WADDIE THOMAS, JR.	NO. 24-C-589 C/W 25-C-32
VERSUS	FIFTH CIRCUIT
BRIAN K. BROUSSARD, RAY BRANDT HYUNDAI, LLC, ABC, INC., COACTION SPECIALTY INSURANCE SERVICES, LLC, FORMERLY KNOWN AS PROSIGHT SPECIALTY INSURANCE COMPANY, GHI INSURANCE AND XYZ INSURANCE COMPANY	COURT OF APPEAL STATE OF LOUISIANA
C/W	
WADDIE THOMAS, JR.	
VERSUS	
BRIAN K. BROUSSARD, RAY BRANDT HYUNDIA OF HARVEY, LLC, ABC, INC., DEF, INC., COACTION SPECIALTY INSURANCE SERVICES, LLC, FORMERLY KNOWN AS PROSIGHT SPECIALTY INSURANCE COMPANY, GHI INSURANCE COMPANY, JKL INSURANCE COMPANY AND XYZ INSURANCE COMPANY	

April 01, 2025

Linda Wiseman
First Deputy Clerk

IN RE BRIAN K. BROUSSARD, RAY BRANDT HYUNDAI OF HARVEY, LLC, AND COACTION SPECIALTY INSURANCE SERVICES, LLC

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE E. ADRIAN ADAMS, DIVISION "G", NUMBER 831-095

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Scott U. Schlegel

WRIT DENIED

This matter is before us on two Applications for Supervisory Writs of Review. Writ No. 24-C-589 ("Brandt's Application" or the "Brandt Application") was filed

by defendants-applicants, Brian K. Broussard, Ray Brandt Hyundai of Harvey, LLC and Coaction Specialty Insurance Services, LLC (collectively, "Brandt"), seeking review of the district court's November 19, 2024 judgment denying Brandt's Motion to Strike Certain Testimony of Dr. Marco A. Rodriguez and Dr. Ronald Segura (the "Motion to Strike") relative to Waddie Thomas, Jr.'s need for future medical care in the form of radio frequency ablation ("RFA") procedures,[1] on the grounds that their conclusions in that regard are purely speculative and therefore, unreliable. Writ No. 25-C-32 ("Thomas' Application" or the "Thomas Application") seeks review of the district court's December 18, 2024 judgment denying Mr. Thomas' Motion to Exclude the Testimony of Dr. Kevin Watson (the "Motion to Exclude") that the accident did not cause Mr. Thomas to suffer the injuries that he claims and that RFA was not, and will not in the future, be indicated or effective to relieve the Mr. Thomas' pain.

We have been informed that no trial date had been set as of the time of the filing of the Thomas Application and that no motions were pending at that time. Because the Brandt Application and the Thomas Application arise in the same district court case (No. 831-095 on the docket of the 24th J.D.C. for Jefferson Parish) and involve the same evidence and the same legal precepts, requiring us to interpret and apply La. C.E. art. 702, we *sua sponte* consolidated them in the interest of judicial efficiency by Order of this Court issued on March 19, 2025.

JURISDICTION

As an initial matter, we note that in his Opposition to Brandt's application, Mr. Thomas suggests, citing *Alex v. Rayne Concrete Serv.,* 05-1457 (La. 1/26/07),

[1] As explained by Drs. Rodriguez and Segura in their depositions and affidavits submitted to the district court in conjunction with the Motion to Strike, RFA, sometimes also referred to as rhizotomy or neurotomy, is a minimally invasive procedure involving the use of a specialized needle that generates heat through radio frequency energy to burn or ablate the nerve responsible for transmitting pain signals to the body. The doctors stated that RFA is used to treat, among other conditions, chronic neck and back pain, including SI joint pain. They testified that once the nerve is ablated by RFA, the patient usually experiences pain relief until the nerve regenerates.

951 So.2d 138, that we do not have supervisory jurisdiction over this matter. This contention is without merit. *Alex* was an opinion in which the Louisiana Supreme Court held that a party seeking review of a *Batson/Edmonson* challenge in a civil trial may do so through an application for supervisory writs or on appeal. Neither that opinion, nor *Herlitz Construction Co. v. Hotel Investors of New Iberia Inc.*, 396 So.2d 878 (La. 1981), constrain the exercise of this Court's supervisory jurisdiction in this matter.

In *Herlitz,* the Louisiana Supreme Court expressly recognized the "plenary power [of a court of appeal] to exercise supervisory jurisdiction over district courts…at any time, according to the discretion of the court." *Id.* The ruling denying Brandt's pre-trial Motion to Strike is an interlocutory judgment under La. C.C.P. art. 1841. This Court has supervisory jurisdiction to review interlocutory judgments. La. C.C.P. arts. 2083(C), 2201; *Alex,* 951 So.3d at 145; See also *Barnett & Associates, LLC v. Whiteside,* 20-362 (12/11/20), 308 So.3d 1218, 1220 ("A trial court judgment which…denies a motion is...an interlocutory judgment which is subject…to discretionary review by the courts of appeal through their supervisory jurisdiction.").

PROCEEDINGS IN THE DISTRICT COURT

This matter arises out of an automobile accident that occurred on August 6, 2021, wherein a motor vehicle being driven by the plaintiff, Mr. Thomas, was struck by a vehicle being driven by Brian Broussard, who, at the time, was acting within the course and scope of his employment with Ray Brandt Hyundai of Gretna.[2] Mr. Thomas claims that he sustained personal injuries as a result of the accident, including to his back and neck. Mr. Thomas filed a Petition for Damages on August 2, 2022.

[2] At the time of the accident, Mr. Thomas was also employed at Ray Brandt Hyundai of Gretna.

Drs. Rodriguez and Segura have been involved in Mr. Thomas' treatment since shortly after the accident. His treatment has involved lumbar, cervical, and SI Joint RFAs recommended by Dr. Rodriguez and performed by Dr. Segura. The Brandt Motion to Strike sought to have the district court limit the testimony of Drs. Rodriguez and Segura by excluding their opinions that Mr. Thomas will require future RFA procedures for several years to the remainder of his lifetime. Brandt does not seek to exclude any other testimony or opinions of Drs. Rodriguez or Segura.

A hearing on Brandt's Motion to Strike was conducted on November 8, 2024. After hearing the arguments of counsel and considering the law and evidence, the district court ruled that:

> [T]he Defendants have failed to meet their burden in establishing that the testimony of the Plaintiff's doctors should be stricken, specifically, the testimony of the doctors regarding the Plaintiff's future medical care as relevant to the proceedings and based upon what has been presented to the Court, such conclusions are based on sufficient facts and data.
>
> Furthermore, this Court finds that the testimony of the doctors will assist the trier of fact in determining certain facts at issue in this litigation. The Motion to Strike…filed by the Defendants…and against Plaintiff, Waddie Thomas, Jr. is hereby denied.

A written judgment denying Brandt's Motion to Strike was entered on November 19, 2024. Brandt gave notice of its intention to seek supervisory writs from this Court on December 6, 2024. On the same day, the district court set a return date for January 6, 2025. The Brandt Application was timely filed.

On October 17, 2024, while Brandt's Motion to Strike was pending, Mr. Thomas filed the Motion to Exclude. The district court conducted a hearing on the Motion to Exclude on December 17, 2024. After considering the law, the evidence

presented at the hearing,[3] and the arguments of counsel, the district court denied Mr. Thomas' Motion to Exclude, stating:

> The Court is considering the law and evidence in this case, more particularly, Code of Evidence 403, exclusion of relevant evidence on grounds of prejudice, confusion, and waste of time. Code of Evidence 702, testimony of the experts; 703 biases of opinion testimony by experts, Code of Evidence Article 704; opinion on the ultimate issue; 705 disclosure of the facts or data underlying an expert opinion. Cases cited within the briefs of both counsel. Law and argument.
>
> However, the Court finds that the plaintiff's motion to exclude the testimony of Kevin Watson filed by the plaintiff…and against the defendants…is hereby denied. Court finds the plaintiff has failed to meet his burden in establishing the testimony of Dr. Watson, the defendants' expert witness should be excluded from the trial in this case.
>
> The Court finds that Dr. Watson qualifies to testify as an expert based upon his knowledge, skill, and experience and education. And looking at the four factors, the court finds it's more likely than not that Dr. Watson's opinion is based upon sufficient facts or data, the product of reliable principles and methods, reflects a reliable application of the principles and methodologies to…the facts of the case, and will be helpful to the trier of fact to understand the evidence or to determine the fact in issue.
>
> Court has heard the arguments in reference to Watson's information as solicited and the bell cannot be unrung. Court is aware of his cross-examination and heard the argument. However, the Court finds as such and that's the reason [for] the Court's opinion.

A written judgment denying the Motion to Exclude was entered on December 18, 2024. On or about December 20, 2024, Mr. Thomas gave notice of his intent to seek supervisory writs from the December 18, 2024 judgment. On December 30, 2024, the district court set a return date of January 20, 2025. The Thomas Application was timely filed.

STANDARDS FOR ADMISSION OF EXPERT TESTIMONY

Article 702 of the Louisiana Code of Evidence governs the admissibility of expert testimony. It provides, in pertinent part:

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[3] At the December 17, 2024 hearing, the parties introduced the depositions of Mr. Thomas, and Drs. Rodriguez, Segura and Watson, the affidavits of Mr. Thomas and Drs. Rodriguez and Segura, Dr. Watson's Second Medical Report, articles, guidelines and excerpts from the materials relied upon by Dr. Watson outlining the methodology he employed in reaching his conclusions relative to causation and the advisability and efficacy of RFA in general and in this case in particular.

A. 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 the proponent demonstrates to the court that it is more likely than not that:

(1) 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;

(2) The testimony is based on sufficient facts or data;

(3) The testimony is the product of reliable principles and methods; and

(4) The expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

In *State v. Foret*, 93-246 (La. 11/30/93), 628 So.2d 1116, 1121, the Louisiana Supreme Court found that Article 702 is "virtually identical to its source provision in the Federal Rules of Evidence, F.R.E 702." As a result, the Court found it appropriate to consider the opinion of the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), the seminal case interpreting F.R.E. 702. *Id.*

Prior to *Daubert*, most state and federal courts generally applied the test espoused in *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923), which found expert testimony admissible if based on techniques that were "generally accepted" in the relevant scientific community (the "Frey Test"). In *Daubert*, the Supreme Court observed that *Frey* had been supplanted by F.R.E. 702, which did not incorporate or reference the Frey Test. 509 U.S. at 587, 588, 113 S.Ct. at 2793, 2794.

Under Federal Rule 702, the trial judge must "ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Id.* at 589, 113 S.Ct. at 2795. The expert's testimony must be grounded in "scientific knowledge," *i.e.*, it must be based upon the methods and procedures of science as applied to the facts or to any body of ideas inferred from such facts or accepted as truths on good grounds." *Id.* at 590, 113 S.Ct. at 2795. There is no requirement that the "subject of

scientific testimony must be 'known' to a certainty," but "[p]roposed testimony must be supported by appropriate validation…." *Id.*

In exercising its "gatekeeping" function, the court must determine whether: (1) the evidence or testimony will "assist the trier of fact to understand the evidence to determine a fact in issue" – *i.e.*, whether the evidence is relevant and helpful; and (2) the expert's testimony or evidence has a reliable basis in the knowledge and experience of his discipline. *Id.* at 591-92, 113 S.Ct. at 2796. The *Daubert* court found that in order to determine whether the expert's testimony is reliable, the court must determine whether the reasoning or methodology is scientifically valid and observed that consideration of the following factors should inform that decision: (1) whether the theory or technique can be and has been tested; (2) whether the theory or technique has been subjected to peer review and/or publication; (3) the known or potential rate of error; and (4) whether the theory is generally accepted in the relevant scientific community. *Id.* at 593-94.

The *Daubert* "observations" are not exclusive. In *Kumho Tire Co., Ltd. V. Carmichael,* 526 U.S. 137, 141-42, 119 S.Ct. 1167, 1171, 143 L.Ed.2d 238, the Supreme Court held that:

> We also conclude that a trial court *may* consider one or more of the more specific factors that *Daubert* mentioned when doing so will help determinethat testimony's reliability. But, as the Court stated in *Daubeert,* the test of reliability is 'flexible,' and *Daubert's* list of specific factors neither necessarily nor exclusively applies to all experts or in every case. Rather, the law grants a trial court the same broad latitude when it decides how to determine reliability as it enjoys in respect to its ultimate reliability determinations.

See also, *Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181 (La. 2/29/00), 755 So.2d 226, 234; *Lavigne v. Allied Shipyard,* 18-666, 18-1077 (La. App. 4 Cir. 1/15/20), 289 So.3d 1088, 1096.

Generally, the evidence and testimony presented by an expert is reliable if it meets accepted standards in the expert's field of expertise. *Lavigne,* 289 So.3d at

1098. If the proposed testimony or evidence is found to be reliable and helpful, the court must still weigh its probative value against potential for unfair prejudice, confusion of the issues or misleading the jury. *Daubert,* 509 U.S. at 595, 113 S.Ct. at 2798; F.R.E. 403.

In *Foret,* the Court found that *Daubert's* approach to admissibility aligned with its own view that scientific evidence should be admitted whenever, after "balancing the probative value of the evidence against its prejudicial effect, [the trial court] determines that 'the evidence is reliable and will aid in a decision,'" all subject to the discretion of the trial judge." *Foret,* 628 So.2d at 1123, citing *State v. Catanese,* 368 So.2d 975, 981-82, 983 (La. 1979). Accordingly, the Louisiana Supreme Court adopted "*Daubert's* requirement that expert scientific testimony must rise to a threshold level of reliability in order to be admissible under La. C.E. art. 702." *Id.* Finding "the *Daubert* court's 'observations' on what will help to determine this threshold level of reliability to be an effective guide," the Court also adopted the "observations." *Id.*

The standard for admissibility under Rule 702, as interpreted by *Daubert,* which applies, by extension to La. C.E. art. 702, "is a flexible one [which has as its] overarching subject…the scientific validity and thus the evidentiary relevance and reliability—of the principles that underlie a proposed submission." *Daubert,* 509 U.S. at 594-95, 113 S.Ct. at 2797. "The focus…must be solely on principles and methodology, not on the conclusions that they generate." *Id.* at 595, 113 S.Ct. at 2797. See also, *Harvey Canal Ltd. P'ship v. Lafayette Ins. Co.,* 09-605 (La. App. 5 Cir. 3/9/10), 39 So.2d 619, 627-28 ("[T]here is a crucial difference between questioning the methodology employed by an expert witness and questioning the application of that methodology or the ultimate conclusions derived from that application. *Daubert* comes into play only when the methodology of the expert is being questioned.")

The court's role as a gatekeeper, however does not replace the traditional adversarial system. "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence" presented by experts. 509 U.S. at 596, 113 S.Ct. at 2798 (citation omitted). The *Daubert* court also noted that district courts would remain free to direct a judgment in appropriate cases and found that, "[t]hese conventional devices, rather than wholesale exclusion under an uncompromising 'general acceptance' test, are the appropriate safeguards where the basis of scientific testimony meets the standards of Rule 702." *Id.*

In sum, the *Daubert* court held that:

> "General acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence—especially Rule 702—do assign to the trial judge the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.

Id. at 597, 113 S.Ct. at 2799.

Further, we recently held in *Lataxes v. Louisiana Home Specialists, LLC,* 24-129, pp. 6-7 (La. App. 5 Cir. 10/30/24), ___ So.3d ___; 2024 WL 5265376 that:

> A trial judge has great discretion concerning the admissibility and relevancy of evidence, and he has wide latitude to determine whether an expert has the competence, background, and experience to qualify. *Williams v. State Farm Mut. Auto. Ins. Co.*, 20-248 (La. App. 5 Cir. 2/17/21), 314 So.3d 1010, 1018, *writ denied*, 21-402 (La. 5/11/21), 315 So.3d 871. 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: (1) 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; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert has reliably applied the principle and methods to the facts of the case. *Id*. at 1019, citing La. C.E. art. 702. The trial court performs the important gatekeeping role of ensuring "that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Id*., quoting *Blair v. Coney*, 19-795 (La. 4/3/20), 340 So.3d 775. A trial court's ruling to qualify an expert to testify at trial will not be disturbed on appeal absent a clear abuse of discretion. *Id.* at 1018.

See also *Giavotella v. Mitchell,* 19-100 (La. App. 1 Cir. 10/24/19), 289 So.3d 1058, 1069-70, *writ denied,* 19-1855 (La. 1/22/20), 291 So.3d 1044 ("[T]he trial court's discretion in controlling the admission of expert testimony is well established in Louisiana jurisprudence…The trial court is vested with broad discretion in ruling on the scope of expert testimony.")

DISCUSSION

Article 702 provides that a witness may be qualified as an expert based on "knowledge, skill, experience, training, or education." In this case, Dr. Rodriguez is a board-certified orthopedic surgeon. Dr. Segura is board-certified both in interventional pain medicine and physical medicine and rehabilitation. Brandt does not contend that Drs. Rodriguez and Segura are not qualified as experts in their respective fields based on their knowledge, skill, or experience, although Brandt does call into question the training and education of these doctors relative to the efficacy of RFAs, in that neither testified that he was trained or educated in medical school about RFAs or their efficacy. Both explained that they had received training and education relative to RFAs post-medical school and that they had obtained extensive training and experience with RFAs in conjunction with their respective medical practices.

Drs. Rodriguez and Segura are Mr. Thomas' treating physicians and may testify relative to the treatment they have provided to Mr. Thomas. Brandt does not contend otherwise. Instead, Brandt seeks to exclude their testimony solely as it relates to Mr. Thomas' need for future RFA procedures, contending that their opinions are speculative, that Brandt's own expert, Dr. Watson, disagrees with the efficacy of and need for RFA procedures, and the probative value of the evidence is outweighed by the potential for prejudice.

In their deposition testimony and affidavits presented to the district court in conjunction with both the November 8th and December 17th hearings, Drs. Rodriguez and Segura testified that, under the treatment regimen prescribed by Dr. Rodriguez, Mr. Thomas underwent RFA procedures in 2022 for lumbar, cervical, and sacroiliac (SI) joint pain, and again in 2024 for lumbar and SI joint pain which were performed by Dr. Segura. In conjunction with the hearing, evidence was produced that Mr. Thomas has realized positive results from these procedures.

Drs. Rodriguez and Segura testified that they have been qualified and have testified as experts in their respective fields, including relative to RFAs, numerous times in Louisiana state and federal courts. Neither has ever been excluded from providing expert testimony.

Dr. Watson is a board-certified orthopedic surgeon. Mr. Thomas, apparently, does not contend that Dr. Watson is not qualified as an expert in the field of orthopedic surgery. Mr. Thomas' challenge to Dr. Watson appears to be, as stated by the district court, that Dr. Watson is a "bought and paid for" expert who regularly testifies for the workers' compensation defense bar and who has never met a plaintiff with a legitimate claim. Dr. Watson's testimony is largely focused on causation. His conclusion as to causation informs his opinions relative to treatment, including the need for future RFAs.

Mr. Thomas contends that the methodology employed by Dr. Watson to determine causation consists of results-oriented junk science, developed solely to provide a basis for defense experts testifying in injury cases (primarily workers' compensation cases) to minimize plaintiffs' recovery (particularly in conjunction with disability claims). Mr. Thomas also maintains that because Dr. Watson does not order or perform RFAs, he is not qualified to testify about their indication or efficacy and that the probative value of his testimony is outweighed by its potential for prejudice.

In his report and deposition testimony that were presented to the district court in conjunction with the November 8th and December 17th hearings, Dr. Watson, who was retained by Brandt to render an Additional Medical Opinion ("AMO"), disagreed with the opinions of Drs. Rodriguez and Segura relative to the efficacy of RFA and the advisability of future RFA procedures for Mr. Thomas. In fact, according to Dr. Watson, RFA is rarely, if ever, indicated to treat any musculoskeletal conditions. Dr. Watson opined that Mr. Thomas incurred only minor injuries as a result of the accident, but none for which RFA was indicated and none requiring future RFAs even if Dr. Watson believed them to ever be indicated or effective, which he does not.

Like Drs. Rodriguez and Segura, Dr. Watson testified that he has been qualified and has testified as an expert in his field numerous times in Louisiana state and federal courts and he has never been excluded from providing expert testimony.

Dr. Segura's Opinion as to Future RFAs

Dr. Segura has been performing RFA procedures for fourteen years. During that time, he has performed some 10,000 RFA procedures. According to Dr. Segura, following an RFA procedure, the ablated nerve dies backward so that it takes about three weeks for the patient to achieve maximum pain relief, but gradually, the body starts reproducing enough neurotransmitters to target the nerve to regrow. As a general rule, the regrowth process takes approximately a year to eighteen months. Once the nerve has regenerated, the pain will return in the same location and at the same level. As a result, patients who are successfully treated with RFA generally repeat the procedure every twelve to eighteen months.

Dr. Segura has approximately 200 patients that he has been treating for the fourteen years that he has been performing RFAs, all of whom have had repeated RFAs. He stated, based on his experience, the pain relief realized by a patient from an RFA varies, but a typical patient experiences pain relief following a cervical RFA

for a period of twelve to twenty-four months, while some patients experience relief for as long as three years. Further, based on his experience and currently accepted, peer-reviewed medical literature and guidelines upon which he relies,[4] once a patient's pain returns, another RFA can be performed and the repeated procedure will provide a similar degree of relief over a similar length of time. Thus, repeated RFAs are recommended so long as the patient experiences at least six months of pain relief from the previous procedure and there is no limit to the number of times an RFA may be successfully repeated.

Applying his experience and medically accepted procedures and guidelines to Mr. Thomas, Dr. Segura opines that Mr. Thomas will need to repeat the RFA procedures indefinitely when the nerves regrow after each prior procedure and his pain returns. Dr. Segura estimates, based on Mr. Thomas' response to the RFAs that he has undergone, that it is more probable than not that Mr. Thomas will be required to repeat RFAs (lumbar, cervical and/or SI) approximately every twelve to twenty-four months, for a minimum of ten years.

Based upon Dr. Segura's testimony and affidavit, we cannot say that the district court abused its discretion and erred in finding Dr. Segura's testimony is reliable under Daubert*/Foret* and is admissible under Article 702. There was sufficient basis before the district court to allow it to conclude that Dr. Segura's opinions are based on his specialized knowledge, experience, training and education, accepted medical science, guidelines and procedures, and peer-reviewed medical literature, as applied to Mr. Thomas.

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[4] Dr. Segura referenced clinically accepted guidelines on performing pain-relieving treatment, including RFAs, including but not limited to those published by the International Pain and Spine Intervention Society f/k/a Spine Intervention Society (IPSIS"), particularly, the *Practice Guidelines for Spinal Diagnostics and Treatment Procedures,* edited by Nikolai Bogduk, M.D., Ph.D., D.Sc., an internationally recognized expert in clinical anatomy and spine pain, which includes a study that provides the foundational science behind the administration of RFAs to the lumbar, thoracic, and cervical facet joints of the spine. Dr. Segura stated that he adheres to these guidelines.

Dr. Rodriguez's Opinion as to Future RFAs

Dr. Rodriguez testified that he has been a board-certified orthopedic surgeon for more than ten years. As part of his training, Dr. Rodriguez was educated in the administration of various orthopedic pain relief procedures, including RFAs. He has performed some fifty RFA procedures. Since 2009, Dr. Rodriguez has been engaged in practice in the area of orthopedic spine surgery, focusing on minimally invasive, motion sparing, and regenerative techniques. Dr. Rodriguez testified that he has treated hundreds of patients, and continues to treat patients, for whom he has recommended RFAs and he has managed their care both before and after the procedures.

Dr. Rodriguez is of the opinion that when a nerve ablated by RFA regenerates, the patient's pain will return to the same level of intensity as existed before the initial RFA. Based on his experience, as well as upon currently accepted medical literature, guidelines, and procedures upon which he relies,[5] Dr. Rodriguez opines that RFAs may be successfully repeated several times. Dr. Rodriguez testified that there is no medical basis or literature to conclude that RFAs become less effective after being successfully repeated several times. According to Dr. Rodriguez, the currently available medical literature and guidelines, as well as his own experience with his patients, lead him to conclude that there is no limit to the number of times RFAs may be successfully repeated. Dr. Rodriguez testified/attested that he has not found any medical basis to support a contrary conclusion.

Dr. Rodriguez testified that he has been treating Mr. Thomas since the accident for cervical facet syndrome, lumbar facet syndrome, lumbar radiculopathy,

[5] Dr. Rodriguez attested that he also adheres to the IPSIS guidelines referenced in note 2 above, as well as the American Society of Regional Anesthesia and Pain Medicine guidelines, the MacVicar studies, the studies, Schofferman, J., et al., *Effectiveness of Repeated Radiofrequency Neurotomy for Lumbar Facet Pain* (Spine, 2004), and Husted, et al., *Effectiveness of Repeated Radiofrequency Neurotomy for Cervical Facet Pain* (Journal of Spinal Disorders and Technologies, 2008),, among other widely accepted medical guidelines.

and sacroiliitis. Dr. Rodriguez initially treated Mr. Thomas' pain with procedures other than RFAs, but when these failed to resolve Mr. Thomas' pain, Dr. Rodriguez recommended that Mr. Thomas undergo the aforementioned RFA procedures with Dr. Segura. Dr. Rodriguez testified/attested that because Mr. Thomas continues to experience chronic neck and back pain, including the SI joint, Dr. Rodriguez is of the opinion that it is more likely than not that Mr. Thomas will require repeated RFAs every twelve to eighteen months at: (1) right L-4-S1; (2) right C5-T1; and (3) right SI joint, for a minimum of 10 years. Dr. Rodriguez testified that this opinion is based on his education and experience and is supported by accepted medical science, guidelines, and procedures, as well as peer-reviewed medical literature.

Based upon Dr. Rodriguez's testimony and affidavit, we cannot say that the district court abused its discretion and erred in finding Dr. Rodriguez's testimony is reliable under *Daubert/Foret* and is admissible under Article 702. There was sufficient basis before the district court to allow it to conclude that Dr. Rodriguez's opinions are based on his specialized knowledge, experience, training and education, accepted medical science, guidelines and procedures, and peer-reviewed medical literature, as applied to Mr. Thomas.

Dr. Watson's Opinions on Causation and the Need for Future RFAs

As stated above, Dr. Watson, who has been board-certified in the field of orthopedic surgery since 2009, was retained by Brandt to perform an Independent Medical Examination ("IME") of Mr. Thomas and to render an AMO. Dr. Watson testified that he began performing IME/DME[6]/AMO examinations in 2009 and performs fifty to sixty such examinations per year.

Dr. Watson testified that he performed an IME on Mr. Thomas on April 19, 2024, approximately three years after the accident and after Mr. Thomas had been

[6] A DME is a "defense medical examination."

treated by Drs. Rodriguez and Segura with RFAs and other pain-management procedures. Dr. Watson stated that his examination usually takes about thirty minutes, but he could not recall how long he spent examining Mr. Thomas. In conjunction with the IME, Dr. Watson reviewed the notes of Drs. Rodriguez and Segura, among other documents and information that was provided to him by defense counsel, and also took a medical history from Mr. Thomas.

Dr. Watson testified that here, as is his practice in every case where causation is at issue, he applied a six-step causation analysis to the findings of his IME of Mr. Thomas. The methodology employed by Dr. Watson (the "Causation Analysis")[7] was developed by J. Mark Melhorn, M.D., James B. Talmadge, M.D.,[8] William E. Ackerman, M.D., and Mark H. Hyman, M.D., and published in the AMA Guides to the Evaluation of Disease and Injury Causation (2nd Ed. 2013) (the "AMA Guides").[9] The Causation Analysis was summarized and explained by Dr. Robert Barth, Ph.D. ("Barth"),[10] in AMA Guides Newsletter, May/June 2012. Dr. Watson's AMO states that his analysis in this case is based off of Barth and the AMA Guides.[11]

At his deposition and in his report, Dr. Watson characterized the Causation Analysis as the standard method utilized by the medical community to determine causation of injury. Mr. Thomas pointed out to the district court, however, that the AMA Guide contains the following disclaimer:

> The contents of this publication represent the views of the author[s] and should not be construed to be the views or policy of the AMA or of the

[7] The six steps are: (1) confirm an explanatory diagnosis for the relevant clinical presentation based primarily on objective findings; (2) apply scientific studies to the causation issues at hand to see if a possible causation-link exists for that diagnosis; (3) evaluate the magnitude and temporal relationship of the causation-link and the diagnosis; (4) consider other risk factors for the potential diagnosis; (5) scrutinize the medical records for inconsistencies or conflicting information; and (6) arrive at a conclusion. If one step fails the analysis, then a causation claim is not justifiable.

[8] Drs. Melhorn and Talmadge are orthopedic surgeons. Dr. Watson's AMO represents that these doctors "teach the [Causation Analysis] for the American Academy of Orthopedic Surgeons ("AAOS")."

[9] According to Dr. Watson, the Causation Analysis was originally developed by the National Institute for Occupational Safety & Health ("NIOSH") and further adapted by the American College of Occupational & Environmental Medicine ("ACOEM"), before being further adapted by Dr. Melhorn, et al. and then by Barth. Dr. Watson's AMO also states that the Causation Analysis is consistent with the professional standards adopted by the Centers for Disease Control (the "CDC"), although he did not produce any evidence of this.

[10] Barth is not a medical doctor. He is a neuropsychologist. Dr. Watson stressed that Barth did not write, develop or create the Causation Analysis.

[11] In addition to three Barth articles and the AMA Guides, Dr. Watson listed an extensive bibliography of articles and studies that he claims support his opinions relative to causation and the lack of efficacy of RFAs.

institution[s] with which the author[s] may be affiliated, unless this is clearly specified.

Mr. Thomas also cited case law from other jurisdictions wherein the courts have been critical of Barth and the Causation Analysis or have rejected the Barth methodology outright. Mr. Thomas further pointed out that no Louisiana court has adopted the Causation Analysis.

Dr. Watson testified that he does not perform neck or back surgery, but he does perform intervention procedures, including cortisone injections into joints, trigger point injections for the neck and back, and hyaluronic acid injections for joints. Dr. Watson orders epidural steroid injections ("ESI's") for his patients, but does not administer the injections.[12]

Dr. Watson further testified that he does not ever perform, order or recommend medial branch blocks, facet blocks, or RFAs because, although there are articles, studies, and publications that reach a contrary conclusion, Dr. Watson does not believe that the best medical studies support their efficacy. In his report and deposition, Dr. Watson agreed with Drs. Rodriguez and Segura that the IPSIS Practice Guidelines establish the methodology for determining whether RFA procedures are indicated in a particular case, but he disagrees with their application of that methodology to Mr. Thomas. Dr. Watson stressed, however, that generally, based on what he described as the "best medical studies,"[13] RFA is not indicated to treat cervical, lumbar, or SI joint pain. According to Dr. Watson, however, if Mr. Thomas' injuries were caused by the accident and if RFA were indicated to treat his

[12] Dr. Watson refers his patients in need of neck or back surgery or ESIs to other providers.

[13] Relative to the efficacy of cervical RFA, Dr. Watson cites to a 1996 study that was deemed inadmissible by the Cervical Spine Task Force and a 2020 study by van Erd (that does not appear to be listed in his bibliography) that studied RFA in 37 patients for six months. Relative to the efficacy of lumbar RFA, Dr. Watson's report and testimony state that the ISPIS Practice Guidelines establish the appropriate methodology, but cites to several other studies finding RFAs to be ineffective to support his opinion that RFAs were not and will not be warranted for Mr. Thomas, or generally for all patients. Relative to the efficacy SI joint RFAs, Dr. Watson stated in his report that the studies are varied and conflicting.

chronic cervical and lumbar pain, Mr. Thomas should not undergo more than three such procedures in each area.

Considering all of the foregoing, the district court concluded that Dr. Watson was qualified to provide expert testimony under Article 702, that his testimony would assist the trier of fact to understand the evidence or to determine facts in issue, that the methodology he relied upon to reach his conclusions was reliable under the *Daubert/Foret* standards, and that the probative value was not outweighed by the potential for prejudice. We cannot say that the district court abused its discretion in so holding.

The mere fact that experts disagree about the reliability of a theory or a methodology does not mean that the testimony of an expert about that theory violates the *Daubert* standard. The accuracy of the facts upon which the expert relies and determinations of credibility and accuracy of the expert's opinion are matters for the jury to decide. *LaBauve v. Louisiana Medical Mutual Ins. Co.*, 21-763 (La. 4/13/22), 347 So.3d 724, 731-32. The parties will have the opportunity to vigorously cross-examine the other side's experts at trial as to causation and the need for and efficacy of future RFAs. It will be the province of the jury to decide whether to accept or reject, in whole or in part, the opinions of these experts.

Accordingly, based on our review of the information presented to us, we find that the district court did not abuse its broad discretion in denying Brandt's Motion to Strike and/or in denying Thomas' Motion to Exclude. Accordingly, the Application for Supervisory Writs filed herein by defendants, Brian K. Broussard, Ray Brandt Hyundai of Harvey, LLC and Coaction Specialty Insurance Services, LLC (No. 24-C-589) and the Application for Supervisory Writs filed herein by plaintiff, Waddie Thomas, Jr. (No. 25-C-32) are **DENIED.**

Gretna, Louisiana, this 1st day of April, 2025.

FHW
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **04/01/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

24-C-589

C/W 25-C-32

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable E. Adrian Adams (DISTRICT JUDGE)
Leo J. Palazzo (Respondent)
Ashlee L. Adams (Relator)
Jason J. Markey (Respondent)
Mario A. Arteaga, Jr. (Respondent)

MAILED

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