New Jersey Supreme Court Uses Daubert Factors To Uphold Trial Court Decision Striking Medical Causation Expert Testimony

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On August 1, 2018, the New Jersey Supreme Court issued a ruling that reinstated a trial court's decision striking plaintiffs' causation experts' testimony as flawed and unreliable. In re: Accutane Litigation, A-25 September Term 2017 (August 1, 2018). The decision effectively ends more than 2,000 Accutane lawsuits. The decision is significant because the Court clarified New Jersey expert witness admissibility standards to include the factors established by the United States Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The end result is that expert testimony that lacks credible support should not survive a motion to strike the expert.

Background on the Accutane Lawsuits

The initial Accutane-related lawsuits were filed over ten years ago and alleged a causal connection between the prescription acne medicine, Accutane, and the gastrointestinal disorder Crohn's disease. Recently, several epidemiological studies were published concluding that Accutane was not causally linked to the development of Crohn's disease. During the litigation, plaintiffs gave notice they would offer expert testimony to discredit those studies. Defendants responded with a motion to exclude the expert testimony as falling below the minimum threshold for the admissibility of scientific expert testimony in New Jersey.

The plaintiffs offered testimony from gastroenterologist Dr. Arthur Asher Kornbluth and a statistician, Dr. David Madigan. Dr. Kornbluth sought to portray the epidemiological studies as unreliable and pointed to his own reliance on contradictory case reports, animal studies, causality assessments, and his own scientific hypothesis. Dr. Kornbluth further opined that the unfavorable epidemiological studies failed to consider Crohn's disease's prodrome, which is the time between the onset of symptoms and actual diagnosis. Dr. Madigan likewise opined that failing to account for this prodrome rendered the studies statistically unreliable.

The Defendants responded by offering testimony from gastroenterologist Dr. Maria Oliva-Hemker and biostatistician Dr. Steven Goodman. Dr. Oliva-Hemker explained why epidemiological studies are preferred to the case reports and animal studies that Dr, Kornbluth cited and relied upon. She further opined that Dr. Kornbluth's methodologies and hypothesis were untested and logically unsound because, among other things, the animal studies that he cited were conducted on species that could not contract an inflammatory bowel disorder such as Crohn's disease. Dr. Goodman's testimony also focused on the heightened value of epidemiological studies and opined that the prodrome issues cited by the plaintiffs would not render those studies invalid.

The trial court conducted a Rule 104 Kemp hearing to determine whether the plaintiffs' experts' opinions and testimony were scientifically sound and reliable. Kemp ex rel. Wright v. State, 174 N.J. 412, 427 (2002). After the hearing, the trial

court excluded plaintiffs' experts' testimony under Rubanick v. Witco Chemical Corp., 125 N.J. 421 (1991), finding it was not based on sound methodology and the data reasonably relied upon by scientific experts in the field. The Appellate Division disagreed and reversed. The appeal to the New Jersey Supreme Court centered on the admissibility of plaintiffs' expert witness testimony and whether New Jersey's expert admissibility standards in medical-causation lawsuits, which has been based on general acceptance standard, required clarification by incorporating the Daubert factors into a trial court's evaluation of the reliability of expert testimony.

Decision

The New Jersey Supreme Court reinstated the trial court's decision to exclude the plaintiffs' expert testimony. After discussing the gatekeeping role a trial court plays when deciding whether to admit expert testimony, the Court compared the Daubert trilogy of cases to New Jersey's Rubanick, Landrigan, and Kemp decisions. The Court "perceived little distinction between Daubert's principles regarding expert testimony and our own[.]" In re Accutane, at *5. The Court concluded that the Daubert factors are useful aids for New Jersey trial courts as gatekeepers of scientific expert testimony in civil matters. Id. *6. The Court intended its decision "to clarify and reinforce the proper role for the trial court as the gatekeeper of expert witness testimony," noting that the Court's previous attempts to outline the trial court's gatekeeping functions required revisiting. Id. at *67, 70. Though it did not adopt Daubert, the Court held that the Daubert factors should be "incorporated for use by our courts," id. at *82, and rejected the Appellate Division's reliance on a more relaxed Frye standard, which, as in Rubanick, merely requires that expert testimony is generally accepted in the applicable scientific community.

Takeaway

Though New Jersey should not be considered a "Daubert state," the shift towards the Daubert factors in civil medical-causation matters is a significant development that must be followed by defendants, including life sciences companies, when defending product liability and other tort claims. Defense motions attacking plaintiffs' causation experts must combine the Daubert factors with the Rubanick standard. The Accutane decision changes the landscape of expert qualification motions in New Jersey, and should encourage defendants to challenge expert testimony when it does not satisfy Daubert's more demanding standards.