



SEVENTH CIRCUIT AFFIRMS THAT UNRELIABLE METHODOLOGY RENDERS EXPERT TESTIMONY ON CAUSATION EXCLUDABLE

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The U.S. Court of Appeals for the Seventh Circuit has once again shown that it takes seriously the role of gatekeeper when parties seek to introduce dubious expert testimony. In its most recent contribution to the case law, *C.W. v. Textron, Inc.*, ___ F.3d ___, 2015 WL 5023926 (7th Cir. Aug. 26, 2015), the court affirmed an order excluding all expert testimony opining that vinyl chloride released from the defendant's manufacturing plant caused the plaintiff's injuries and granting summary judgment to the defendant due to the resulting lack of evidence on causation.

The parties in *C.W. v. Textron, Inc.* agreed that vinyl chloride is a carcinogen and genotoxin (a poisonous substance that can damage DNA). Testing revealed that vinyl chloride released from the defendant's plant had contaminated the well from which the plaintiff's family drew its water at a low level that nevertheless exceeded regulatory limits. The plaintiffs, two infant children, experienced gastrointestinal, immunological, and neurological issues during the months that they were exposed to water from the affected well. Those symptoms abated once the family moved away from their home. The plaintiffs alleged that the symptoms they experienced while living in the house were caused by the vinyl chloride in their well water and that, because of the exposure, they were at an increased risk of developing cancer later in life.

To prove causation, the plaintiffs' experts cited various studies involving exposure to vinyl chloride. The district court "conducted an in-depth review of the relevant studies that the experts relied upon," *id.* at *6, and found that those studies "fail to establish that [vinyl chloride] at the dose and duration present in this case could cause the problems that the [p]laintiffs have experienced or claim that they are likely to experience." *Id.* at *3. Expanding on that finding, the Seventh Circuit observed that one of the experts' animal studies actually showed that there was no increased risk of cancer from exposure levels that, measured in dose-per-unit-of-body-weight, were higher than the plaintiffs'.

Other studies, which did find adverse effects from vinyl chloride, involved significantly higher exposures over significantly longer time periods. *Id.* at *6-7. The plaintiffs' experts offered no sound methodological basis for finding causation based on these studies, given the plaintiffs' actual exposure levels. Accordingly, the district court excluded the experts under Federal Rule of Evidence 702. It subsequently granted summary judgment for the defendant because the plaintiffs could not prove either general or specific causation.

On appeal, the plaintiffs contended that the district court had imposed an impossible standard for the admissibility of expert testimony because no literature studying the effects of similar exposure levels on young children exists. As the Seventh Circuit stated, however, the district court did not exclude the

experts because they could not identify a precisely analogous study, but because they failed to “adequately extrapolate from the studies they had.” *Id.* at *6.

The court noted that “there is a scientific end-around to make up for this dearth in literature” by using “computer-based models to extrapolate from animal data to human subjects, and from high doses to lower doses.” *Id.* at *7. The plaintiffs’ experts had not used such recognized methods of extrapolation, however, which left “too great an analytical gap between the data and opinion proffered.” *Id.* (quoting *General Electric v. Joiner*, 522 U.S. 136, 146 (1997)). In such situations, the Seventh Circuit explained, “the opinion amounts to nothing more than the *ipse dixit* of the expert,” and “it is not an abuse of discretion under *Daubert* to exclude that testimony.” *Id.*

The court also noted that plaintiffs’ experts could not fill the missing gap in their opinions by resort to a differential etiology—“a process-of-elimination approach to determining a subject’s cause of injury” *id.* at *2 n.4—because, “[w]ithout the benefit of analogous studies and an acceptable method of extrapolation,” the experts could not “rule in” vinyl chloride as a potential cause of the plaintiffs’ injuries. *Id.* at *8. Neither was it sufficient to point out that the presence of vinyl chloride in the plaintiffs’ well exceeded regulatory limits because “exceedance of government regulation ... does not by itself prove causation.” *Id.*

Finally, the experts’ opinions were not rendered admissible based on the coincidence of the plaintiffs’ symptoms with the time that they lived in the house because “a temporal relationship ... does not show a sufficient causal relationship.” *Id.* (quoting *Ervin v. Johnson & Johnson*, 492 F.3d 901, 904-05 (7th Cir. 2007)). Having concluded that the experts did not offer a reliable methodological basis for their causation opinions—leaving too great an analytical gap between the underlying literature on causation and the facts of this case—the Seventh Circuit affirmed their exclusion and the resulting summary-judgment order.

The opinion is notable both because the court engaged in a detailed analysis of the literature cited by the plaintiffs’ experts—comparing the specific dosage levels in the studies to the plaintiffs’ exposure—and because the court insisted that the experts use a reliable method of extrapolating from the studies on which they relied before offering a causation opinion. This is the type of engaged and substantive review that courts must perform if they are to fulfill their role as the gatekeepers of expert testimony. While judges often observe that they are not scientists by training, they must be willing to delve into the substance of an expert’s scientific or technical opinion in order to ensure that each step of the expert’s analysis meets the standards for admissibility.