

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

JUDGE CINDI PORT  
Trial Date: 05/23/2022

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

LAUREN HABENICHT, individually,  
  
Plaintiff,

vs.

BERTHA MEDINA and "JOHN DOE"  
MEDINA, individually, and the marital  
community composed thereof; AMANDA  
JAMES and "JOHN DOE" JAMES,  
individually and the marital community  
composed thereof; KARA BETTENCOURT  
and "JOHN DOE" BETTENCOURT,  
individually, and the marital community  
composed thereof; FRED MEYER STORES,  
INC., a foreign corporation doing business in  
Washington; JOHN AND JANE DOE  
EMPLOYEE 1-10, jointly and severally,  
KRAFT HEINZ FOODS COMPANY d/b/a  
NABISCO, a foreign corporation doing  
business in Washington; MONDELEZ  
INTERNATIONAL, a foreign corporation  
doing business in Washington; MONDELEZ  
GLOBAL, LLC, a foreign corporation doing  
business in Washington,  
  
Defendants.

No. 20-2-17024-1 KNT

~~PROPOSED~~ ORDER GRANTING  
DEFENDANT JAMES'S MOTION TO  
EXCLUDE EXPERT TESTIMONY

~~PROPOSED~~ ORDER GRANTING MOTION  
TO EXCLUDE EXPERT TESTIMONY – 1  
cpw/GAW1218.660/3959195X

**ORIGINAL**

WILSON  
SMITH  
COCHRAN  
DICKERSON

901 FIFTH AVENUE, SUITE 1700  
SEATTLE, WASHINGTON 98164  
TELEPHONE: (206) 623-4100  
FAX: (206) 623-9273

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

THIS MATTER having come before the Court for consideration on Defendant James's Motion to Exclude Expert Testimony Regarding qEEG, and the Court having reviewed the case file and pleadings contained therein, and having considered following submittals from the parties:

- 1. Defendants' Motion;
- 2. Declaration of Jeffrey R. Tenney and exhibits thereto;
- 3. Declaration of Gary A. Western in Support of Motion to Exclude Expert Testimony and exhibits thereto;
- 4. RESPONSE BRIEF AND ALL ATTACHMENTS \_\_\_\_\_;
- 5. AMENDED REPLY \_\_\_\_\_;
- 6. \_\_\_\_\_;
- 7. \_\_\_\_\_;
- 8. the files and pleadings herein,

Now, therefore, the Court enters the following findings:

(1) As identified in the Declaration of Jeffrey R. Tenney and Exhibit 2 to that declaration, qEEG is not generally accepted in the relevant scientific community for purposes for which Plaintiff intends to use it here – diagnosis <sup>AND TREATMENT</sup> of her alleged traumatic brain injury;

(2) Prior to the motor vehicle accident of December 10, 2017, at issue in this matter, Plaintiff suffered multiple head injuries from various causes and was diagnosed with an abnormal brain scan, prefrontal cortex dysfunction, and temporal lobe disorder/dysfunction;

1 and, in addition, following the accident but immediately before one of her qEEG tests suffered  
2 additional head trauma in which she reported losing consciousness for between 10 and 15  
3 seconds

4 (3) Plaintiff's qEEG analysis is unable to distinguish between Plaintiff's other head  
5 trauma and any traumatic brain injury and any traumatic brain injury she alleges to have  
6 received as a result of the subject accident, and therefore would be unhelpful to the jury in  
7 assessing what injury, if any, was caused by the subject motor vehicle accident, and therefore  
8 fails to meet the requirements of ER 702.

9  
10 BASED ON THE FOREGOING, Defendant's Motion to Exclude Expert Testimony is  
11 GRANTED. Any expert report or testimony on the basis of qEEG is excluded pursuant to *Frye*  
12 *v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923), and ER 702.

13  
14 DONE IN OPEN COURT this 22<sup>nd</sup> day of September, 2021.

15  
16   
17 \_\_\_\_\_  
18 JUDGE CINDI PORT

19 Presented by:

20 s/ Gary A. Western

21 Gary A. Western, WSBA# 12878  
22 WILSON SMITH COCHRAN DICKERSON  
23 901 Fifth Avenue, Suite 1700  
24 Seattle, WA 98164-2050  
25 T: (206) 623-4100  
26 Email: [western@wscd.com](mailto:western@wscd.com)  
Attorneys for Defendant James