2011 WL 7517673 (Ind.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Indiana.
Elkhart County

Tracy C. KIRTS, Plaintiff,
v.
Todd S. WYSE, D.D.S. and 57250 Alpha Drive, LLC, Defendants.

No. 20D01-0803-CT-00018.
April 18, 2011.

Plaintiff's Memorandum in Opposition to Defendant's Motion to Exclude Expert Testimony of David B. Daubert, P.E.

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Introduction

Tracy Kirts filed this lawsuit to recover damages for personal injuries she received as a result of a slip and fall incident which occurred in the parking lot of Defendant's dental practice in December of 2007. Mrs. Kirts has retained the services of David B. Daubert, P.E. to explain the mechanics of pedestrian safety to the jury. Defendant has moved to exclude the testimony of Mr. Daubert under the authority of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny. However, as the Indiana Supreme Court observed in *Sears Roebuck and Co. v. Manuilov*, 742 N.E.2d 453, 461 (Ind. 2001), federal jurisprudence interpreting *Daubert* is not binding on state courts in deciding evidentiary issues.

As will be explained below, Mr. Daubert is imminently qualified as an expert in the field of engineering and accident reconstruction with an emphasis on pedestrian issues. His testimony will assist the jury to understand issues in this case concerning pedestrian safety and ground surface conditions and maintenance. The trial court should exercise its broad discretion as gatekeeper for expert opinion evidence, and deny Defendant's Motion to Exclude Expert Testimony.

STATEMENT OF FACTS

In 2007, Defendant Todd S. Wyse operated his dental business at 57250 Alpha Drive, in Goshen, Indiana. [1] (Todd Wyse Dep. p. 6.) He admitted in his deposition that it is his responsibility to make sure that the premises are safe for his patients. (*Id.* p. 8.) Defendant Wyse hired a snow plow contractor to move snow and spread salt in his parking lot. (*Id.* p. 16.) The snow plow contractor only showed up to plow late at night or early in the morning. (*Id.* p. 27.)

On Tuesday, December 18, 2007, Mrs. Kirts came to the office at 57250 Alpha Drive, Goshen, Indiana for routine dental services. (Tracy Kirts Dep. p. 19.) She parked her truck in an available space facing the front of the building, at the end of the front row. (*Id.* p. 25.) After her appointment ended at approximately 11:45 a.m., Mrs. Kirts left the building to return to her vehicle. (*Id.* p. 20.) Although it was not snowing at that time, the parking lot and the sidewalk were covered with a thin layer of fresh snow. (*Id.* pp. 21-23.) The area beside the parking lot had accumulated more snow than the parking lot itself. (*Id.* p. 26.) A van was parked in the space located on the passenger's side of Mrs. Kirts's truck. (*Id.* p. 25.)

Mrs. Kirts stepped from the snow-covered sidewalk onto the snow-covered parking lot on the passenger's side of her truck, next to the van. (*Id.* p. 26.) As she walked around the rear of the truck, her feet slipped on ice that was covered by the snow

in the parking lot. (*Id.* p. 27.) This caused her to lose her balance. She tried to break her fall, but was unsuccessful. She fell to the ground on the right side of her body. (*Id.* p. 28.) She sustained serious and permanent injury to her right leg and also injured her left forearm when she fell to the parking lot.

ARGUMENT

Foundational Requirements for Expert Testimony

The trial court is a gatekeeper charged with responsibility for controlling the admission of expert evidence. *Akey v. Parkview Hospital, Inc.*, 941 N.E.2d 540, 544 (Ind. Ct. App. 2011) The court is vested with broad discretion to perform this function, and its determination of whether a witness is qualified to testify as an expert is reviewed on appeal for an **abuse** of that discretion. *Manuilov, supra,* at 459.

Indiana Evidence Rule 702 sets forth the foundational requirements for expert testimony:
(a) 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.

(b) Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.

Ind. Evid. Rule 702 (West 2011).

Under this rule, a witness may be qualified as an expert by virtue of "knowledge, skill, experience, training or education." *Kubsch v. State*, 784 N.E.2d 905, 921 (Ind. 2003). Only one characteristic is necessary to qualify an individual as an expert. *Creasy v. Rusk*, 730 N.E.2d 659, 669 (Ind. 2000). A witness may qualify as an expert on the basis of practical experience alone. *Id.*

In their Motion to Exclude Expert Testimony, Defendants admit that Mr. Daubert is qualified to testify on the issues in this case. (Def.'s Mo. Exclude p. 7.)[2] He has a Master's degree in traffic and transportation engineering, and he is licensed as a professional engineer. (David Daubert Dep. p. 6.) He also holds a Master of Arts degree from the U.S. Army War College. (*Id.*) For approximately 25 years, Mr. Daubert has been involved with the pedestrian committee at the Transportation Research Board, dealing with snow and ice issues related to research needed in the transportation area. (*Id.* p. 11.) He is among the reviewers for the Americans with Disabilities Act relating to slipperiness of pavement, and he served as a research scientist at the National Walking Study for slip and fall and ice precaution in the State of Minnesota. (*Id.* pp. 11-12.) His role in that study was to accumulate data on human walking speeds and pathway choices in snow and ice conditions. (*Id.*) He also participates with the Institute of Transportation Engineers on walking issues to protect older pedestrians. (*Id.*) He is also an expert in footwear, having worked as a shoe repairman since childhood. (*Id.* p. 37.)

The thrust of Defendants' argument to exclude Mr. Daubert's testimony is that it does not meet the standards for *scientific* testimony as set forth in *Daubert* or *Steward.* (Def.'s Mo. Exclude p. 1.) In support of this argument, Defendants rely on numerous cases applying the Federal Rules of Evidence[3], or which are factually distinguishable from the instant case.[4] Indiana law is well-settled that the factors set forth in *Daubert* are merely guidelines. *Daubert* is not controlling.

In *Akey, supra,* the Indiana Court of Appeals reiterated well-settled case law that scientific testimony does not need to meet the standard described in *Daubert* to be admissible under Indiana Evidence Rule 702(b). *Akey*, 941 N.E.2d at 543.

In *Akey,* the estate of a deceased **elderly** patient filed a lawsuit alleging medical malpractice because he suffered a cerebral hemorrhage two days after receiving emergency room treatment. The trial court granted the defendants' motion for summary

judgment. After excluding the affidavit testimony of the plaintiff's expert witness offered in opposition to summary judgment. *Id.* at 542. The Court of Appeals reversed the trial court's entry of summary judgment, and explained its reasoning in the following terms:

Although this court held... that to be admissible, expert scientific evidence "must be supported by reliable principles independent of (the witness's) expertise in the field," that rationale is not cause for us to reject the proposition that a witness's education, experience, knowledge and training is adequate to permit the trier of fact to give such weight and credence to the opinion testimony as it is inclined to do. This is not an opening of the door to "junk science" nor to unreliable and unsupported opinions. It is merely an acceptance that reasonable expert opinions are not to be summarily excluded on grounds that the opinion has not been subjected to general acceptance by others in the field or proved by testing and peer review. Such opinions, so long as not based wholly upon speculation and conjecture, are entitled to be given due consideration.

Id. at 545-546 (citations omitted). [5]

The Court's recent discussion *inAkey* concerning the admissibility of expert testimony clarifies the departure in Indiana from the rigid standards of *Daubert.* [6]

Defendants did not thoroughly explore Mr. Daubert's credentials and expertise in the field of pedestrian safety issues. Had they done so, they also would have learned that Mr. Daubert has reconstructed hundreds of pedestrian collisions. He has also been a competitive runner since 1960, having completed 98 marathons or longer distance races on six continents, 15 countries and 48 states. Since 2004, Mr. Daubert no longer runs marathons due to shrapnel wounds to both knees which he received during combat in Vietnam. He has since undergone three knee replacements and six arthroscopic knee surgeries to repair the damage. Nevertheless, instead of running marathons, Mr. Daubert is now a race walk competitor. He logs approximately 50 miles per week speed walking, and he participates in speed walk competitions ranging in distance between 1 and 100 miles.

The Application of 702(b) is Limited to Scientific Testimony

Rule 702(b), which sets forth an additional requirement for admission of expert *scientific* testimony, states as follows:

> Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.

Ind. Evid. R. 702(b) (West 2011).

Scientific testimony is only one type of expert testimony that falls within the parameters of Rule 702 because 702(a) states that expert testimony may embody "scientific, technical, *or* other specialized knowledge." Evid. R. 702(a) (emphasis supplied). It is the Plaintiff's position that the provisions of Rule 702(b) only apply if the expert testimony is *scientific.* The Indiana Court of Appeals considered this very issue in *Cansler v. Mills,* 765 N.E.2d 698 (Ind. Ct. App. 2002).

In *Cansler*, the Court of Appeals reversed the trial court's entry of summary judgment for the defendant automobile manufacturer. The plaintiff filed a lawsuit against General Motors for products liability because his air bags failed to deploy when he rear-ended another vehicle. [7] *Id.* at 701. The plaintiff offered affidavit testimony of an automobile mechanic in opposition to defendants' motion for summaryjudgment. *Id.* The trial court found that the mechanic was not qualified as an expert, and ruled that his testimony regarding the air bag's failure to deploy was inadmissible. *Id.* The plaintiff argued that the trial court erred in excluding the mechanic's testimony because it was based on his observation and skill rather than scientific principles. *Id.* at 702.

The Court of Appeals found that the trial court **abused** its discretion when it excluded all of the mechanic's testimony. *Id.* The Court concluded that the mechanic was qualified to testify as a skilled witness about observations from his years of experience with wrecked automobiles and from his observation of the plaintiff's Corvette, even though he was not qualified to testify as a scientific expert witness in the area of air bag deployment. *Id.* at 704.

In the present case, Defendants have devoted a considerable amount of time arguing that Mr. Daubert's testimony is inadmissible because it is not based on reliable scientific methodology. (Defs' Mo. Exclude p. 7.) In cases where expert witness opinions are based on scientific principles, Rule 702(b) requires that those principles be reliable. Mr. Daubert's opinions are *not* based on scientific principles. He is instead possessed with considerable specialized and technical knowledge of pedestrian safety issues that are at the heart of this case. Therefore, Defendants' reliance on a barrage of federal decisions that apply the scientific standards set forth in *Daubert* is entirely misplaced.

Testimony of David B. Daubert

The keystone for expert testimony under Rule 702 is whether it "will assist the trier of fact to understand the evidence or to determine the fact in issue ..." 13B ROBERT L. MILLER, JR. INDIANA EVIDENCE at 240 (West 2010). Rule 702(a) does not limit the basis of the qualifications of an expert to expertise in any particular scientific endeavor. Instead, any witness with technical or other specialized knowledge acquired by way of experience, training, or education may give opinions relative to the ultimate issue in a case. [8] Just as the non-scientific portion of the mechanic's testimony was considered helpful in *Cansler*, Mr. Daubert's testimony will help the jury understand the evidence at trial.

Mr. Daubert considered several factors in analyzing Mrs. Kirts's slip and fall incident which occurred on December 18, 2007. His analysis included a review of several photographs of Dr. Wyse's premises, weather records and deposition testimony of the parties and some witnesses. The factors he considered included slope of the ground, particularly the ground adjacent to Dr. Wyse's parking lot or sidewalk, how much snow has fallen, visible differences in ground elevation, direction and method of drainage, temperatures, and the phenomenon of "freeze-back." (David Daubert Dep. pp. 14-15.) These critical factors -- drainage, accumulation, temperature, and "freeze-back"-- are interrelated. Mr. Daubert's testimony will assist the jury in understanding how these factors apply to the conditions that were present on December 18, 2007.

It is one of Mr. Daubert's opinions that snow should have been removed from Dr. Wyse's parking lot in a different manner. At a minimum, Dr. Wyse should have moved the snow to an area that would not result in snow melt flowing back into the area of the parking lot used by his patients, including Tracy Kirts. (Pl.'s Supp. Resp. Defs' Expert Witness Interrog. No. 6.) This opinion is based on Mr. Daubert's years of experience reviewing and researching pedestrian and pavement engineering issues. (Daubert Dep. pp. 6, 9, 11-14.)

Dr. Wyse's parking lot is "typical." (Daubert Dep. p. 16.) The center of the parking lot is at a lower elevation than the edges of the parking lot. (*Id.*) This common design guides the flow of water, or snow melt, to a single drain located in the center of the parking lot. (*Id.*) The center of the parking lot is the area behind the parked vehicles as depicted on the photographs reviewed by Mr. Daubert. (Id.) Just as asphalt roads are constructed with a crowning center line, parking lots are designed with a slope to drain water off the surface. (*Id.* p. 20.) The surface of Dr. Wyse's parking lot is asphalt. (Id.) Asphalt surfaces require slopes to allow for drainage because water collected on top of asphalt presents a dangerous condition. (*Id.*) The slope of the parking lot is evident in photographs filed contemporaneously herewith. (Id.; Dep. Exh. 1.) Mr. Daubert explained the photograph exhibits as follows:
Q. How does this photo tell you that?

A. Because the rest of the parking lot is clear. The part that is going to melt and go to the low spot is going to stay frozen.

Q. But how do you know the rest of the parking lot is clear? I mean, there could be ice over here. I'm just curious here. This is all new to me, so you have to teach me.

A. I guess it'sjust experience, that if we look at that photograph 3, and even photograph 4, the area of bare assault (asphalt) -- there's some wet spots, but the area of bare asphalt is where the water has drained from downhill.

Q. Okay. So you're saying that if there had been melt, it would have come from both sides of the parking lot to the center?

A. Yes.

(Id. pp. 18-19.)

When Mrs. Kirts arrived at Dr. Wyse's office on December 18, 2007, she parked in the end parking space facing the front of the office building. [9] (Tracy Kirts Dep. p. 25.) The snow was plowed into the grass next to the end of the row where Mrs. Kirts parked. (*Id.* pp. 26-27.) Because there was too much snow piled up outside her door, she went around the rear of her vehicle into the building. (Id.) She took essentially the same route back to the vehicle after her appointment. (*Id.*) The low spot behind Mrs. Kirts's vehicle is precisely the area where snow melt accumulated and re-froze, and is precisely where she fell.

As Mr. Daubert explained, freeze-back is a phenomenon that occurs all winter long, and it is a common problem in parking lots and roadways. (Daubert Dep. p. 40.) During the day, warmer temperatures and sunlight melt the snow, especially near warm asphalt or near a building. (*Id.*) The snow melt flows with the design of the slope. (*Id.*) As night approaches, temperatures decrease and the water, or snow melt, re-freezes. (Id.)

Freeze-back certainly played a role in this case. (*Id.*) Prior to Mrs. Kirts's fall, the snow melted downhill from all sides of the parking lot toward the middle of the parking lot where the single drain is located. (*Id.*) The result of this phenomenon is evident in photograph number 3. (*Id.* p. 41; Dep. Exh. 1.) The substance covering the middle of the parking lot behind the white vehicle arrived there by freeze-back. (Id.)

On top of the materials that had melted and re-froze on the asphalt, Mrs. Kirts testified that there was a dusting of snow on the sidewalk and in the parking lot when she arrived at Dr. Wyse's office on December 18, 2007. (*Id.* p. 28; Kirts Dep. pp. 20-22.) Mr. Daubert explained how the snow-covered ground created a hidden condition at Dr. Wyse's dental office that increased the danger to Mrs. Kirts:
Q. How does that amount of snowfall in that period of time come into play with your opinions in this case, if it does?

A. Ms. Kirts said that there was snow on the sidewalk, a small amount, a dusting of snow on the sidewalk and in the parking lot. That is a particular problem because it masks what's underneath it. The person walking on a dusting of snow on asphalt has a different traction than a person walking on snow that has another surface underneath it; for example, ice or packed snow. So the person is fooled into thinking I can walk fine from the door, down the sidewalk, out into the parking lot, and then reaches a different texture, different friction value as they turn around the rear of the vehicle as we see in the photographs in Deposition Exhibit 1.

(Daubert Dep. pp. 28-29) (emphasis supplied).

The three surfaces -- asphalt, snow, and ice -- have different friction values. The different friction values dictate how an individual walks on any given surface. (Pl.'s Supp. Resp. Defs' Expert Witness Interrog. No. 6.) Ice has a much lower friction value than snow. (Id.; Daubert Dep. p. 28.) When Mrs. Kirts left Dr. Wyse's office and began walking to her truck, she was walking on what she believed was snow--nothing else--and she adjusted her gait accordingly for the lower friction. Had Mrs. Kirts been aware of the presence of ice under the “dusting of snow” in the Dr. Wyse's parking lot, she would have been in a position to adjust her gait. (Pl.'s Supp. Resp. Defs' Expert Witness Interrog. No. 6.) However, she was fooled by the appearance

of the parking lot. She unexpectedly encountered ice under the snow in the parking lot without knowing she needed to adjust her walking gait. According to Mr. Daubert, Dr. Wyse was in the best position to recognize the danger, but he failed to remove it:
Q. Well, Doctor Wyse and several of his employees testified that they did inspect the parking lot the morning of the 18th when they arrived at work and that none of them thought that the parking lot was slippery, they all walked across it.

What is it that you think my client should have done to prevent this from happening?

A. It's a matter of knowing snow and ice control and knowing that if you have a dusting of snow over what we see in the pictures as preexisting ice or packed snow, that you have to be careful.

I wouldn't be surprised if somebody, an employee parked their car on the opposite side of the parking lot, walked across the parking lot on a spot that had no ice or snow underneath it and said it's fine, not a problem.

But the areas that have ice and snow, that are already there, that are not treated, and you put a light dusting of snow on them and hide that ice and snow underneath it, that's your problem.

(Daubert Dep. pp. 33-34) (emphasis supplied).

Defendants were in the best position to recognize the dangers that were present in the parking lot on December 18, 2007. Nonetheless, Defendants attempt to shift their responsibility to Mrs. Kirts because she had walked into the building an hour before she fell, because she is familiar with northern Indiana winters, and because of the shoes she was wearing on December 18, 2007. Dr. Daubert was questioned on these topics as well.

Dr. Wyse and his staff are familiar with the premises because they park their vehicles in the lot on a regular basis, parking in the same general area and walking essentially the same route from the parking lot into the building. As Mr. Daubert pointed out, it cannot be assumed that Mrs. Kirts walked across the same area on her way into Dr. Wyse's office that morning:
Q. Well, Ms. Kirts walked across the same area that she fell on her way into Doctor Wyse's office, so she would have noticed it, right?

A. We don't know exactly where she walks. That's an unknown. If she hit a spot that had no ice and snow underneath it, then that even makes it more difficult for her. Then coming out she thinks, well, the parking lot's fine, I see a little dusting of snow, I can walk on it fine.

If she steps one foot over farther east or west or north and south and that's the spot where there is ice underneath that dusting of snow, that's what my criticism is of Dr. Wyse, that that ice and snow that's hidden underneath the dusting of snow is the dangerous part, that that's got to be taken care of.

(Id. pp. 34-35) (emphasis supplied).

Defendants have also charged Mrs. Kirts with the responsibility of anticipating the hidden dangers because she is familiar with northern Indiana winters. (Daubert Dep. p. 36.) Mr. Daubert dismissed this suggestion by explaining how the hidden ice in the parking lot was the primary cause of the injury:
Q. Well, another thing that may have happened is that Ms. Kirts was negligent, right?

A. I find it hard to criticize people in situations like this. If I can't see the hazard, I don't know how to react to it. If I don't know that it's a hazard, how do I react to it?

Q. Well, someone who is familiar with northern Indiana winters should be familiar with snow and ice, right?

A. I agree. And she got from the door all the way to the truck walking on a dusting of snow over non-iced sidewalk and parking lot. She didn't fall when she walked out the door. She got that far. It was when the surface changed on her that caused the problem. She got quite a ways on surfaces that were good.

(Id. pp. 35-36) (emphasis supplied).

Mr. Daubert also explained how Mrs. Kirts's shoes were not a factor in contributing to her slip and fall on December 18, 2007. As Mr. Daubert stated:
Q. Have you seen the photographs of the shoes she was wearing at the time she fell?

A. I have not, but I have heard a description of them.

Q. Deposition Exhibit Number 2, there are two photographs on this exhibit. One of them is the top of Ms. Kirts' shoes and the other is the bottom. Would you agree with me that these shoes do not have any traction on the bottom?

A. I have to apologize and go back and tell you what my other profession is that I didn't cover. I own a shoe repair shop, and I see shoes such as this come in all the time. The slipperiness of the bottom of a shoe is determined by the type of rubber that the shoe is made out of. Shoes such as this are made out of a soft rubber as compared to a pair of boots that I see that I repair for a worker that is on concrete all day that's wearing them down. These types of shoes are very soft rubber, have good traction.

The big lugs that are seen on the bottom of shoes are not necessarily for ice and snow, they are more for mud and traction in mud, and they still don't work very well that way.

That it doesn't have a lug on the bottom or doesn't have any traction on the bottom that we're looking at doesn't bother me. If we didn't have water on the roadway, we would have tires with no tread at all. We want as much traction -- as much contact with the shoe with the ground as possible.

This is the kind of shoe that doesn't have -- it has more traction on the ground than a shoe that would have a lug on it that you're cutting down the amount of contact you have with the ground. I don't have any criticism of these kinds of shoes.

(Id. pp. 36-38.)

According to Mr. Daubert, the shoes that Mrs. Kirts was wearing played no role in causing her to fall. It is Mr. Daubert's opinion, based on different facets of specialized knowledge and experience, that shoes with soft rubber soles, similar to the ones Mrs. Kirts was wearing, allow for more contact with various ground surfaces and provide good traction. Defendants have no contrary evidence to offer to the jury on this point. They hope to exclude this expert opinion in order to confuse and mislead the jury into thinking that old shoes are unsafe shoes, even though they have no such evidence.

Defendants' argument to exclude the testimony of Mr. Daubert based on the standards set forth in *Daubert* and *Steward* is misplaced. Mr. Daubert's skill and expertise in regards to pedestrian safety issues is apparent. He has technical and specialized knowledge that will not otherwise be available to the jury, and his experience and training will provide the jury with helpful information in understanding the specifications of negligence from the Plaintiff's perspective in this case. For all the foregoing reasons, Defendants' Motion to Exclude the Expert Testimony of David B. Daubert, P.E. should be denied.

Respectfully submitted this 15th day of April, 2011.

<<signature>>

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Footnotes

1 That real estate located was owned by an entity known as 57250 Alpha Drive, LLC. That entity is owned by Dr. Wyse's wife and is also a Defendant in this case.

2 "Defendants do not dispute that Mr. Daubert has the education necessary to testify on the issues involved in this case." (Id.)

3 *Maytag v. Chapman,* 297 F.3d 682, 687 (7th Cir. 2002) (in an electrocution death suit, mechanical engineer failed to produce studies, tests, and experiments that justified his conclusions, despite representations to the court that such test results would be forthcoming, and his theory was novel and unsupported by any article, text, study, scientific literature or scientific data produced by others in his field, was not qualified as expert witness *underDaubert); Clarkv. Takata Corp.,* 192 F.3d 750, 759 (7th Cir. 1999) (expert opinion based merely on his assumptions was not helpful to trier of fact and was therefore inadmissible); *Dana Corp. v. Am. Standard, Inc.,* 866 F. Supp. 1481 (N.D. Ind. 1994) (in an action for cost recovery and contribution under CERCLA, opinion of plaintiffs' expert, that 77% and 36% of each defendant's waste was disposed of at site for respective time periods, was based on assumption and therefore insufficiently reliable to be admissible under *Daubert*) (Def.'s Mo. Exclude pp. 3, 4, 7, 8).

4 *Franciose v. Jones,* 907 N.E.2d 139 (Ind. Ct. App. 2009) (admissibility of expert testimony was not decided by Court of Appeals because motion to strike based on insufficient reliability was not clearly made a part of the record at trial; "in order for trial court to know that a *Steward* analysis needs to be conducted, however, the party opposing the evidence needs to alert the trial court that the gate is squeaking") *Hannan v. Pest Control Serv., Inc.,* 734 N.E.2d 674, 679 (Ind. Ct. App. 2000) (expert testimony concerning medical causation is scientific in nature and, where it is based on subjective belief or unsupported speculation, properly excluded); *Lytle v. Ford Motor Co.,* 696 N.E.2d 465, 473 (Ind. Ct. App. 1998) (expert testimony regarding inertial release found to be scientifically unreliable because the only inference which the testimony can support is tenuous at best) (Defs Mo. Exclude pp. 3, 4-7.)

5 The Court also noted that a study that contradicted the expert's opinion on causation went to the weight of his testimony, not the admissibility. *Id.* at 545.

6 *Compare, Doe v. Shults-Lewis Child and Family Services, Inc.,* 718 N.E.2d 738 (Ind. 1999).

7 The plaintiff, *Cansler,* rear-ended a car driving by defendant *Mills* that came into his lane after hitting the car in front of it. The air bags in plaintiff's car failed to deploy. Suit was filed against defendant *Mills* for negligence. The complaint was amended to add General Motors as a defendant for products liability.

8 "The Rule was intended to liberalize, not constrict, the admission of reliable scientific evidence." *Sears Roebuck & Co. v. Manuilov,* 742 N.E.2d 453, 460 (Ind. 2001).

9 As was explained during her deposition, if Mrs. Kirts were facing her truck from the rear, no one could have parked to her left because of the snow. (Tracy Kirts Dep. p. 25.)