with a nearly identical issue the Court concluded "biomechanics are qualified to determine what injury causation forces [sic] are in general and can tell how a hypothetical person's body will respond to those forces, but are not qualified to render medical opinions regarding the precise cause of a specific injury"); *Rybackzewski v. Kingsley*, Oh. App., No. L-97-1048, 1998 Ohio App. LEXIS 1694 at *17 (Apr. 24, 1998)(court concluded that biomechanical expert could not offer a "medical opinion" with respect to the cause of the plaintiff's injuries but rather was limited to testimony regarding the

² It should be noted that the Court has not located any decisions which exclude the testimony altogether when the expert has engaged in a proper scientific process. In other words, the Court has not located any decision which concludes that biomechanics is "junk science" or otherwise unreliable or irrelevant in low impact automobile accident cases. Such decisions may exist, but this Court, in the limited time available, did not locate them.

amount of force [plaintiff] experienced in the accident); *Doherty v. Municipality of Metropolitan Seattle*, Wash. App., 921 P.2d 1098, 1101 (1996)(affirming trial court's determination that biomechanical engineer could not testify regarding medical causation).

The Court's holding today recognizes a simple irrefutable fact: biomechanical engineers are not doctors. As Dr. Ford acknowledged during voir dire, biomechanical engineers cannot treat injuries, cannot recommend treatment, cannot interpret (at least from a medical perspective) diagnostic studies and, indeed, under Delaware law, cannot practice medicine in any manner. 24 Del. C. § 1720. If the Court was to allow Dr. Ford to testify regarding the cause of the plaintiff's injuries, the Court would be sanctioning a result which would permit both plaintiffs and defendants in personal injury cases to present only the testimony of biomechanical engineers with respect to proximate cause. The testimony of physicians would be unnecessary because biomechanical engineers could address all causation issues, including the medical issues. The Court cannot countenance this result.

Finally, the Court does not share plaintiff's concern that the limited nature of Dr. Ford's testimony will confuse the jury.³ Dr. Ford's testimony will be

³ Plaintiff has argued that cutting Dr. Ford's testimony short of any opinions regarding plaintiff's specific injury will actually be more prejudicial to her because the jury will be left to speculate regarding the cause of the specific injury.

offered as a compliment to Dr. Ger's testimony which, in part, relies upon the conclusions of Dr. Ford. Dr. Ger has offered a medical opinion that plaintiff did not suffer an injury as a result of the accident. Dr. Ger's testimony, and the testimony of plaintiff's own medical expert that the accident did cause injury, will ensure that the jury does not speculate as to causation. They will weigh the competing medical opinions and reach their verdict accordingly.

Based on the foregoing, the plaintiff's motion in limine is GRANTED in part and DENIED in part. Dr. Ford will not be permitted to testify regarding the cause (or lack thereof) of the plaintiff's injuries. She will, however, be permitted to testify regarding the forces implicated by a particular accident and their effect upon the human body generally. Dr. Ger will be permitted to testify regarding his reliance upon Dr. Ford's conclusions regarding the force of the impact and the general nature of the injuries which might result from such forces, but will not be permitted to refer to her opinions regarding the plaintiff's specific injuries. His opinion that plaintiff suffered no injuries as a result of the accident must be based upon information other than Dr. Ford's opinion to that effect.

IT IS SO ORDERED.

Very truly yours,

Joseph R. Slights, III

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