

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
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Date Submitted: April 2, 2008
Date Decided: October 24, 2008

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**RE: Ronald S. Allen v. Brendan F. Gierstorfer, Newark Concrete,
and Material Acquisition, LLC
C.A. No. 07C-01-055
*Upon Plaintiff's Motion in Limine to Exclude the Expert Testimony
of Dr. Robert O. Gordon – GRANTED IN PART, DEFERRED IN PART***

The Court has reviewed Plaintiff's Motion in Limine to Exclude the Expert Testimony of Dr. Robert Gordon, and the Defendants' opposition thereto. The Court has a concern about Dr. Gordon's opinion that by two and a half months post accident the Plaintiff "would have recovered from any soft tissue injuries...."¹

¹ Report of Robert O. Gordon, M.D. dated January 16, 2008; Ex. A-3 to Plaintiff's Motion in Limine to Exclude the Testimony of Robert O. Gordon, M.D. in Full or in Part; Docket Item ("D.I.") 93.

This opinion runs afoul of the Court’s ruling in *Crowhorn v. Boyle*,² and is therefore excluded. The Court also has a concern about the relevance and reliability of certain other of Dr. Gordon’s opinions. For example, Dr. Gordon has opined that the diagnosis of annular tear made by a radiologist “is a totally impossible diagnosis to make...based on an MRI scan.”³ The Court is not satisfied at this juncture that Dr. Gordon is qualified to interpret MRI studies. Given the Court’s concerns, the Court will allow Plaintiff to conduct *voir dire* of Dr. Gordon prior to his direct testimony at trial and will determine the admissibility of his other opinions at that time. Consequently, Plaintiff’s Motion is **GRANTED** in Part and **DEFERRED** in Part.

IT IS SO ORDERED.

Jan R. Jurden, Judge

² *Crowhorn v. Boyle*, 793 A.2d 422 (Del. Super. Ct. 2002).

³ D.I. 93, Ex. A-3 at 3.