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In researching the admissibility of Diffusion Tensor Imaging, I came upon a Louisiana court decision upholding the use of Diffusion Tensor Imaging. [Andrew v. Patterson Motor Freight, Inc.](#), Civil Action No. 6:13cv814 (U.S.D.C., W.D. 2014).

Plaintiff was injured in a motor vehicle crash and was diagnosed as having sustained a traumatic brain injury to the frontal lobe resulting in residual deficits in the areas of emotion, impulsivity, personality, and short term memory. Plaintiff retained Dr. Eduardo Gonzalez-Toledo who administered Diffusion Tensor Imaging, which according to Dr. Gonzalez-Toledo demonstrated evidence of traumatic brain injury pathology.

Defendants moved to bar Dr. Gonzalez-Toledo, a neuro-radiologist, arguing that Diffusion Tensor Imaging was not widely accepted for the diagnosis of traumatic brain injury. In support of their argument, defendants relied upon a single article entitled “Guidelines for the Ethical Use of Neuroimages in Medical Testimony.”

The Court found:

“The majority of defendants’ argument against Dr. Gonzalez-Toledo’s methodology (*i.e.* DTI is not widely accepted for the diagnosis of TBI) is based upon a single article entitled *Guidelines for the Ethical Use of Neuroimages in Medical Testimony*. According to defendants, this article supports their position that “[t]he post processed images are vibrant and visually arresting, and likely to impress the average juror who will likely not understand how the images are created, what they actually show, and whether they are reliable.” Defendants additionally note the article “cites concerns about bias, such as the hindsight bias, by which

radiologists are more likely to detect an abnormality on imaging when they are told in advance to expect one,” as well as concerns that “in cases that use functional neuroimaging methods typically performed in the research setting, the expert may be influenced by a professional investment in promoting his or her research area or specific research findings.” [Id.] Defendants then state the same concerns “may very well be at play here. . . .” [Id.] The Court finds these are all matters for cross-examination and not a basis for blanket exclusion of Dr. Gonzalez-Toledo’s testimony.

Defendants note the article states DTI “results may vary by scanner field strength, scanner type, pulse sequence, and post processing.” However, Dr. Gonzalez-Toledo has provided all the relevant information necessary for defendants to explore this topic on cross-examination Defendants additionally assert Dr. Gonzalez-Toledo was “required” to include a disclaimer in his report, but failed to do so. First, the Court notes the disclaimer is “suggested” — not required. Second, the Court notes the disclaimer is addressed toward physicians and not jurors. Regardless, this issue can be fully addressed on cross-examination. The remainder of defendants’ argument against admission of DTI evidence is based upon defendants’ expert’s assertion of the ways in which he alleges Dr. Gonzalez-Toledo did not follow the “proposed” guidelines set forth in the referenced article. Again, all of these issues are matters for cross-examination, and not the basis for blanket exclusion of evidence.

Unlike CTM, the Court finds plaintiff has submitted sufficient evidence to show the reliability of DTI. In sum, the evidence submitted shows DTI has been tested and has a low error rate;

DTI has been subject to peer review and publication; and DTI is a generally accepted method for detecting TBI. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94. The Court additionally notes DTI testimony has been admitted by several courts. See e.g. *Ruppel v. Kucanin*, 2011 WL 2470621 (N.D.Ind.); *Hammar v. Sentinel Ins. Co., Ltd.*, No. 08-019984 (Fla.Cir.Ct.2010); *Booth v. Kit*, 2009 WL 4544743 (D.N.M.). Accordingly, the Court denies defendants' motion to the extent it seeks to exclude evidence and testimony regarding DTI" (reference).