

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

NICOLE LISOWSKI, )  
as Next Friend of BRANDON )  
RODRIGUEZ, JEREMIAH )  
RODRIGUEZ, NICHOLAS )  
O'BRIEN, minors, and JUAN )  
RODRIGUEZ, in his capacity as )  
Personal Representative of the )  
Estate of Alexis Rodriguez, )  
Plaintiffs, )  
)  
)  
v. )  
)  
BAYHEALTH MEDICAL CENTER, )  
INC., d/b/a KENT GENERAL )  
HOSPITAL, )  
Defendant. )

C.A. No. N15C-04-228 ALR

**ORDER**

***Upon Consideration of Defendant's Motion in Limine  
to Exclude the Opinion of Plaintiffs' Economic Expert***

Upon consideration of Defendant's Motion *in Limine* to exclude the opinion of Plaintiffs' economic expert; the parties' submissions; the Superior Court Rules of Civil Procedure; the Delaware Rules of Evidence; the facts, arguments, and legal authorities set forth by the parties; decisional law; and the entire record in this case, the Court hereby rules as follows:

1. Pursuant to Rule 702 of the Delaware Rules of Evidence, Defendant challenges the admissibility of Plaintiffs' economic expert's opinion. Defendant

argues that the expert opinion lacks the requisite underlying medical testimony regarding Mr. Rodriguez's life expectancy.

2. Plaintiffs contend that competent evidence regarding Mr. Rodriguez's life expectancy will be presented to the jury during trial. Therefore, Plaintiffs argue that the expert opinion is admissible.

3. At the trial level, it is the role of the Court to perform a gatekeeping function with respect to expert testimony.<sup>1</sup> The admissibility of such testimony is governed by Rule 702 of the Delaware Rules of Evidence, which provides:

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.<sup>2</sup>

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<sup>1</sup> *Sturgis v. Bayside Health Ass'n*, 942 A.2d 579, 583 (Del. 2007).

<sup>2</sup> D.R.E. 702.

4. At the Court’s request, the parties supplemented the record to address Delaware decisional law. Both parties rely upon the Superior Court’s 2012 decisions in *Edney v. Moylan et al.*<sup>3</sup>

5. This Court finds the *Edney* decision on reargument to be persuasive, and similarly concludes that “[t]he projection of future damages is inherently a task fraught with the risk of speculation . . . All that is required is that there ‘be some reasonable basis upon which a jury may estimate with a fair degree of certainty the probable loss which plaintiff will sustain in order to make an intelligent determination of the extent of the loss.’”<sup>4</sup>

6. Weight and credibility challenges relate to an expert’s skill or knowledge, including the ability to tie the facts of the case to the opinion he or she plans to give.<sup>5</sup> Defendant’s challenge goes to the weight and credibility of the proposed testimony and not to its admissibility. Therefore, the motion must be denied.

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<sup>3</sup> C.A. No. K10C-10-045 (Del. Super. Nov. 27, 2012), *reargument granted in part, denied in part*, C.A. No. K10C-10-045 (Del. Super. Dec. 6, 2012).

<sup>4</sup> *Edney*, C.A. No. K10C-10-045 (Del. Super. Dec. 6, 2012), at 7-8 (*quoting Henne v. Balick*, 146 A.2d 394, 396 (Del. 1958)).

<sup>5</sup> *Perry v. Berkley*, 996 A.2d 1262, 1270–71 (Del. 2010).

**NOW, THEREFORE, this 7<sup>th</sup> day of September, 2016, Defendant's Motion *in Limine* to exclude Plaintiffs' Economic Expert is hereby DENIED.**

**IT IS SO ORDERED.**

*Andrea L. Rocanelli*

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The Honorable Andrea L. Rocanelli