

**ALFRED DONALDSON, SR.,
INDIVIDUALLY AND AS THE
ADMINISTRATOR OF THE
ESTATE OF HIS MINOR
CHILD, ALFRED
DONALDSON, JR.**

* **NO. 2012-CA-1013**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

VERSUS

**HUDSON INSURANCE
COMPANY; TANGO MOTOR
TRANSIT, LLC; TANGO
TRANSPORT, INC. AND LOYD
DOLLINS**

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TOBIAS, J., CONCURS IN THE RESULT AND ASSIGNS REASONS.

I respectfully concur in the result reached by the majority that affirms the trial court’s judgment in its entirety, save reducing the award for past medical expenses to \$19,041.00. I write separately because I agree in part with certain points contained in the dissent of Judge Lombard.

A *Daubert* hearing does not require live testimony. Testimony in a deposition may suffice if the expert was adequately cross examined thereat by all parties. In a discovery deposition, the party who intends to rely upon the deposed witness at trial does not necessarily ask many questions, if any at all, intending to ask his/her useful questions at only trial.

In the case at bar, defendant’s counsel did not ask the deposed expert witnesses during the discovery deposition the questions that would ordinarily be necessary to establish the experts’ qualifications and the appropriateness of the experts’ opinions. When these experts were not present at the *Daubert* hearing and defense counsel sought to rely solely upon their discovery deposition, the court had no way to properly rule upon the motion pending before the court. The court did not, therefore, abuse its discretion in determining the experts unqualified and did not abuse its discretion in excluding the experts at trial.