

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA

CHRISTOPHER D. WIGHINGTON,

Plaintiff,

v.

Case No.: CL07-1074

SHELTER SYSTEMS LIMITED  
and DAVID P. WEISS, III,

Defendants.

ORDER

The parties appeared on October 9, 2009, by counsel, for argument on Plaintiff's motion to exclude or limit the testimony of Defendants' experts, Edward A. Peck, III, Ph.D. and Jed S. Vanichkachorn, M.D. The rulings of the court are as follows:

1. Plaintiff's Motion to Exclude or Limit Defendants' Expert, Edward a. Peck, III, Ph.D., is GRANTED in part and DENIED in part as follows:

a. Dr. Peck is not a vocational expert, and, accordingly, shall not be permitted to testify about the Plaintiff's vocational capabilities.

b. Dr. Peck is not a pharmacologist, pharmacist, medical doctor, or psychiatrist authorized to prescribe medication, and, therefore, shall not be permitted to testify about medication interactions.

c. Dr. Peck shall not be permitted to testify about the credibility or veracity of the plaintiff, however he may testify as to his diagnosis of major depression with somatization.

d. Dr. Peck shall be permitted to testify about his neuropsychological test data, but in accordance with *John v. Im*, 263 Va. 315 (2002), he shall not be permitted to

By *Yours truly*  
*Kilgore*  
*Phelan*  
11-19-09

provide causation testimony concerning Plaintiff's alleged brain injury, including whether Dr. Peck's test data is consistent with a concussive head injury or brain injury.

2. Plaintiff's Motion to Exclude or Defendants' record review expert, Jed S. Vanichkachorn, M.D., is GRANTED in part and DENIED in part as follows:

a. Dr. Vanichkachorn may testify in his area of expertise – orthopedic surgery. In accordance with *McMun v. Tatum*, 237 V. 558 (1989) and *Commonwealth v. Wynn*, 277 Va. 92 (2009), Dr. Vanichkachorn's testimony on direct examination shall be limited to identifying the records he reviewed and relied upon and stating his opinions. He may rely upon hearsay matters of opinion and fact from the records reviewed and base his opinions thereon, but may not repeat any hearsay matters of opinion or fact in course of his direct examination.

b. Provided, however, that Dr. Vanichkachorn's opinion that "[m]ost cervical and lumbar strains after motor vehicle accidents resolve within a period of approximately 3-6 months" shall be excluded on the grounds that Dr. Vanichkachorn's opinion is simply an average and does not apply specifically to the Plaintiff. Dr. Vanichkachorn will be allowed, if so disclosed in a supplemental expert designation that complies with Rule 4:1(b)(4)(A)(i), to testify if his opinion is that the cervical and lumbar strains of Plaintiff Christopher Wightington should have resolved within a period of approximately 3-6 months after the accident.


The Clerk shall mail a copy of this Order to all counsel of record.

ENTER: 11 / 18 / 09

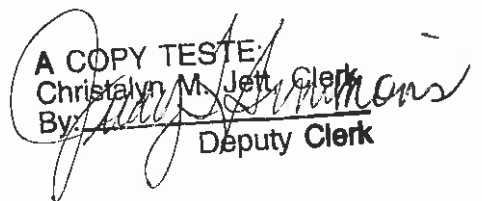
  
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JUDGE

SEEN AND OBJECTED TO FOR THE REASONS STATED ON THE RECORD:

  
\_\_\_\_\_  
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A COPY TESTE:  
Christalyn M. Jett, Clerk  
By:   
Deputy Clerk