

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JANIE J. AUBERT, ET AL	*	CIVIL ACTION
VERSUS	*	NO: 09-3566
UNITED STATES OF AMERICA, ET AL	*	SECTION: "D"(1)


ORDER AND REASONS

Before the court is the **Motion for Partial Summary Judgment** (Doc. No. 11) filed by Plaintiffs, Janie J. Aubert, Rhett Aubert and Ryan Aubert. Defendant, the United States of America, filed a memorandum in opposition. The motion, set for hearing on Wednesday, August 25, 2010, is before the court on briefs, without oral argument. Now, having considered the memoranda of counsel, the record, and the applicable law, the court finds that there are genuine issues of material fact in the medical malpractice case, and Plaintiffs are not entitled to partial summary judgment as a matter of law.¹ Accordingly;

¹ The court notes that in support of their motion, Plaintiffs have submitted the expert reports of Dr. Ira Gelb and Dr. Cyril Wecht, but Plaintiffs have failed to submit either doctor's affidavit or declaration that would render their opinion competent summary judgment evidence. However, even if these doctors' opinions had been offered as competent summary judgment evidence, there would still be genuine issues of material fact.

IT IS ORDERED that Plaintiffs' **Motion for Partial Summary Judgment** (Doc. No. 11) be and is hereby **DENIED**.

New Orleans, Louisiana, this **25th** day of **August, 2010**.



A.J. McNAMARA
UNITED STATES DISTRICT JUDGE