

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF  
JESSICA R. MAYER, J.S.C.  
JUDGE



MIDDLESEX COUNTY COURT HOUSE  
P.O. BOX 964  
NEW BRUNSWICK, NEW JERSEY 08903-964

**NOT FOR PUBLICATION WITHOUT  
THE APPROVAL OF THE COMMITTEE ON OPINIONS**

**Memorandum of Decision on Plaintiffs' Motion to  
Exclude Defendants' Specific Causation Expert Testimony**

Laissen v. Johnson & Johnson, et al., Docket No. MID-L-6720-06  
Skala v. Johnson & Johnson, et al., Docket No. MID-I-6820-06  
(In re: Risperdal®/Seroquel®/Zyprexa® Litigation, Case No. 274)

Defendants: Jodi Sydell Rosenzweig, Esq., Drinker Biddle & Reath LLP  
Jeffrey A. Peck, Esq., Drinker Biddle & Reath LLP

Plaintiffs: Fletch V. Trammell, Esq., Bailey Perrin Bailey  
Robert W. Cowan, Esq., Bailey Perrin Bailey

Dated: November 18, 2011

Plaintiffs Shon Laissen and Gary Skala (collectively "Plaintiffs") filed motions to exclude the specific causation testimony of Drs. Harvey M. Hammer and John J. Shelmet.<sup>1</sup> Defendants Johnson & Johnson and Janssen Pharmaceutical Products, Inc. (collectively "Defendants") offer the expert reports of Drs. Hammer and Shelmet to support their claim that treatment with Risperdal® was not the cause-in-fact of Plaintiffs' onset of diabetes.<sup>2</sup> After

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<sup>1</sup> Plaintiffs filed two separate Motions to Exclude the Expert Testimony of Drs. Hammer and Shelmet. Plaintiff Shon Laissen's Motion to Exclude the Expert Testimony of Drs. Hammer and Shelmet is hereinafter referred to as "Laissen Br." Gary Skala's Motion to Exclude the Expert Testimony of Drs. Hammer and Shelmet is hereinafter referred to as "Skala Br." The court's decision on both motions is set forth in this memorandum.

<sup>2</sup> Defendants filed two separate briefs in opposition to Plaintiffs' Motions to Exclude the Expert Reports of Dr. Hammer and Dr. Shelmet. Defendants' Opposition to Plaintiff Shon Laissen's Motion is hereinafter referred to as

considering the parties' moving papers, as well as the deposition testimony and expert report of Drs. Hammer and Shelmet, the court determines that Plaintiffs' motions to exclude the specific causation testimony of Drs. Hammer and Shelmet are **DENIED**.

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"Laissez Defs. Opp." Defendants' Opposition to Plaintiff Gary Skala's Motion is hereinafter referred to as "Skala Defs. Opp."

## BACKGROUND

### A. Dr. Hammer

Plaintiffs argue that Dr. Hammer's specific causation testimony should be excluded because the doctor failed to employ a scientifically reliable methodology in forming his opinions. Laissen Br. at 1; Skala Br. at 1. Plaintiffs contend that Dr. Hammer's conclusion that Risperdal® did not lead to the onset of diabetes can only be determined systematically through a comprehensive differential diagnostic procedure, which was not employed. Laissen Br. at 14-15; Skala Br. at 14-15. Moreover, Plaintiffs argue that Dr. Hammer is unable to explain how or why such conclusions were drawn. Laissen Br. at 11; Skala Br. at 11. Plaintiffs contend that they are unable to question Dr. Hammer adequately regarding his opinions because of the doctor's perfunctory conclusions. Laissen Br. at 4; Skala Br. at 4. It is further argued that Dr. Hammer "failed to provide factual support" for his position that alcohol consumption is "the most significant contributing factor" to the development of Mr. Skala's diabetes. *Id.* at 5. Finally, Plaintiffs argue that Dr. Hammer, as a psychiatrist, is not qualified to offer specific causation opinions as to the basis of Plaintiffs' diabetes. Laissen Br. at 17; Skala Br. at 21.

Defendants respond by noting Dr. Hammer's vast training in the field of psychiatry. Laissen Defs. Opp. at 9; Skala Defs. Opp. at 11. Janssen contends that Plaintiffs failed to explore in any meaningful manner the methodology employed by Dr. Hammer in his assessment of the relationship between Risperdal® and the onset of diabetes. Laissen Defs. Opp. at 13; Skala Defs. Opp. at 14. Defendants argue that during Dr. Hammer's deposition, Plaintiffs' counsel only inquired as to the doctor's case-specific opinions and the statements from his 2005 affidavit without addressing his testimony from prior proceedings. Laissen Defs. Opp. at 10; Skala Defs. Opp. at 12. Defendants further contend that Plaintiffs did not question the doctor about other

reports that more fully explained the material the doctor reviewed in forming his opinions. Laissen Defs. Opp. at 17; Skala Defs. Opp. at 19. Thus, Defendants argue that the doctor's testimony should not be excluded simply because Plaintiffs' counsel did not adequately inquire as to the doctor's methodology. Laissen Defs. Opp. at 14; Skala Defs. Opp. at 14-15. Finally, Defendants conclude that Dr. Hammer is qualified as an expert and does not have to employ a differential diagnosis process in drawing his conclusions, as Plaintiffs contend. Laissen Defs. Opp. at 24-25; Skala Defs. Opp. at 20.

B. Dr. Shelmet

Plaintiffs argue that Dr. Shelmet is unable to articulate the methodology he employed in forming his opinion and thus should be barred from testifying at trial. Laissen Br. at 11; Skala Br. at 11. Further, the doctor concludes that Risperdal® is not capable of causing diabetes despite his acknowledgement of literature to the contrary. Laissen Br. at 12; Skala Br. at 18. Plaintiffs argue that because Dr. Shelmet cannot explain why he discounts studies causally connecting Risperdal® with diabetes, they are unable to examine him properly. Laissen Br. at 14; Skala Br. at 19.

Plaintiffs note that Dr. Shelmet opined during deposition that Mr. Laissen had several risk factors for diabetes prior to ingestion of Risperdal®. Laissen Br. at 15. However, this information was not mentioned in the doctor's expert report nor could Dr. Shelmet recount which of the risk factors were most significant in Plaintiff's development of diabetes. *Id.* Despite this testimony, the doctor believes that Mr. Laissen's alcohol consumption was the likely cause of his diabetes. *Id.* at 16. Similarly, Dr. Shelmet believes that Mr. Skala's diabetes is a result of his depression and alcohol consumption despite the lack of support for this conclusion.

Skala Br. at 20. Since the doctor is unable to explain how he draws these conclusions, Plaintiffs urge this court to exclude Dr. Shelmet's specific causation testimony.

Defendants support Dr. Shelmet by citing his career-long focus on treating diabetic patients. Laissen Defs. Opp. at 5; Skala Defs. Opp. at 7. Specifically, Janssen notes the doctor's focus on the topic of alcohol use and its causal relationship to the development of diabetes. Laissen Defs. Opp. at 5; Skala Defs. Opp. at 7. Relying on his experience, as well as an extensive list of peer-reviewed articles, the doctor determined that Risperdal® was not a substantial cause of either Plaintiff's diabetes. Laissen Defs. Opp. at 7; Skala Defs. Opp. at 7. In both cases, Dr. Shelmet believes that alcohol consumption played a significant role in the onset of Plaintiffs' diabetes. Laissen Defs. Opp. at 6; Skala Defs. Opp. at 8. In particular, Defendants note the doctor's extensive discussion of Mr. Skala's weight changes and his "longstanding alcohol abuse and 'less than optimal management of hypothyroidism.'" Skala Defs. Opp. at 9 (citing June 2011 report of John J. Shelmet, M.D. at 2).

Defendants argue that Dr. Shelmet employed a proper methodology in forming his opinions about Plaintiffs and that the doctor's testimony should not be excluded simply because Plaintiffs' counsel failed to question him adequately. Laissen Defs. Opp. at 8; Skala Defs. Opp. at 9. In fact, Defendants note that during the doctor's deposition, Plaintiffs did not ask the doctor about any studies cited in his expert report. Laissen Defs. Opp. at 18; Skala Defs. Opp. at 19. Defendants argue that Dr. Shelmet employed a proper methodology in forming his opinions about Plaintiffs and that the doctor's testimony should not be excluded simply because Plaintiffs' counsel failed to question Dr. Shelmet thoroughly. Laissen Defs. Opp. at 8; Skala Defs. Opp. at 9.

## RELEVANT LAW

To establish liability, Plaintiffs must show that treatment with Risperdal<sup>®</sup> caused them to develop or was a substantial contributing factor in the development of their diabetes. Kemp ex rel. Wright v. State, 174 N.J. 412, 417 (2002). In order to rebut this theory, Defendants offer the expert testimony of Dr. Harvey M. Hammer, M.D., a psychiatrist, and Dr. John J. Shelmet, M.D., an endocrinologist, who opine that Risperdal<sup>®</sup> did not cause Plaintiffs to develop diabetes. The admissibility of expert testimony in New Jersey is governed by New Jersey Rules of Evidence (“N.J.R.E.”) 702. The rule provides that:

[i]f 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.

[N.J.R.E. 702.]

To be deemed admissible, an expert’s testimony must satisfy three requirements:

(1) the intended testimony must concern a subject matter that is beyond the ken of the average juror; (2) the field testified to must be at a state of the art such that an expert’s testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony.

Creanga v. Jardal, 185 N.J. 345, 355 (2005) (quoting Landrigan v. Celotex Corp., 127 N.J. 404, 413 (1992)). Plaintiffs do not dispute that Drs. Hammer and Shelmet are rendering opinions regarding “scientific, technical, or other specialized knowledge” that is “beyond the ken of the average juror,” and that “will assist the trier of fact to understand the evidence or to determine a fact in issue.”<sup>3</sup> Landrigan, supra, 127 N.J. at 413; N.J.R.E. 702. Nor do Plaintiffs contest the doctors’ qualifications as a psychiatrist and endocrinologist with “sufficient specialized knowledge” to express and explain why each believes that Risperdal<sup>®</sup> was not a factor in the

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<sup>3</sup> During oral argument on October 25, 2011, the Plaintiffs’ counsel agreed that the doctor’s are qualified and that expert testimony would aid the jurors in understanding the issues in these cases.

development of Plaintiffs' diabetes. Ibid. Plaintiffs contend that the specific causation testimony of Drs. Hammer and Shelmet is not "sufficiently reliable" because these experts have not explained their methodology nor can they demonstrate their methodology is scientifically reliable. Laissen Br. at 4-7; Skala Br. at 4-7; see Kemp, supra, 174 N.J. at 427.

"The burden of proving that the testimony satisfies those threshold requirements rests with the party proffering the testimony." Hisenaj v. Kuehner, 194 N.J. 6, 15 (2008). An expert must be "able to identify the factual bases for their conclusions, explain their methodology, and demonstrate that both the factual bases and the methodology are scientifically reliable." Landrigan, supra, 127 N.J. at 417. This court must review the expert testimony of Drs. Hammer and Shelmet to determine whether their opinions are "derived from a sound and well-founded methodology that is supported by some expert consensus in the appropriate field." Kemp, supra, 174 N.J. at 427 (quoting Landrigan, supra, 127 N.J. at 417) (internal quotations omitted). An expert's methodology can be properly supported by "professional journals, texts, conferences, symposia, or judicial opinions accepting the methodology," and "[c]ourts also may consider testimony from other experts in the field who use similar methodologies." Ibid. While the traditional Frye standard required that an expert's testimony be "generally accepted within the relevant scientific community," New Jersey applies a more relaxed standard. State v. Chun, 194 N.J. 54, 91 (2008); accord Harvey, 151 N.J. 117, 169-70 (1997) (citing Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)). Rather than requiring expert testimony to be generally accepted in the profession, "a scientific theory of causation that has not yet reached general acceptance may be found to be sufficiently reliable if it is based on a sound, adequately-founded scientific methodology involving data and information of the type reasonably relied on by

experts in the scientific field.” Rubanick v. Witco Chem. Corp., 125 N.J. 421, 449 (1991); accord Kemp, supra, 174 N.J. at 430.

Hence, even if an expert’s opinion is not generally accepted in the scientific community, it can still be admitted as evidence, so long as the methodology and reasoning underlying that opinion are sound. See Clark v. Safety-Kleen Corp., 179 N.J. 318, 337 (2004). The Supreme Court of New Jersey specifically notes that in pharmaceutical cases “in which a medical cause-effect relationship has not been confirmed by the scientific community but compelling evidence nevertheless suggests that such a relationship exists,” such evidence may be admissible. Kemp, supra, 174 N.J. at 430.

Flaws in an expert’s causation testimony are not fatal. Even where an expert draws only a tenuous relationship between “the studies and literature on which [the expert] relied . . . ,” the expert’s causation testimony may still be admitted, so long as the expert sufficiently provides the “why and wherefore” underlying his conclusions. Hisenaj v. Kuehner, 194 N.J. 6, 24 (2008); see also State v. Townsend, 186 N.J. 473 (2006) (quoting Rosenberg v. Tavorath, 352 N.J. Super. 385, 401 (App. Div. 2002)). As the Hisenaj Court emphasized, flaws in an expert’s reasoning may be explored by opposing counsel on cross-examination, but such flaws do not compel exclusion of an expert opinion under N.J.R.E. 702. Hisenaj, supra, 194 N.J. at 24; see also State v. Dreher, 302 N.J. Super. 408, 464 (App. Div.) certif. denied, 152 N.J. 10 (1997), cert. denied, 524 U.S. 943 (1998).

Although trial courts are “expected to act as gatekeepers to the proper admission of expert testimony,” the court is not required to “investigate *sua sponte* the extent to which the scientific community holds in esteem the particular analytical writings or research that a proponent of testimony advances as foundational to an expert opinion.” Hisenaj, supra, 194 N.J.



at 16; see also Landrigan, supra, 127 N.J. at 414; Rubanick, supra, 125 N.J. at 451. Instead, “[t]he court’s function is to distinguish scientifically sound reasoning from that of the self-validating expert, who uses scientific terminology to present unsubstantiated personal beliefs.” Landrigan, supra, 127 N.J. at 414.

## LEGAL ANALYSIS

### A. Dr. Hammer

Dr. Hammer is a board certified psychiatrist who has been practicing in his field for 40 years. See August 1, 2011 Transcript of Deposition of Harvey M. Hammer, M.D. (“Hammer Dep.”) at 9:18-10:4. He has served on the psychiatric staff at several of the country’s leading academic and research institutions including Johns Hopkins University, the National Institute of Mental Health (“NIMH”) and Columbia University. See Curriculum Vitae of Harvey M. Hammer, M.D. Dr. Hammer was an attending psychiatrist when first- and second-generation antipsychotics were introduced onto the market and therefore has extensive experience with these agents. Hammer Dep. at 13:11-16. Dr. Hammer was Chairman of the Psychiatry Department at Morristown Memorial Hospital and a Professor of Psychiatry at the University of Medicine and Dentistry of New Jersey. Throughout his career the doctor has seen hundreds of patients, and utilized a variety of methods to treat them. See December 13, 2005 Affidavit of Harvey M. Hammer, M.D. (“Affidavit of Dr. Hammer”) at 1. He was also selected to participate in a Peer Review Committee at Morristown Memorial Hospital in which he evaluated hundreds of patient records to determine common risk factors for patients who were prescribed psychotropic medication. Id. at 3. It is based on this experience as well as discussions with other psychiatrists, evaluation of peer-reviewed journal articles and review of the psychiatric literature that supports his qualification to testify in this trial. Id. at 6:18-25; 7:1-6.

In his case specific expert reports and deposition testimony, Dr. Hammer demonstrated his extensive knowledge and experience with first and second-generation antipsychotics. Further, Dr. Hammer’s expert reports described his review of Plaintiffs’ medical histories in detail. See Harvey M. Hammer M.D. June 15, 2011 Report. The doctor concludes that

Risperdal® was of benefit to Mr. Skala and that any potential risks were outweighed by these benefits. Id. at 3-4. Likewise, Dr. Hammer provides support for the beneficial effects Mr. Laissen experienced when treated with Risperdal®. In the doctor's expert report he states that "the use of Risperdal® for Mr. Laissen was, in all likelihood, a life-saving intervention." See Harvey M. Hammer M.D. June 14, 2011 Report at 3. In coming to these conclusions, Dr. Hammer relies on the NIMH-sponsored Clinical Antipsychotic Trial of Intervention Effectiveness ("CATIE") study at fifty-seven participating clinical sites across the United States between January 2001 and December 2004. Affidavit of Dr. Hammer at 1. Of five atypical antipsychotics tested in that study, Risperdal® had the "lowest number of drop-outs due to adverse effects." Id.

The court is further persuaded as to the sufficiency of Dr. Hammer's qualifications based upon his previous expert testimony in litigations in West Virginia and Florida. Laissen Defs. Opp. at 10; Skala Defs. Opp. at 11. The expert report for the case in West Virginia lists eight articles that Dr. Hammer reviewed in formulating his opinion. See Harvey M. Hammer M.D. November 14, 2007 Report. Likewise, the doctor lists thirty studies he relied upon in writing a subsequent report for the same case in West Virginia. See Harvey M. Hammer M.D. March 3, 2008 Report. Dr. Hammer explained that he has relied upon his prior litigation reports in forming his opinions in Plaintiffs' cases. Laissen Defs. Opp. at 10; Skala Defs. Opp. at 11.

Mr. Skala argues that Dr. Hammer devised a differential diagnosis when he stated that alcohol consumption was a substantial contributing factor in Plaintiff's development of diabetes. Hammer Dep. at 37:10-18; Skala Br. at 17. However, Defendants' specific causation expert did not give a differential diagnosis in determining the cause of Mr. Skala's diabetes. "It is not a defendant's burden to prove by a reasonable medical probability what caused the claimed injury.

That is plaintiff's burden, and a defendant should be able to rebut any such proof by medical evidence negating the claimed cause." Johnesee v. Stop & Shop Cos., 174 N.J. Super. 426, 431 (App. Div. 1980). Thus, Defendants' expert does not have to rule in potential causes of diabetes and rule out those which he believes did not contribute to Plaintiff Skala suffering from the disease. When Dr. Hammer was asked the cause of Mr. Skala's diabetes, Dr. Hammer answered that he was not asked to make that determination. Instead he was "asked to analyze the case of Mr. Skala and to see what role the treatment of his mental disorder with Risperdal® may have had as it contributed to the formation of his glucose difficulties." Hammer Dep. at 20:12-17. It was only after Plaintiff's counsel pressed Dr. Hammer that the doctor stated that Plaintiff's alcohol consumption probably played a role in the development of diabetes. Hammer Dep. at 37:10-17.

Plaintiffs also seek to exclude portions of Dr. Hammer's testimony on the grounds that such testimony is beyond the scope of his expertise. Laissen Br. at 17; Skala Br. at 21. The best mechanism for exclusion of specific portions of Dr. Hammer's testimony is through a motion in limine. Plaintiffs' criticisms of the data and/or literature relied upon by Dr. Hammer are for cross-examination and go the weight to be accorded to his expert testimony. See Grassis v. Johns-Manville Corp., 248 N.J. Super. 446, 455 (App. Div. 1991). To the extent that Dr. Hammer is being offered to opine on psychiatric matters, the court finds that he is qualified to do so.

B. Dr. Shelmet

Dr. Shelmet is an endocrinologist who is board certified in internal medicine. See June 2011 Expert Report of Dr. John J. Shelmet. The doctor has been an Assistant Clinical Professor of Medicine at Robert Wood Johnson University Hospital since 1988 and is a senior attending

physician at the University Medical Center at Princeton. See Curriculum Vitae of Dr. John J. Shelmet. Dr. Shelmet has been in private practice for 33 years caring exclusively for diabetic patients. Id. at 3. During his long career, the doctor has been involved in over thirty clinical trials concerning diabetes and has written nineteen articles on various diabetic topics. Id. at 4-12.

Plaintiffs argue that Dr. Shelmet failed to use scientific methods and procedures in forming the opinions set forth in his expert reports. However, the doctor's reports cite multiple published, peer-reviewed studies in support of his conclusion that Risperdal® was not a substantial factor in Plaintiffs' development of diabetes. He also consulted articles in the American Diabetes Association Journal in forming his opinions. See August 12, 2011 Transcript of Deposition of John J. Shelmet, M.D. ("Shelmet Dep.") at 14:6-13.

Plaintiffs contend that Dr. Shelmet's testimony is inadmissible because he does not properly account for some diabetic risk factors, and gives more weight to certain risk factors. Dr. Shelmet enumerates several risk factors each Plaintiff had prior to treatment with Risperdal®. See June 2011 Expert Report of Dr. John J. Shelmet. While Dr. Shelmet is hesitant to assign relative weight to each risk factor, he is able to support his conclusions with well-reasoned explanations. For example, Dr. Shelmet points to studies suggesting that individuals with depression are more likely to develop diabetes than those not suffering from mental illness. Id. at 6. Dr. Shelmet also notes that Mr. Skala's weight gain was a significant factor in the development of his diabetes. Ibid. Further, according to Dr. Shelmet, Mr. Skala's well-documented consumption of alcohol likely contributed to his weight gain. Id. at 7. In fact, the doctor tracks Mr. Skala's largest weight gain during periods when Plaintiff Skala was drinking several beers a day. Ibid. Dr. Shelmet opines that periods of excess alcohol consumption also coincide with periods when Mr. Skala's glycemic control was at its worst. Ibid. Dr. Shelmet

explains that while increasing doses of Risperdal® have been associated with weight gain, in Mr. Skala's case, increasing doses are associated with a 13-pound weight loss. Id. at 8. Therefore, Dr. Shelmet discounts any correlation between Risperdal® and Mr. Skala's diabetes. Ibid.

Dr. Shelmet likewise explains the basis for his belief that Mr. Laissen actually had diabetes prior to ingestion of Risperdal®. See June 2011 Report of John J. Shelmet, M.D. The doctor clarifies that Plaintiff Laissen had an abnormal blood glucose level in February 1999, well before commencing treating with Risperdal® in March 1999. Id. at 8-9. While Plaintiff's treating physician suggested Mr. Laissen seek further medical care for his elevated blood sugar, Mr. Laissen failed to do so. Id. at 5. Seven months after first being prescribed Risperdal®, Plaintiff again had lab work done and at that time was diagnosed with diabetes. Id. at 6. Dr. Shelmet believes that Plaintiff Laissen could not have developed diabetes from Risperdal® in such a short period of time and likely was pre-diabetic in February 1999. Id.

Thus, the court finds that the underlying studies relied upon by Dr. Shelmet are well-regarded by experts in the field of endocrinology and that his opinions are based on proper scientific methodologies. Plaintiffs' counsel may cross-examine Dr. Shelmet as to any perceived flaws in his expert opinions so as to allow the jury to assess the weight to be given to those expert opinions. See Grassis, supra, 248 N.J. Super. at 455.

## CONCLUSION

The court finds the testimony of Defendants' specific causation experts, Drs. Hammer and Shelmet, sufficiently reliable to be admissible at trial. Therefore, Plaintiffs' motions to exclude Defendants' specific causation expert testimony are **DENIED**. The court will sign the orders accordingly.



JESSICA R. MAYER, J.S.C.

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**FILED**

NOV 18 2011

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GARY SKALA, Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MIDDLESEX COUNTY
vs.	:	
	:	
JOHNSON & JOHNSON COMPANY, JANSSEN PHARMACEUTICA PRODUCTS, L.P. a/k/a JANSSEN, L.P., a/k/a JANSSEN PHARMACEUTICA, L.P., a/k/a JANSSEN PHARMACEUTICA, INC., Defendants.	:	CIVIL ACTION
	:	CASE CODE 274
	:	(Risperdal/Seroquel/Zyprexa Litigation)
	:	
	:	DOCKET NO. MID-L-6820-06(MT)
	:	
	:	<b>ORDER</b>
	:	

THIS MATTER having been brought before the Court by Bailey Perrin Bailey and Weitz & Luxenberg, attorneys for Plaintiff Gary Skala; the Court having heard and considered the moving papers, ~~any~~ opposition papers, ~~any~~ reply papers, and the arguments of counsel, and good cause having been shown;

IT IS on this 18<sup>th</sup> day of November 2011,

**ORDERED** that Plaintiff's Motion to Exclude the Specific Causation Testimony of Drs. Harvey M. Hammer and John J. Shelmet is hereby granted, for the reasons set forth in the court's memorandum dated November 18, 2011.

**DENIED**



IT IS FURTHER ORDERED that a copy of this Order shall be served upon Defendants' counsel within seven (7) days of the date of this Order.

**OPPOSED**

  
\_\_\_\_\_  
JESSICA R. MAYER, J.S.C.

This motion was:

Opposed

Unopposed