

**IN THE SUPERIOR COURT FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

JEFFREY KUCINE, D.O. and LAURA KUCINE,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. N12C-01-007-ALR
)	
EMILY METHENY,)	
)	
Defendant.)	

Submitted: November 8, 2013
Decided: November 8, 2013

**ON DEFENDANT’S MOTION TO LIMIT AND PRECLUDE TESTIMONY
OF PLAINTIFF’S EXPERT, STEVEN M. SCHORR, P.E.
DENIED in part and GRANTED in part**

This matter arises from a June 5, 2011 automobile accident. Plaintiff Jeffrey Kucine claims to have been injured when his motorcycle was struck by Defendant Emily Metheny. Plaintiff was passing Defendant on the left, and the collision occurred when Defendant made a left-hand turn into Plaintiff’s path of travel. (The second plaintiff is Kucine’s wife.)

Defendant seeks to preclude argument or testimony by Plaintiffs’ expert witness concerning the expert’s reconstruction analysis in paragraphs 12 and 14 and the expert opinion set forth in paragraph 7, on the basis that these do not constitute permissible expert opinions. At oral argument, Plaintiffs conceded that Plaintiffs’ reconstruction expert should not reference the State of Delaware Motor Vehicle Code or the Delaware Driver Manual published by the Delaware Division of Motor Vehicles. Nevertheless, despite the concession, Defendant sought an order precluding the testimony further. However, Defendant’s remaining concerns can be addressed through cross-examination. The applicable rules and decisional law do not support the ruling sought by Defendant.

Expert testimony is governed by Delaware Rule of Evidence 702, as follows:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

When applying Rule 702, Delaware courts follow the standards determined by the US Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), which requires the trial judge to act as gatekeeper and determine whether the expert testimony is relevant and reliable and whether it will assist the trier of fact. *M.G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513 (Del. 1999); *Brown v. United Water Delaware, Inc.*, WL 4716251 *2, (Del. Super. 2011). Testimony from an expert is inadmissible if it expresses the expert's opinion concerning applicable domestic law. *Itek Corp. v. Chicago Aerial Industries, Inc.*, 274 A.2d 141, 143 (Del. 1971). The Court finds that it is permissible for the Plaintiffs' reconstruction expert to offer an opinion based in part on Defendant's own testimony. To the extent there are facts in dispute, those facts can be utilized by Defendant's counsel during cross-examination to test and challenge the Plaintiffs' expert's opinion.

Accordingly, Plaintiffs' reconstruction expert may testify as follows:

- Reconstruction analysis paragraph 12
 - Based on Ms. Metheny's own testimony, she activated her left turn signal approximately 45 to 60 feet prior to the intersection.
- Reconstruction analysis paragraph 14
 - Had Ms. Metheny looked in her driver side mirror prior to or as she slowed, she would have seen the Honda motorcycle behind her attempting to pass her and could have waited until it was safe for her to execute her left-hand turn.

- Expert Opinion paragraph 7
 - Accepting the testimony of Ms. Metheny, she activated the turn signal on the Mitsubishi Outlander approximately 45 to 60 feet prior to the intersection.

NOW, THEREFORE, IT IS HEREBY ORDERED this 8th day of November, 2013, that the Defendant's Motion to Limit and Preclude Testimony of Plaintiffs' Expert Steven M. Schorr, P.E. is hereby DENIED as to the proposed factual testimony regarding the distance at which Defendant activated her turn signal before turning left and is hereby GRANTED as to the proposed testimony referencing the State of Delaware Motor Vehicle Code or the Delaware Driver Manual published by the Delaware Division of Motor Vehicles.

Andrea L. Rocanelli

Honorable Andrea L. Rocanelli