

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

NORA J. EPP,)	CASE NO. CI 01-4292
)	
Plaintiff,)	
)	
vs.)	BRIEF IN SUPPORT OF
)	DEFENDANT LAUBY'S MOTION IN
MARK E. LAUBY and)	LIMINE RE: DR. HANDKE'S TESTIMONY
BRAD A. WEBB,)	
)	
Defendants.)	

I. INTRODUCTION.

Nora Epp, Plaintiff, was in the front vehicle in a three car accident on 56th Street. Nora Epp did not require treatment at the scene. The driver of the vehicle second in line, Brad Webb, reported that Epp showed no ill effects at the time of the accident.

Nora Epp began treatment with a chiropractor, but about a month after the accident switched to treatment with Dr. Lane Handke, a physician in general practice. After a few months of treatment Epp had shown "significant" progress in physical therapy. Then in January of 2000 she was taken to the emergency room at Bryan Hospital having difficulty breathing. She was intubated and had to be put on mechanical ventilation in order to breathe. (Handke Depo. 63:10-64:20) Drugs paralyzing her were administered in order to get the breaching tube down her throat because she was "combative." (Handke Depo. 65:14-24)

She was in the hospital five days and described the experience as frightening. (Handke Depo. 79:19-80:16) Shortly thereafter, she began experiencing all kinds of problems. Dr. Handke diagnosed fibromyalgia. The symptoms he ascribes to Plaintiff's fibromyalgia syndrome are general chronic neck and back pain, chronic fatigue, chronic insomnia and major depression. (Handke Depo. 155:9-19)

Dr. Handke is prepared to testify at trial that the fibromyalgia was *caused* by the motor vehicle accident of June 1999, even though he admits that fibromyalgia has an unknown etiology and medical science does not understand the process by which fibromyalgia develops. (Handke Depo. 156:8-25)

II. FIBROMYALGIA.

Fibromyalgia is a “syndrome” not a disease. It is a group of symptoms that “is characterized by complaints of generalized pain, poor sleep, an inability to concentrate, and chronic fatigue.” *Black v. Food Lion, Inc.*, 171 F.3d 308, 309 (5th Cir. 1999); see also STEDMAN'S MEDICAL DICTIONARY 671 (27th ed. 2000) (defining fibromyalgia as “[a] syndrome of chronic pain of musculoskeletal origin but uncertain cause”). Because it has no known cause in medical science, testimony regarding the cause of fibromyalgia syndrome should not be the subject of expert testimony. *Vargas v. Lee*, 317 F.3d 498 (5th Cir. 2003); *Black v. Food Lion, Inc.*, 171 F.3d 308, 309 (5th Cir. 1999)

III. THE *DAUBERT* STANDARDS.

Before expert testimony can be admitted under Nebraska Rule of Evidence 702, the district court must conduct a preliminary inquiry to ensure that the testimony is both relevant and reliable. *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-49, 143 L. Ed. 2d 238, 119 S. Ct. 1167 (1999); *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 244 (5th Cir. 2002) (“Expert testimony is admissible only if it is both relevant and reliable.”). The objective of this gate keeping requirement “is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho Tire*, 526 U.S. at 152.

In *Schafersman*, the Nebraska Supreme Court adopted the “*Daubert* standards” as the law in Nebraska. Thus, in order to be able to present the testimony of their experts, Plaintiff must satisfy the *Daubert* standards with respect to the proffered testimony. If not, Defendant’s Motion *in Limine* must be sustained.

According to *Daubert*, the proponent of an expert’s testimony has the burden of proving admissibility of the testimony **by a preponderance of the evidence**. *White v. Chicago Pneumatic Tool Co.*, 994 F. Supp. 1478, 1481 (D. Ga. 1998).¹ To prove the admissibility of such testimony, the proponent must satisfy the “*Daubert* standards.” *Id.* Under the “*Daubert* standards,” a trial court must determine “whether the expert is proposing to testify to (1) scientific, technical, or other specialized knowledge that (2) will assist the trier of fact to understand or determine a fact in issue.” *Schafersman*, 262 Neb. at 232, 631 N.W.2d at 876-77. To determine this, the trial court must conduct a preliminary assessment as to “whether the reasoning or methodology underlying the testimony is scientifically valid **and** whether that reasoning or methodology properly can be applied to the facts in issue.” *Id.* at 225, 631 N.W.2d at 872 (Emphasis added).

The Nebraska Supreme Court in *Schafersman v. Agland Coop*, stated as follows:

- 1) The *Daubert* standards require proof of the scientific validity of principles and methodology utilized by an expert in arriving at an opinion in order to establish the evidentiary relevance and reliability of that opinion.
- 2) Under *Daubert*, supra, when faced with a proffer of expert scientific testimony, a trial judge must determine at the outset whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue.
- 3) This entails a preliminary assessment whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in issue.

¹ See also *U.S. v. Lester*, 234 F. Supp.2d 595, 598 (E.D. Va. 2002)(Proponent of the testimony bears the burden of proving reliability); *Travelers Property & Cas. Corp. v. General Electric Co.*, 150 F. Supp.2d 360, 366 (D. Conn. 2001)(**Proponents must demonstrate by the preponderance of evidence** that the opinions of their experts are reliable); *Koppell v. New York State Bd. of Elections*, 97 F. Supp.2d 477, 479 (S.D. N.Y. 2000)(**The burden is on the proponent of the testimony that such testimony is competent, relevant, and reliable**); *Pillow v. General Motors Corp.*, 184 F.R.D. 304, 307 (E.D. Mo. 1998)(**Proponent of expert evidence bears the burden of proving by a preponderance** of the evidence that the evidence is admissible).

- 4) In *Daubert*, the Supreme Court set forth an illustrative, non-exhaustive list of factors that may be considered by the district court when determining whether the expert testimony is sufficiently reliable. These factors include whether the theory or technique that forms the basis of the expert's testimony: (1) can be and has been tested; (2) has been subjected to peer review and publication; (3) has a known or potential rate of error and standards controlling its operation; and (4) is generally accepted within the relevant scientific or technical community. *Daubert*, 509 U.S. at 593-94.

The specific facts of *Schafersman* are directly applicable here. In *Schafersman*, Agland Cooperative filed a Motion *in Limine* to exclude the expert opinion testimony of a highly qualified and board certified Iowa State University professor (Dr. Wass) whose opinion was reliant upon an “underlying reasoning” referred to as “multiple mineral toxicity.” In *Schafersman* the Nebraska Supreme Court characterized the theory or technique that Dr. Wass used to make his causation opinion as follows:

Essentially, the only basis for Wass' opinion, other than his theory of multiple mineral toxicity, was that since the cows consumed the feed and then became ill, the feed must have caused the illness

Schafersman v. Agland Coop., 262 Neb. at 223, 631 N.W.2d at 871. The Nebraska Supreme Court also concluded that:

The deduction at issue in this case, Wass' opinion on the cause of the illnesses afflicting the Schafersmans' cows, is not derived from a principle or procedure that has gained general acceptance in the particular field in which it belongs. Wass' opinion is dependent upon the underlying theory of multiple mineral toxicity, and the evidence at trial established that this theory is not generally accepted in any scientific field.

Schafersman v. Agland Coop., 262 Neb. at 222, 631 N.W.2d at 870-71.

Dr. Handke made the same admissions in his deposition testimony, as well as in the reports that he had done prior to that time. In commenting on a statement in a report that he had provided for Plaintiff that there was no known etiology for fibromyalgia, he testified as follows:

Q: What does the next sentence mean, this is probably a moot point?

A: I stated that because Fibromyalgia is a condition that is not well understood in general as to its etiology or even the physiologic effects on the body, causing the consistent grouping of symptoms.

Q: What does that sentence mean?

A: What means is that in general no one can really say that the etiology of Fibromyalgia, in general or what the cause or the physiologic effects on the body are from this condition. And so you - - to argue - - argue one way or the other is in some ways not very meaningful.

Q: Because in medical science, no one has been able to identify what factors cause Fibromyalgia syndrome?

A: Not consistently, no.

(Handke Depo. 156: 8-25) (See also Handke's April 10, 2003 Report, part of Exhibit 25 to Handke's Deposition)

He also stated that the basis for his opinion just as Dr. Wass testified in *Schafersman* was, essentially, that since Nora Epp had an accident and then some time after developed symptoms associated with fibromyalgia, the accident must have caused the fibromyalgia:

Q: In order to render the opinion that you just gave, what theory or technique did you use in order to determine the cause of Nora Epp's Fibromyalgia syndrome?

A: She, as I stated before, did not have the symptoms prior to the accident on 6/24/99 and soon thereafter developed these symptoms, you know. As is evident, you know, physical trauma can be a direct cause of the triggering of not only her sleep anomaly but Fibromyalgia in general.

(Handke Depo. 173:12-22)

Q: Well, what we are talking about is not the diagnosis of Fibromyalgia syndrome. The cause of Fibromyalgia syndrome, how do you determine in your expert -- in your area of expertise what causes Fibromyalgia syndrome?

Objection. Asked and answered.

A: Well, I don't think anyone can say consistently what the cause is. But in this particular patient, she didn't have the symptoms at the time of the accident and soon thereafter developed the symptoms that she had.

(Handke Depo. 174:21-175:7)

In *Schafersman*, the Nebraska Supreme Court specifically stated that "the assumption that correlation proves causation" as "fallacious post hoc propter hoc reasoning that cannot be said to

be helpful to the trier of fact under Neb. Evid. R. 702 . . .” The Nebraska Supreme Court cited to the fibromyalgia case of *Black v. Food Lion, Inc.*, 171 F.3d 308 (5th Cir. 1999) as support for this proposition, i.e. that it is not a matter of science to simply note the occurrence of an event and then to attribute post-event symptoms as a cause or effect of the event. The *Black v. Food Lion* cited to by our Supreme Court dealt specifically with expert opinion concerning the cause of fibromyalgia syndrome in a plaintiff. The Fifth Circuit Court of Appeals held that science had not developed a known cause for fibromyalgia and that, under the *Daubert* standards, it took much more than to find an accident had occurred and then symptoms developed in order to render an expert opinion that an accident had “caused” fibromyalgia:

This analysis amounts to saying that because Dr. Reyna thought she had eliminated other possible causes of fibromyalgia, even though she does not know the real "cause," it had to be the fall at Food Lion. This is not an exercise in scientific logic but in the fallacy of *post-hoc propter-hoc* reasoning, which is as unacceptable in science as in law. By the same "logic," Dr. Reyna could have concluded that if Black had gone on a trip to Disney World and been jostled in a ride, that event could have contributed to the onset of fibromyalgia. See, e.g., *Allen v. Pennsylvania Eng'g Corp.*, 102 F.3d 194, 195-96 (5th Cir. 1996) (expert evidence suggesting connection between exposure to ethylene oxide and brain cancer insufficient under *Daubert*).

Black v. Food Lion, 171 F.3d 313-14.

Dr. Handke’s opinion concerning the cause of fibromyalgia is equally as suspect as the opinion of the physician in the *Black v. Food Lion* case. There is no known cause for fibromyalgia in science but the physician has identified a cause in a specific patient simply by noting symptoms some time after an accident. Dr. Handke’s opinion relies on “the fallacy of *post-hoc propter-hoc* reasoning, which is as unacceptable in science as in law.”

Earlier this year in the case of *Vargas v. Lee*, 317 F.3d 498 (5th Cir. 2003), the Fifth Circuit Court of Appeals again ruled that expert testimony concerning the causation of fibromyalgia did not meet the *Daubert* standards for reliability. The Fifth Circuit Court of Appeals discussed its prior decision in *Black v. Food Lion*:

After reviewing the materials submitted in support of the expert testimony, we determined that the theory that trauma causes fibromyalgia did not satisfy the *Daubert* factors or any other standard of reliability. See *id.* at 313 (stating that "[plaintiff's expert's] theory of causation, which has not been verified or generally accepted, also has no known potential rate of error"). We concluded that "neither [plaintiff's expert] nor medical science knows the exact process that results in fibromyalgia or the factors that trigger the process. Absent these critical scientific predicates, for which there is no proof in the record, no scientifically reliable conclusion on causation can be drawn." *Id.* at 314.

Vargas v. Lee, 317 F.3d at 501.

The Court in *Vargas* went on to review "scientific understanding of fibromyalgia syndrome" and its progression since 1999. The Fifth Circuit Court of Appeals found:

[T]he plaintiff produced only two studies, neither of which indicates that medical science has determined with any degree of reliability that trauma causes fibromyalgia. Indeed, the more recent of the two studies -- a survey concluding that some groups of Canadian physicians were more likely than others to accept a diagnosis of fibromyalgia following a patient's involvement in a car accident -- expressly disavowed this conclusion. See Kevin P. White, et al., *Perspectives on Posttraumatic Fibromyalgia: A Random Survey of Canadian General Practitioners, Orthopedists, Psychiatrists, and Rheumatologists*, 27:3 J. OF RHEUMATOLOGY 790, 794 (2000) ("White Study") ("We emphasize ... that our study was merely a survey of physician opinions about the association between trauma and [fibromyalgia]; whether these opinions are valid needs to be determined by further study within cohorts of individuals with [fibromyalgia]. To date, the arguments both for and against a causal role of trauma in [fibromyalgia] are weak.").

Vargas v. Lee, 317 F.3d at 501-02.

The Fifth Circuit Court of Appeals in *Vargas* also held that a physician's observation that "a high percentage of his fibromyalgia patients stated that their symptoms appeared following a traumatic injury," was not sufficient to demonstrate the reliability of the "theory that fibromyalgia is *caused* by trauma, particularly in light of the lack of scientific support for that conclusion." *Vargas v. Lee*, 317 F.3d at 502.

In summary, in *Vargas v. Lee* the Fifth Circuit of Court of Appeals held that the understanding of the cause of fibromyalgia syndrome had not advanced significantly since the *Black v. Food Lion* case cited by the Nebraska Supreme Court in *Schafersman* and that the

federal district court had abused its discretion by allowing a physician to testify as to the cause of fibromyalgia in a specific patient. *Vargas v. Lee*, 317 F.3d at 502-03.

IV. EVIDENCE BEFORE THE COURT.

As noted above, Dr. Handke testified at his deposition and made note in his reports related to Nora Epp that fibromyalgia does not have a known etiology or cause. At his deposition, he reviewed some medical literature concerning fibromyalgia syndrome and its cause and further testified as follows:

Q: And can you - - do you know if anyone has identified the process which causes Fibromyalgia?

A: No.

Q: You - - you don't know whether they have or not or?

A: They have not.

Q: Okay. Medical -- in medical science, they haven't identified the process that would cause Fibromyalgia in an individual?

A: If you read further in this document on the third page, there is a question that says, what causes or triggers Fibromyalgia. The statement there is, "the single exact cause of Fibromyalgia is unknown. Many different factors alone or in combination may trigger this disorder. For example, a number of stresses, such as illness, physical trauma, emotional trauma or hormonal changes may precipitate the generalized symptoms."

Q: And you agree with that statement?

A: Yes.

(Handke Depo. 158:20-160:17) The doctor also testified that there are a "lack of objective findings" in relation to the symptoms exhibited and also that science has not identified any specific tissue abnormality that is consistently associated with fibromyalgia:

Q: Now this - - I am reading on page 228, fifth full paragraph down. It says, "The hallmark of the examination of a fibrositis patient is the lack of objective findings in relation to the plethora of symptoms." Is that - - do you agree with that statement?

A: Yes.

Q: If you look at page 229, it states that - - under etiology, does that correspond with what you stated in you April 10, 2003 report?

A: Yes.

Q: "A specific tissue abnormality has never been consistently demonstrated in fibrositis"?

A: Correct.

(Handke Depo. 169:17-170:19) The following exchanges from Dr. Handke's deposition prove, unequivocally, that there is no testing to validate the diagnosis that can be done and that the diagnosis in a patient cannot be subjected to a peer review:

Q: Is there any testing that can be done to verify the cause of Fibromyalgia syndrome in a patient?

A: No - no specific laboratory or x-ray testing, no.

(Handke Depo. 176:7-11)

Q: If medical science doesn't understand how trauma causes Fibromyalgia, is there is any way to subject - - subject it to any type of testing or peer review?

A: Not that I know of. And that was the statement that I was making in the letter of April 10, I believe, that we just referred to.

Q: Well, I think we are in agreement. As I read this, what you're saying is that he accident occurred and then within a period of time thereafter, her symptoms occurred; is that correct?

A: Correct.

Q: And that's what you base your opinion on that the accident caused the Fibromyalgia syndrome from which she suffered?

Objection.

A: In general, yes.

(Handke Depo. 178:10-179:3)

Q: Is there anything in medical science that would allow you to distinguish between the cause of her Fibromyalgia syndrome as you diagnosed on

February 17, 2000, to differentiate between trauma of the motor vehicle accident and the trauma of the hospitalization?

(read back question please)

A: Not specifically, no.

(Handke Depo. 180:24-182:10)

Q: In order to render the opinion that you just gave, what theory or technique did you use in order to determine the cause of Nora Epp's Fibromyalgia syndrome?

A: She, as I stated before, did not have the symptoms prior to the accident on 6/24/99 and soon thereafter developed these symptoms, you know. As is evident, you know, physical trauma can be a direct cause of the triggering of not only her sleep anomaly but Fibromyalgia in general.

(Handke Depo. 173:12-22)

Defendant has also offered the Affidavit of Dr. John Goldner a neurologist from Omaha, Nebraska. Dr. Goldner is a licensed physician in the state and treats patients with back pain and pain complaints. Her personally examined Nora Epp. (Dr. Goldner Aff. ¶¶ 1 & 2) Dr. Goldner provides a review of medical literature related to causation of fibromyalgia syndrome and fibromyalgia in general. Dr. Goldner states that:

In medical science the cause of symptoms known as fibromyalgia syndrome is unknown. There is, therefore, no known methodology or testing to validate a physician's opinion of the cause of fibromyalgia syndrome.

(Dr. Goldner Aff. ¶6) Dr. Goldner gives the following opinion in his Affidavit:

[T]here is no known testing to validate any opinion or diagnosis that a physician may have with regard to the cause of fibromyalgia syndrome in a particular patient. That is because there is no known theory or technique in medical science to make such a determination other than self reporting by a patient. Because there is no known testing or way to validate an opinion or diagnosis as to the cause of fibromyalgia syndrome, there can be no known rate of error and there certainly are no existing standards to control the technique in operation.

(Dr. Goldner Aff. ¶8) The statement and opinion as recited by Dr. Goldner above is supported by the testimony of Dr. Handke as well as the medical literature and scientific studies, the reports of which are attached to Dr. Goldner's Affidavit.

IV. DR. HANDKE'S OPINION REGARDING DEPRESSION SHOULD BE EXCLUDED.

Dr. Handke listed depression as one of the symptoms of fibromyalgia syndrome. (Handke Depo. 155:9-19) He should not be allowed to give an opinion that her depression was caused by the accident of June 24, 1999 as a separate opinion. He testified as follows:

Q: Do you relate the depression that Nora Epp suffers from to the accident of June 24, 1999?

A: Yes.

Q: And what's the basis for that?

A: Well, the basis is that the accident did cause physical trauma, it caused chronic pain, caused loss of the ability to work and support herself and her family, caused significant effect on her self-esteem. Certainly she had other psychosocial stressors that contributed to her condition. But I think the accident played a large role in her present state of mental well-being.

Q: And is there any testing, objective testing to determine that causation opinion?

A: No. No such testing exists.

(Handke Depo. 206:24-207:14)

Dr. Handke testified there is no way to validate a causation opinion outside of the clinic:

Q: How -- do you -- I take it you have an opinion as to whether her depression that she continues to suffer from was caused by the accident of June 24 comma 1999?

A: Yes.

Q: And the opinion, what is your opinion?

A: I think I just stated that.

Q: That it was caused by the accident?

A: That it -- the accident played a large -- large role in her depression and in her ongoing depressed mental state.

Q: And now the question is, what technique or theory did you use to relate her current depression to the accident? In Medical science what technique or theory is available to make that type of opinion?

MR. LEFLER: I'll object to the form of the question. Are you asking what exists other than the fact that he's licensed to practice medicine in the state of Nebraska and has been treating this woman for four years now?

MR. MCCLELLAN: Yes, that's exactly what I'm asking.

A: Well, there are no laboratory, x-ray test or other specific parameters to make the diagnosis of depression. It's a clinical diagnosis based on their symptoms and based on the impression of the treating physician.

Q: (BY MR. MCCLELLAN) Is there anything outside the clinic for -- to evaluate the diagnosis?

A: Well, there are various inventories, such as the Zung Depression Scale, the Hamilton Depression Scale, et cetera. But basically those are all questions that are typically asked of a patient who has depression. And each symptom is given a weighted score.

Many clinicians don't use that because they typically ask those questions already.

Q: Well, outside of the diagnosis part out of it, the -- the causation of depression, is there anything outside of the clinic to validate a causation opinion?

A: Not that I know of.

(Handke Depo. 207:23-209:16)

Plaintiff has the burden to meet the *Daubert* standards. Dr. Handke's opinion regarding the cause of Nora Epp's depression cannot be validated through testing or by other healthcare professionals. He should not be allowed to testify that Epp's depression was caused by the accident of June 24, 1999.

VI. CONCLUSION.

In the Nebraska Supreme Court case of *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), the Nebraska Supreme Court cited directly to a fibromyalgia case, *Black v.*

Food Lion, Inc., 171 F.3d 308, 309 (5th Cir. 1999). In that case, the Fifth Circuit Court of Appeals did not allow a physician to give an expert opinion that fibromyalgia was caused by trauma. The Nebraska Supreme Court cited to the case for the proposition that “post hoc propter hoc reasoning” is not helpful to the trier of fact under Neb. Evid. R. 702. It is obvious based on Dr. Handke’s testimony, Dr. Goldner’s Affidavit, review of the medical literature and the state of medical science with regard to knowledge of the causation of fibromyalgia syndrome, that expert opinion regarding the cause of any individual’s fibromyalgia syndrome should not be allowed. The Nebraska Supreme Court cited directly to *Black Lion*, a fibromyalgia case, in adopting the *Daubert* standards for the admissibility of expert opinion. Under such standards, medical science has not developed to the extent that any opinion regarding the cause of fibromyalgia syndrome can be allowed in to evidence. The theory or technique that Dr. Handke used was simply identifying when the accident occurred and comparing that to when Nora Epp began complaining of the symptoms of fibromyalgia. Because she began complaining after the motor vehicle accident, he reached the conclusion that the motor vehicle accident caused her symptoms of fibromyalgia. The theory or technique cannot be tested and has not been subjected to any peer review and publication. There are no potential rate of error and standards that control its operation. Most importantly, it is not generally accepted within the relevant scientific or technical community. See *Daubert*, 509 U.S. at 593-94.

Based on all of the above, this Court must exclude Dr. Handke’s testimony regarding fibromyalgia syndrome and its related symptoms from evidence at the trial of this matter. At his deposition, Dr. Handke described the symptoms of fibromyalgia as follows:

Q: Is fibromyalgia described by symptoms?

A: It usually has a fairly consistent grouping of symptoms.

Q: And are the symptoms -- you’ve listed at symptoms here, general chronic neck and back pain with paired trigger points, chronic fatigue, chronic insomnia and major depression?

A: Yes.

Q: And are those related to the diagnosis of fibromyalgia?

A: Yes.

(Handke Depo. 155:9-19)

The Court should exclude from testimony of Dr. Handke, and mention in voir dire or argument, any opinion that these symptoms, and the grouping thereof, are related to injuries suffered by Nora Epp in the motor vehicle accident of June 24, 1999. In addition a separate opinion that Nora Epp's depression was caused by the accident should not be allowed.

For the reasons set forth herein, Defendant Lauby respectfully requests that this Court grant its Motion in Limine related to Dr. Handke's testimony as requested in Defendant Lauby's Amended Motion in Limine Related to Expert Testimony filed on or about May 30, 2003.

DATED this ____ day of June, 2003.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Brief was served by regular United States mail, postage prepaid on this ____ day of June, 2003, upon the following:

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