UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KATHLEEN CROCKFORD	:	
	:	
	:	
v.	:	CIV. NO. 3:10CV813(HBF)
	:	
LAWRENCE M. SPENCER AND	:	
METALS USA PLATES AND SHAPES	:	
NORTHEAST, L.P.	:	
	:	

RULING ON DEFENDANTS' MOTIONS IN LIMINE [DOC. ##67, 69, 71]

This case arises out of a collision that occurred at the intersection of Routes 1 and 1A in Stonington, CT. Defendant Lawrence Spencer, driving a fully-loaded flatbed truck, rear-ended plaintiff Kathleen Crockford, who was stopped on Route 1 and waiting to take a left hand turn onto Route 1A. As a result of this accident, plaintiff alleges she sustained bodily injuries, lost wages and an impairment of her earning capacity.

Oral argument was held on June 1, 2012 on the three pending motions in limine, to preclude two of defendants' experts and one of plaintiff's experts. Evidence is scheduled to begin June 12, 2012.

I. Expert Testimony

A witness with "scientific, technical, or other specialized knowledge" may be qualified to testify based on such expertise. Fed.R.Evid. 702. A district court is assigned a "gatekeeping"

role in determining whether expert testimony is permitted under the federal rules. See United States v. Farhane, 634 F.3d 127, 158 (2d Cir. 2011). The court must ensure "'that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand.'" United States v. Williams, 506 F.3d 151, 160 (2d Cir. 2007) (quoting Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 597 (1993)). When assessing reliability, Rule 702 provides a number of nonexclusive factors to consider, including: "(1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case." Fed.R.Evid. 702; see Williams, 508 F.3d at 160 ("[T]hese criteria are not exhaustive."). With these principles in mind, the Court turns to the motions before it.

II. In Limine Motions

A. PLAINTIFF'S MOTION TO PRECLUDE DEFENSE ECONOMIC EXPERT SHELDON WISHNICK [DOC. #67]

Defendants have disclosed actuary Sheldon Wishnick as an economic expert to discuss the plaintiff's lost wages and impaired earning capacity. Plaintiff argues that Mr. Wishnick's methodology and assumptions are unreliable, rendering his opinion inadmissible under Daubert. In particular, plaintiff first argues that Mr. Wishnick's assumptions about plaintiff's

work-life are flawed in that they do not consider plaintiff's educational level and the fact that ministers are known to work into their 70s and 80s. Next, plaintiff argues that Mr. Wishnick miscalculated plaintiff's pre-accident earnings. And, finally, plaintiff argues that Mr. Wishnick, while purporting to opine on the issue of lost wages and impairment of earning capacity, improperly deducts from his calculation sources of income replacement such as social security disability.

Any debatable assumptions regarding plaintiff's work life expectancy and educational level or disagreement over the calculation of plaintiff's pre-accident earnings goes to the weight of Mr. Wishnick's testimony. As such, the Court will not exclude or limit Mr. Wishnick's on this basis.

With regard to Mr. Wishnick's deductions, this Court previously held when ruling on the motion to preclude plaintiff's expert witness, Dr. Crakes, that,

> Whether there are any potential offsets that could affect the amount of damages awarded if plaintiff were to prevail at trial is separate and apart from the issue of plaintiff's lost earning capacity. Second, pursuant to Conn. Gen. Stat. § 52-225a, any reductions for collateral source payments would be made at the end of trial by the judge if plaintiff were to prevail at trial. Third, social security income is not a collateral source, according to the Connecticut Supreme Court's interpretation of Conn. Gen. Stat. § 52-225a in Schroeder v. Triangulum Associates, 259 Conn. 325 (2002), and therefore would not be deducted.

[doc. #63, Ruling at 7-8].

As stated then and reiterated now, evidence of collateral

sources or other sources of income replacement should not be presented to the jury. He is precluded from testifying regarding calculations that include any deductions made to account for social security income or other forms of income replacement. As such, plaintiff's motion [doc. #67] is GRANTED IN PART AND DENIED IN PART.

B. PLAINTIFF'S MOTION TO PRECLUDE PARTIAL OPINION OF DEFENSE NEUROPSYCHOLOGIST DR. KIMBERLEE SASS [DOC. #69]

Defendants have disclosed Dr. Kimberlee Sass, a clinical neuropsychologist, to rebut the opinions of plaintiff's experts Albert Sabella and Dr. Caruso concerning plaintiff's ability to return to work. Dr. Sass reviewed plaintiff's records and conducted a neuropsychological examination of the plaintiff. He offered three main opinions; the third opinion is the subject of plaintiff's motion.

Plaintiff takes issue with Dr. Sass's opinion that a year after the accident, the plaintiff had and still has the capacity to return to her prior occupation of minister on a part-time basis. Plaintiff argues that Dr. Sass's opinion is unreliable in that it fails to take into consideration the vocational limitations which would make it difficult, if not impossible, to obtain part-time employment as a minister. Simply stated, plaintiff argues Dr. Sass's opinion overlooks the fact that there are not part-time minister positions available.

Any vocational limitations not considered by Dr. Sass in his opinion do not render his opinion unreliable. Rather, the basis for Dr. Sass's opinion that the plaintiff would be able to perform her job as a minister on a part-time basis goes to the weight of the opinion and can be the subject of inquiry on cross-examination or through other witnesses who may have knowledge on the subject. As such, plaintiff's motion to preclude Dr. Sass's opinion [doc. # 69] is DENIED.

C. DEFENDANTS' MOTION TO PRECLUDE CERTAIN TESTIMONY OF PLAINTIFF'S TRUCKING EXPERT LEW GRILL [DOC. #71]

Plaintiff disclosed Lew Grill as a trucking expert to opine as to the standards pertaining to the safe operation of commercial motor vehicles and the preventability and causation of the collision. Defendants move to preclude the portion of Mr. Grill's testimony regarding his opinions that, (1) steering to the right to avoid colliding into the plaintiff's car would have been a safer option; (2) Spencer's belief that steering to the right was unsafe was unreasonable; and (3) Spencer's choice not to veer to the right and rear-end the plaintiff consciously disregarded the plaintiff's safety. In support of preclusion, defendants argue that Mr. Grill's opinion as to the option to steer right lacks a foundation because Mr. Grill never reconstructed the accident, relying instead on the police reconstruction.

In making his assessment, Mr. Grill reviewed a number of materials, including the police report, photos of the accident location and vehicles, the deposition of Spencer and exhibits, a CD of videos taken August 30, 2011, a map of the town, plaintiff's exhibits 1-12, the federal motor carrier safety regulations and the commercial driver's license. [doc. #54, Expert Report of Lew Grill, Appendix B]. In light of Mr. Grill's extensive experience in the trucking industry and particular knowledge of safety standards applicable to the operation of commercial motor vehicles and the fact that he reviewed materials depicting the accident and the conditions with which defendant was confronted, the Court finds that there is a proper foundation for his opinion.

There is no requirement -and the defendants cite no authority- that an expert reconstruct the accident in order to give an opinion on the accident, especially where the facts relied upon are accurate. In that regard, Mr. Grill's opinion is distinguishable from the facts in Going v. Pagani, 172 Conn. 29 (1976), cited by defendants, where the trial court's decision to preclude an expert report was affirmed. In Going, the expert reconstructed the accident over three years after the accident, but the conditions of the roadway where the accident had taken place had changed significantly during the three years, rendering the expert's opinion conjectural and without foundation. Id. at

34. Here, there is no claim that the facts underlying Mr. Grill's opinion are unfounded. As such, the Court finds that Mr. Grill's expert testimony is admissible and defendants' motion to preclude [doc. # 71] is DENIED.

III. Conclusion

For the foregoing reasons, plaintiff's motion to preclude expert Sheldon Wishnick [doc #67] is GRANTED IN PART AND DENIED IN PART, plaintiff's motion to partially preclude expert Dr. Kimberlee Sass [doc. #69] is DENIED, and defendants' motion to partially preclude expert Lew Grill [doc. #71] is DENIED. This is not a recommended ruling. The parties consented to proceed before a United States Magistrate Judge [doc. #59] on December 20, 2011 with appeal to the Court of Appeals.

SO ORDERED at Bridgeport this 11th day of June 2012.

HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE