

NEW YORK SUPREME COURT - COUNTY OF BRONX

PART IA-1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

Case Disposed	<input type="checkbox"/>
Settle Order	<input type="checkbox"/>
Schedule Appearance	<input type="checkbox"/>

BERKLEY WORRELL,

Index No. 303540/09

-against-

HON. KIBBIE F. PAYNE

BOUBACAR KANTAGO AND ERWICH
CHERRY,

J.S.C.

The following papers numbered 1 to _____ Read on this motion, _____
Noticed on _____ and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Motion is Respectfully Referred to:

Justice:

Dated:

Plaintiff's motion in limine seeking to preclude the expert opinion testimony of Kevin Toosi is, in all respects, denied. Plaintiff maintains that Mr. Toosi should be prevented from giving expert opinion testimony on the grounds that he is not a licensed physician in the State of New York and that an engineer is not competent to testify as to medical causation of an injury. It is undisputed that the witness earned his medical degree in another country and that he is a Ph. D. candidate in the Biocengineering Department at the University of Pittsburgh with a masters of science degree in bioengineering. Here the proposed witness has educational degrees in the fields of medicine and bioengineering. The fact that he is not a licensed physician in this state or any other state goes to the weight of evidence to be accorded to his testimony and not to its admissibility (see *Borawski v Huang*, 39 AD3d 409). Moreover, a biomcchanical engineer is qualified to give opinion testimony regarding whether the force of impact in an accident would have caused injury (*Plate v Palisade Film Delivery Corp.*, 39 AD3d 835, 836). With respect to that branch of the motion seeking a Frye Hearing (*Frye v United States*, 293 F 1013), that application must be denied. There is no novel scientific theory in dispute, nor is there an assertion of any lack of scientific support on relevant issues to warrant a Frye Hearing (see *Drago v Tishman Construction Corporation of New York*, 4 Misc3d 354). Counsel's conclusory affirmation fails to establish initially that the defendant's expert relied upon novel scientific methods or principles (*Pappalardo v Long Island Railroad Company*, 11 Misc3d 744, 755). Accordingly the motion is denied.

Dated: 3 March 2011

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HON. KIBBIE F. PAYNE
J.S.C.