

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

LLOYD CHARLES DAVIDSON
Plaintiff,

Case No.: 05-4320

vs.

Division: A

STRAWBERRY PETROLEUM, INC. and
ARNOLD L. HADEL
Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO
STRIKE OR LIMIT THE TESTIMONY OF DEFENSE EXPERT HAROLD SMITH OR
IN THE ALTERNATIVE MOTION TO HOLD A HEARING TO DETERMINE IF THE
METHODOLOGY IS "SCIENTIFICALLY ACCEPTED"**

This cause having come before this Court on May 30, 2007, upon Plaintiff's Motion To Strike Or Limit The Testimony Of Defense Expert Harold Smith Or In The Alternative Motion To Hold A Hearing To Determine If The Methodology Is "Scientifically Accepted" and after review of the file, argument of counsel, and the Court otherwise being fully informed it is hereby ordered and adjudged:

The Plaintiff's motion to strike any conclusions as to credibility, honesty, malingering, exaggeration and/or symptom exaggeration, best effort or lack thereof, symptom magnification regarding the fake bad scale or the MMPI2 are hereby GRANTED and shall apply not only to Dr. Smith but to any other witness (Plaintiff or Defense) reviewing the material in question. Further, and specifically as to the Fake Bad Scale:

After reviewing the affidavit of Dr. James N. Butcher expressing concerns as to the scientific validity of the Fake Bad Scale, and considering the fact that there is no hard medical science to support the use of this scale to predict truthfulness or lack thereof, and reviewing the

articles produced by both side I find.

1. Drawing conclusions from such a test which gives points for malingering when a plaintiff answers "true" to questions asking about conditions involving genuine physical pathology has no place in this courtroom.
2. Regardless of defense counsel's reference to articles which may support the use of this test, it is clear that
 - a. There is genuine controversy surrounding the use of this test.
 - b. No test can act as a lie detector which is how this test is being used by Dr. Smith or any other doctor.
 - c. Determining the truthfulness of a witness is the job of the jury and not a psychologist.
3. The Defendants argument and materials obtained from Pearson Assessments' website are not persuasive. *Sybers v. Florida*, 841 So.2d 532, (1st DCA 2003).

DONE AND ORDERED in chambers at Tampa, Florida on this ____ day of

_____, 2007.

ORIGINAL SIGNED
CONFORMED COPY

JUN 14 2007

Sam D. Pendino, Circuit Court Judge

SAM D. PENDINO
CIRCUIT JUDGE

copies to:

Matthew D. Powell, 304 S. Plant Avenue, Tampa, Florida 33606
Mitch Espot, Esq. for Strawberry, P.O. Box 2939, Tampa, Florida 33601

FILED
ALAMEDA COUNTY
JUL 30 2008
CLERK OF THE SUPERIOR COURT By.
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY
OF ALAMEDA

MEENA ANDERSON, et al.,) Case No. RG05-211076
) Plaintiffs,) ORDER GRANTING PLAINTIFF'S
) MOTION IN LIMINE NO. 16
 v.)
)
E&S INTERNATIONAL ENTERPRISES,) INC., et al.,)
)
 Defendants.)
 ^)
AND RELATED CROSS-ACTIONS.)

Plaintiffs Motion in Limine Number 16 is granted. The defendant is precluded from introducing evidence concerning the Fake Bad Scale.

The court finds that the Fake Bad Scale is a "new scientific technique" within the meaning of the *Kelly/Frye* rule. (*Frye v. United States* (D.C.Cir. 1923) 293 F. 1013, 1014; *People v. Kelly* (1976) 17 Cal.Sd 24, 30.) Accordingly, as the proponent of this evidence, defendant must show that the technique is "sufficiently established to have gained general acceptance in the particular field in which it belongs." (*People v. Morris* (1988) 199 Cal.App.3d 377, 386, quoting *People v. Kelly, supra*, 17 Cal.3d 24, 30.) Defendant has not met this burden.

Defendant's request for an Evidence Code section 402 hearing is
denied. DATED: July 29, 2008 ALAMEDA COUNTY SUPERIOR COURT