SUPERIOR COURT
OF THE
STATE OF DELAWARE

CHARLES E. BUTLER
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: *Conkey v. Dollar General Corporation, et al.*
C.A. No. N16C-01-079 CEB

Dear Counsel:

I have the defendants' motion to preclude certain opinions of plaintiff's medical expert.

The case involves a "slip and fall" outside the Dollar General Store after a snowfall at a property owned and managed by other defendants and snowplowed by the remaining defendant. Plaintiff retained an expert whose opinion is memorialized in a report, duly discovered by the defense, that opines that certain conditions of the plaintiff were exacerbated by the fall.

The defendants have a copy of this report. They argue that "his expert report does not provide any explanation for the basis of his opinions, nor any citation to an

authority that he relies upon in forming these opinions."[1] Because this leaves the defense without a basis upon which to "verify or support the reliability and admissibility"[2] of the opinions, his opinions expressed in the report should be excluded.

The short answer is that the report is not the testimony, but rather a report of what the testimony will be. If defendants wish to test the reliability of the opinion testimony, they are welcome to notice the expert's deposition and learn what they must to properly frame the issue.

Defendants' motion may be well founded, but the record is insufficiently developed for the Court to draw a conclusion without the benefit of the expert's deposition testimony. Understanding that there may be economic considerations militating against the taking of an expert deposition, the Court is unable to exercise its "gatekeeping" function until the expert testifies, either by deposition, live on direct examination or by way of *voir dire* at trial. If defendants elect to take an expert deposition, they may resubmit their motion as fleshed out by a completed record.

Judge Charles E. Butler

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[1] Defendants' motion at 3.

[2] Id.