

Recent Decision Concerning Admissibility of Expert Testimony of Biomechanical Engineer

By Barbara A. Hayes



The Appellate Division, First Department recently issued a decision broadly expanding the admissibility of the expert testimony of a biomechanical engineer. In *Vargas v Sabri*, 115 AD3d 505 [1st Dept 2014], the First Department upheld the decision denying plaintiff's request for a *Frye* hearing to determine the admissibility of the testimony of Dr. Callum McRae. The First Department held that the Court properly denied plaintiff's request for a *Frye* hearing as to Dr. McRae's expert qualifications. Although Dr. McRae lacked formal medical training, the Court found him qualified to render an expert opinion that the force of the subject motor vehicle accident could not have caused the injuries alleged. Significantly, the First Department held that Dr. McRae's education, background, experience and areas of specialty rendered him able to testify as to the mechanics of the injuries, citing *Melo v Morm Mgt. Co.*, 93 AD3d 499 [1st Dept 2012], wherein it was found that the Court properly allowed a safety expert who was not a licensed engineer, to testify as to safety engineering based upon that expert's experience and training ⁽¹⁾.

The *Vargas* decision creates broad opportunities to challenge cases involving questionable causation with the expert testimony of a biomechanical engineer. Historically, biomechanical engineers have been precluded from testifying and offering their opinions as to causation, on the ground that biomechanical engineers are not doctors and therefore not qualified to testify as to the causal relationship between a motor vehicle accident and the injuries alleged ⁽²⁾.

The takeaway of *Vargas* is that the expert testimony of a biomechanical engineer can now be freely used, at least in the First Department, to directly challenge the causal connection between the plaintiff's alleged injuries and the subject occurrence. Certainly, *Vargas* signals a trend in the First Department towards an increased recognition of the legitimacy of biomechanical science, and its relevance in determining the issue of causation in a personal injury case. We recommend citing *Vargas* in support of any case where a biomechanical engineer can challenge the causation of the plaintiff's injuries.

(1) In *Melo*, the plaintiff allegedly injured himself when he exited an elevator in the basement of the defendants' building. Upon believing the elevator door was level with the basement floor, the plaintiff took one or two steps and fell to the floor from what turned out to be a one-step platform. The Court allowed the plaintiff's safety expert's testimony that the condition of the single-step platform was dangerous.

Recent Decision Concerning Admissibility of Expert Testimony of Biomechanical Engineer

(2) See Santos v Nicolos, 24 Misc 3d 999, 1002 [Sup Ct 2009] [where the defendants' proposed expert was unable to cite to any studies, articles, journals or other scientific literature which utilized his methodology, and therefore failed to show that his theory is "generally accepted"; specifically, the proposed expert failed to cite any studies which showed that a person in a car subject to a low-speed rear-end collision could not suffer serious injuries to his lumbar spine or a meniscus tear based on the way that the accident occurred, nor could he cite to any studies or literature which discussed his theory that a person could not sustain certain types of injuries in a low impact collision].

THE LAW FIRM OF
HANNUM FERETIC PRENDERGAST & MERLINO, LLC
ONE EXCHANGE PLAZA
55 BROADWAY, SUITE 202
NEW YORK, NY 10006
(212) 530-3900
TELEFAX: (212) 530-3910