

At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of June, 2014.

P R E S E N T:

HON. RICHARD VELASQUEZ

Justice.

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RAMON TORRES, DORINA TORRES, and
RAMON TORRES, JR.,

Plaintiffs,

Index No.: 13903/11

-against-

TEYEB O. EHMEITY and ERICK J. PAUL,

Defendants.
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THE FOLLOWING PAPERS NUMBERED 1 to 3 READ ON THIS MOTION

1	Papers Numbered
NOTICE OF MOTION -NOTICE OF MOTION FOR PARTIAL SUMMARY JUDGMENT AFFIDAVIT(S) - AFFIRMATION(S)	1-2
ANSWERING AFFIDAVIT(S) - AFFIRMATION(S)	3
REPLY AFFIDAVIT(S) - AFFIRMATION(S)	
Other - Memoranda of Law	

After oral argument and a review of the submissions herein, the Court finds as follows:

Upon the foregoing cited papers, the Decision/Order on this Joint Motion In Limine to Preclude Defendants' Designated Biomechanical Expert is as follows:

Plaintiffs bring the instant *In Limine* motion seeking to preclude the defendants' Biomechanical Expert from testifying at trial and to conduct a hearing pursuant to *Frye v. U.S.*,

293 F. 1012 (D.C. Cir. 1923) to permit plaintiffs to examine the defendants' designated biomechanical expert, Sorin Siegler, Ph.D., as to whether his procedures, results and methodologies are generally accepted in the scientific community. The Court granted plaintiffs' request for a *Frye* hearing and after such hearing the Court finds as follows:

"The important purpose of the *Frye* test is to ensure that courts do not rely upon an expert's testimony regarding a novel procedure, methodology or theory unless it has been 'generally accepted' within the relevant scientific community as leading to reliable results. *Marsh v. Smyth, M.D.*, 12 A.D.3d 307, 785 N.Y.S. 2d 440, citing *People v. Angelo*, 88 NY 2d 217, 223, 644 N.Y.S. 2d 460, 666 N.E. 2d 1333 [1996]. Use of the *Frye* test to determine 'general acceptance' helps courts avoid reliance on psychological theories or experimental processes which may actually be widely rejected as baseless, unreliable or insufficiently established." *Marsh*, supra at 444. As Chief Judge Kaye explained in *People v. Wesley*, 83 N.Y. 2d 417, 422, 611 N.Y.S. 2d 97, 633 N.E. 2d 451 [1994]:

...The *Frye* test is not for our Court to determine whether the method was or was not reliable... but whether there was a consensus in the scientific community as to its reliability. The *Frye* test emphasizes 'counting scientists' votes, rather than verifying the soundness of a scientific conclusion.

On this note, the Court must point out that plaintiff, in the instant matter, submitted no expert affidavits to support its conclusion that defendants' expert "lacks the requisite expertise to opine as to the causation of injury and/or that the opinions to be expressed are impermissibly based upon speculation, conjecture, and/or unsupported assumptions. Further, plaintiff offered no affidavits from experts demonstrating that there is no consensus in the scientific community as to the reliability of defendants' expert's opinions and report. But most importantly, as Chief Judge Kaye determined: The "*Frye* test emphasizes 'counting scientists' votes, rather than verifying the soundness of a scientific conclusion."

Plaintiff's entire cross-examination of biomechanical expert, Sorin Siegler, Ph.D. consisted of attempts to undermine the soundness of his scientific conclusion by asking questions that attacked Dr Siegler's methods of reaching his scientific conclusions, rather than providing any evidence at all as to whether there was a consensus in the scientific community as to its reliability. No evidence was ever offered by plaintiff to demonstrate any opposing views of the Biomechanical community, if any, regarding the methods used by Dr. Siegler. Plaintiff presented no publications, periodicals, or court decisions, nor did plaintiff offer any witnesses in support of its motion regarding the use of a biomechanical expert in a vehicle accident trial which might have contradicted Dr. Siegler's findings.

Accordingly, this Court finds that on plaintiff's motion to exclude Dr. Sorin Siegler, Ph.D., from testifying as an expert for defendants on the grounds that Dr. Siegler lacks the necessary credentials to opine on the mechanics of the injuries in this matter to be with out

merit. Dr. Siegler testified as to his credentials: He was awarded Ph.D. in biomechanical engineering from Drexel University, and he is a Professor at the University of Pennsylvania in the Department of Radiology. He has also been a Professor of Mechanical Engineering and Biomechanics at Drexel University for over 25 years, and has taught classes in Biomechanics in undergraduate and graduate programs to engineers, medical students and orthopaedic residents.

The Court finds Dr. Siegler's credentials to be impressive in the field of Biomechanics. Plaintiff's ground for excluding Dr. Siegler as an expert is without merit. As plaintiff offered no evidence of any kind as to whether the Doctor's procedures, results and methodologies are generally accepted in the scientific community, this ground for preclusion is also without merit.

Plaintiff's motion to preclude Defendants' Biomedical Expert is denied in its entirety.

ENTER:

RICHARD VELASQUEZ, J.S.C.