

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION**

BETHANY HAMMAR and TOM
HAMMAR, her husband,

Plaintiffs,

Case No.: 08-019984

vs.

Division: C

SENTINEL INSURANCE COMPANY,
LTD.,

Defendant.

**ORDER DENYING DEFENDANT'S *Frye* CHALLENGE REGARDING
ADMISSIBILITY OF MRI WITH DTI AND RESULTING TESTIMONY**

THIS CAUSE having come before this Court upon Defendant's Motion in limine/to exclude Testimony and Evidence, Plaintiffs' Response and Memorandum of Law in opposition to Defendant's Motion for *Frye* Hearing, Defendant's Memorandum in Support of Defendant's *Frye* Challenge and Plaintiffs' Response to Defendant's Memorandum in Support of Defendant's Motion in Limine (*Frye*) on admissibility of MRI with DTI and testimony pertaining to same on September 2, 2010, and the Court having considered the extensive filings, expert testimony, scientific and legal publications, peer reviewed journals, and judicial opinions and after having heard argument of counsel and being further advised on the premises, this Court finds as follows:

1. Diffusion Tensor Imaging (DTI) is not new or novel science.
2. Plaintiffs have demonstrated that the basic underlying principles of DTI have been sufficiently tested and accepted by the relevant scientific and medical communities.

3. DTI of the brain is a proven and well-established imaging modality in the evaluation and assessment of normal and abnormal conditions of the brain. DTI demonstrates evidence of traumatic brain injury pathology and can reveal abnormalities that are not visible on standard MRIs. According to Dr. David Herbst, a Board Certified Radiologist, DTI studies are definitely accepted by practicing radiologists and are depended upon by physicians who order them to assist in diagnosing and treating brain injuries.

4. DTI is generally accepted by the medical community, FDA approved, peer reviewed and approved, and a commercially marketed imaging modality which has been in clinical use for the evaluation of suspected head traumas including mild traumatic brain injury.

5. This Court's findings are further buttressed by the position of the American College of Radiology (ACR), who defines practice guidelines and technical standards for radiologic practice on the Performance and Interpretation of Magnetic Resonance Imaging (MRI) of the Brain, which clearly provides that indications for MRI of the brain with diffusion imaging, if available, is helpful in many indications, including but are not limited to, acute and chronic neurological deficits, headache, mental status change, suspicion of non-accidental trauma, suspicion of acute intracranial hemorrhage or evaluation of chronic hemorrhage, functional imaging, brain mapping, blood flow and brain perfusion study, post-traumatic conditions.

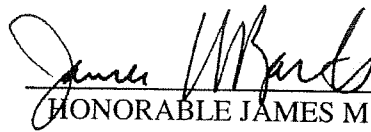
6. The ACR explains that advanced imaging techniques such as diffusion weighted imaging, diffusion tensor imaging, susceptibility weighted imaging, functional imaging, perfusion imaging, parallel imaging and volumetric, morphometric, and other quantitative applications provide added utility for MRI of the brain.

7. The weight to be given to stated scientific theories, and the resolution of legitimate but competing scientific views, are matters appropriately entrusted to the trier of fact.

It is thereby **ORDERED AND ADJUDGED** as follows:

8. Defendant's *Frye* challenge to the admissibility of the MRI with Diffusion Tensor Imaging is hereby **DENIED**;

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this 27th day of September, 2010.



HONORABLE JAMES M. BARTON, II
CIRCUIT COURT JUDGE

Conformed Copies To:
J. Daniel Clark, Esq.
Teresa Jones, Esq.
Jason Lamoureux, Esq.