

**Case Name:** Andrew Shea v Long Island Railroad Co.

**Date Decided:** May 21st, 2009

**Originally Filed in:** New York (Federal)

**Decided by:** New York Southern District Court (Federal)

**Court:** U.S.D.C. - S.D. New York

**Judge:** District Judge Stanton

**Citation:** 2009 WL 1424115 (S.D.N.Y.)

**Background:**

Plaintiff Andrew Shea sued under the Federal Employers' Liability Act ("FELA") for alleged physical and psychological injuries sustained in an accident at work. Plaintiff filed a Motion *in Limine* [a motion to limit evidence] under *Daubert* and Federal Rule of Evidence 702 to exclude testimony of defendant Long Island Railroad Company's experts. Those experts included psychologist Richard Vickers, and psychiatrist William Head. Plaintiff sought to preclude Dr. Vickers and Dr. Head from testifying in reliance upon or referring to the Minnesota Multiphasic Personality Inventory-2 ("MMPI-2") which Dr. Vickers administered to the plaintiff. The plaintiff argued that Dr. Vickers did not reliably interpret his MMPI-2 results, and therefore Dr. Head in turn should not be allowed to rely on Dr. Vickers's report on the MMPI-2.

**Issue:**

Whether the plaintiff's motion *in limine* to preclude testimony from Dr. Vickers and Dr. Head will be granted.

**Overall Issues Discussed or Touched Upon in this Case:**

- *Daubert Ruling*
- *Procedural Issues - Federal*

**Held:**

The crux of the plaintiff's objection against Dr. Vickers was that he failed to apply the principles and methods *reliably* to his case. He contended Dr. Vickers "cherry picked" which interpretation he wanted, and failed to consider alternative explanations. Dr. Vickers argued that he considered and ruled out each of the plaintiff's alternative interpretations of the MMPI-2 results, using his professional judgment and cited authorities in his field. Dr. Vickers' opinions based on Mr. Shea's MMPI-2 results were reliable and followed the approach other clinicians in his field have in the past. Thus, the motion *in limine* to preclude Dr. Vickers' testimony regarding the MMPI-2 is denied.

**Comments:**

An expert witness or professional witness is someone, who because of education, training, skill, or experience, is believed to have knowledge in a particular subject beyond that of the

average person. Experts charge a professional fee which is paid by the party commissioning the report. The fee must not be contingent on the outcome of the case. Expert witnesses must be subpoenaed, although it is merely a formality.

Steve Gordon