IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

JEREMIAH L. JOHNSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 1911-cc00960
	)	
PUNDMANN MOTOR COMPANY,	)	
d/b/a Pundmann Ford	)	
	)	
Defendant.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY OF KYLE MOTZKUS OR IN THE ALTERNATIVE MOTION FOR DAUBERT HEARING

COMES NOW, Plaintiff, Jeremiah L. Johnson, by and through his attorney, Mark L. Williams of McClamroch & Williams, LLC and for his response to Defendant's Motion in Limine to Exclude Expert Testimony of Kyle Motzkus, responds as follows:

Plaintiff has filed a two (2) count petition in this matter, which includes a claim under the Missouri Merchandising Practices Act and for breach of contract. Both claims center around Defendant's attempted repair of Plaintiff's 2013 Ford Explorer after the Explorer was involved in a two (2) vehicle collision in January of 2019. Plaintiff intends to call, as an expert witness, Kyle Motzkus. Plaintiff anticipates that Mr. Motzkus will provide testimony that will assist the members of the jury to understand autobody repairs and the consequences of faulty repairs. Plaintiff has no specialized training or experience in the industry of auto body repair and therefore, cannot provide any testimony as to that issue. Thus, Mr. Motzkus is a material witness for Plaintiff to proceed with his case.

"The decision to admit or exclude expert testimony is within the trial court's discretion, and we will not reverse the decision absent an abuse of discretion." ***Colt Investments, L.L.C. v. Boyd,*** 419 S.W.3d 194, 197 (Mo.App. E.D. 2013). Section 490.065 of the Missouri Revised Statutes states in subsections 2.(1)(a)-(d); 2.(2); and (3)(a) the following:

> **2. In all actions except those to which subsection 1 of this section applies:**
>
> **(1) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:**
> **(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;**
> **(b) The testimony is based on sufficient facts or data;**
> **(c) The testimony is the product of reliable principles and methods; and**
> **(d) The expert has reliably applied the principles and methods to the facts of the case;**
>
> **(2) An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed.**
>
> **(3)(a) An opinion is not objectionable just because it embraces the ultimate issue.**

In its Motion in Limine, Defendant would first have this Court exclude the testimony of Mr. Motzkus because he relied upon information provided to him by the Plaintiff and/or Plaintiff's paramour, Peggy Turney. The United States Supreme Court stated in ***Daubert v. Merrell Dow Pharmaceuticals, Inc.*** 113 S.Ct. 2786, 2796 (1993) that "Unlike an ordinary witness, see Rule 701, an expert is permitted wide latitude to offer opinions, including those that are not based on first-hand knowledge or observation." Furthermore, Section 490.065.2(2) clearly states that "An expert may base an opinion on facts or data in the case that the expert ***has been made aware of*** (emphasis added) or personally observed." Defendant argues in paragraphs 5 through 7, inclusive, that

because Mr. Motzkus relied upon some information provided to him by Plaintiff and/or Peggy Turney, his testimony and opinions are without evidentiary value as the opinions are not based upon "facts or data … reasonably relied upon by experts in the field in forming opinions or inferences upon the subject… " Furthermore Defendant argues that the expert opinion must also, "be founded upon **substantial information**, not mere conjecture or speculation, and there must be a rational basis for the opinion." Citing ***Rigali v. Kensington Place Homeowners' Ass'n,*** 103 S.W.3d 839, 845 (Mo. Ct. App. 2003). Defendant then recites part of Mr. Motzkus testimony concerning what facts he relied upon to determine the cause of damage to Plaintiff's vehicle by having this Court believe that the substantial information came from Plaintiff and/or Peggy Turney as to whether or not the 2013 Ford Explorer had been seen by another repair shop between January 2019 and July 2019.

Defendant's argument fails in this regard not only due to the holdings in ***Daubert*** and the clear language of Section 490.065.2(2) RSMo., but also due to the fact that Mr. Motzkus did not solely rely upon facts provided by Plaintiff and/or Peggy Turney to formulate his opinions in this case. At pages 122 and 123 of Mr. Motzkus' deposition testimony, Mr. Motzkus testifies as follows:

Q Yeah. Do you know if anyone else did any sort of repair work between the date the vehicle was at Pundmann for repairs in March or April 2019 up until it came to Hunter in July of 2019.

A Yes, Jeremy told me there was no other repair work done.

Q Did he tell you whether there was any other accidents to the vehicle during that time period from –

A Yeah, there was no other accidents.

Q Other than this being the area where Hunter did the body work –

A Pundmann.

Q I'm sorry. Other than this being the area where Pundmann did the body work, is there anything else that in your opinion links this cut to Pundmann?

A Yes.

Q What's that?

A Everything.

Q Why don't you tell me what you're basing that on.

A The repair procedures from Ford.

(See Defendant's Exhibit A, pg. 122, Lines 7-25 and page 123, Lines 1-6)

Defendant would also have this Court exclude Mr. Motzkus from testifying as to whether or not Plaintiff's vehicle was unsafe to drive citing testimony found on pages 116-117. Defendant omitted from its Motion in Limine other important testimony of Mr. Motzkus concerning this issue. Counsel for Defendant's examination continued as follows:

Q Yeah. And did you consult with anyone either at Hunter or outside of Hunter to determine whether this issue that you've noted bout the vehicle potentially being unsafe to drive, what that would be based on?

A The manufacturer's requirements.

Q Is it a structural issue or crash test – crash worthiness, crash test worthiness?

A Well, crash worthiness is a good – is a good definition for it. Inner quarter panels are generally structural in nature. They may be mild steel, but this one in particular is not, it is high strength steel, low alloy, which means it is of a certain tensile strength, and it is not to be repaired.

Q Was that part of the C-pillar?

A That would be considered part of the C-pillar, yeah. In an SUV, there's four different pillars.

Q Right. What work did you do or investigation did you do to determine that this cut makes it non-crashworthy?

A The disassembly, and part of that is shown in Exhibit D.

Q So it would be your visual inspection?

A Yeah.

(See Defendant's Exhibit A, page 117, Lines 18-25 and page 118, Lines 1-18)

By stating that he is not a structural engineer, Mr. Motzkus did not admit to lacking sufficient "knowledge, skill, experience, training, or education" to form an expert opinion on whether Plaintiff's vehicle was safe to drive. There is no requirement that Mr. Motzkus has to be a structural engineer to give an opinion on the C-pillar and crash worthiness of Plaintiff's vehicle. If this were so, why did Counsel for Defendant continue his deposition examination on page 119 as follows:

Q Why don't you list for me the opinions you have in this case. And I know you can say "It's pretty much in my estimate" if you want, but I just want to make sure I kind of have your opinions.

A Well obviously, my obvious answer to you is going to be my opinion is in my repair plan, which is based off what the manufacturer requires of me to do for those corrective repairs.

However, it is of my opinion that when Pundmann Ford repaired this vehicle using a used quarter panel, that they caused damages unknown to them by using that used quarter panel. And in doing so, it caused the vehicle to be unsafe. Whether or not he did it maliciously, I – you can't say that.

But it is obvious that the repairs done with a used quarter panel still created these damages. That is my opinion.

(See Defendant's Exhibit A, page 119, Lines 9-25)

It is clear that Mr. Motzkus relied upon his skill, experience, training, or education to come to an opinion concerning the crash worthiness of Plaintiff's vehicle. Furthermore, Defendant has not alleged that Mr. Motzkus is not an expert. In fact, Counsel for Defendant admits that Mr. Motzkus is an expert:

> Q Let me give you a hypothetical, because you're an expert, and Missouri law allows me to do that.

(See Defendant's Exhibit A, page 82, lines 17-19)

Mr. Motzkus, based upon his knowledge, experience, training and education, is clearly an expert in this case as admitted by Defendant's Counsel. There is no evidence that Plaintiff provided Mr. Motzkus with information concerning a recycled quarter panel and the effects of using such a part would have on Plaintiff's vehicle. Defendant's argument in paragraph 11 of its Motion in Limine is without merit.

Based upon the foregoing, and the facts and opinions given by Mr. Motzkus in Defendant's Exhibit A, this Court must overrule Defendant's Motion in Limine to Exclude Expert Testimony of Kyle Motzkus.

MOTION FOR DAUBERT HEARING

If this Court where to consider granting Defendant's Motion in Limine to Exclude the Testimony of Kyle Motzkus, then Plaintiff respectfully requests that this Court grant Plaintiff a Daubert hearing so that the Court can determine Mr. Kyle Motzkus expert witness qualifications. ***See Gebhardt v. American Honda Motor Co.***, 627 S.W.3d 37, 43 footnote 4 (Mo.App. W.D. 2021).

Respectfully submitted,

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CERTIFICATE OF SERVICE AND
CERTIFICATE OF COMPLIANCE WITH RULE 55.03(a)

The undersigned, hereby certifies that a copy of the foregoing Response and Motion was served upon Mr. Corey L. Kraushaar, Attorney for Defendant, by the Court's e-Filing system on this 29th day of November 2023. In addition, the undersigned counsel certifies under Rule 55.03(a) of the Missouri Rules of Civil Procedure that he has signed the original of this Certificate and the foregoing Response and Motion.

_____
Mark L. Williams