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2017 WL 3022765

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United States District Court,

D. Maryland

BARBARA ARBOGAST et al., Plaintiffs v. GEORGIA-PACIFIC LLC et al., Defendants  
 United States District Court, D. Maryland. July 17, 2017 Slip Copy 2017 WL 3022765 (Approx. 2 pages)

BARBARA ARBOGAST et al., Plaintiffs

v.

GEORGIA-PACIFIC LLC et al., Defendants

CIVIL NO. JKB-14-4049

07/17/2017

James K. Bredar, United States District Judge

**MEMORANDUM AND ORDER**

\*1 Pending before the Court is Plaintiffs' "Daubert" Motion to Exclude the Testimony and Opinions of Donald E. Marano. (ECF No. 598.) The motion has been briefed (ECF No. 606),<sup>1</sup> and no hearing is required, Local Rule 105.6 (D. Md. 2016). The motion will be denied.

Federal Rule of Evidence 702 provides,

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:

- (a) 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;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Mr. Marano is a certified industrial hygienist who is offered by Defendant Georgia-Pacific as an expert who will testify as to his qualitative assessment of the various exposures to **asbestos** described by the decedent, Charles Lemuel Arbogast, Jr.; additionally, Mr. Marano will offer his quantitative assessment of Mr. Arbogast's alleged exposure to **asbestos** from Georgia-Pacific products. He will also testify as to the level of risk of contracting mesothelioma associated with his quantitative assessment of Mr. Arbogast's exposure.

Plaintiffs indicate that Mr. Marano will be offered as an expert concerning both risk and causation of Mr. Arbogast's mesothelioma (Pls.' Mot. 1-2), but Georgia-Pacific counters that by saying Mr. Marano repeatedly disclaimed any expertise on causation and has confined his opinion "to explaining the risk assessments performed by various agencies and organizations and offering his risk assessment opinion based on the analysis that his profession is trained to provide" (Def.'s Opp'n 3).

Both sides have provided ample information and argument on this motion, and after carefully reviewing that, the Court concludes that the motion is properly denied for the reasons stated in Georgia-Pacific's opposition. Mr. Marano's opinion is based on sound, recognized, scientific methodology and meets all of the requirements of Rule 702, and it will be helpful to the trier of fact.

Accordingly, Plaintiffs' motion (ECF No. 598) is DENIED. DATED this 17<sup>th</sup> day of July, 2017.

BY THE COURT:

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 /s/

**SELECTED TOPICS**

Opinion Evidence

Admissibility of Expert Opinion Evidence

**Secondary Sources**

**s 180. Basis or predicate for opinion**

10 M.L.E. Evidence § 180

...Expert opinion derives its probative force from the facts on which it is predicated, and these must be legally sufficient to sustain the opinion of the expert. Stated differently, an expert's opinion h...

**s 702:5. Federal law: Proper subjects of expert testimony**

6 Maryland Evidence, § 702:5

...As in state court, in federal court expert testimony will be appropriate if the fact finder can receive appreciable help from an expert on the subject matter. Expert opinion testimony is properly exclu...

**s 702:5. Reliability "gatekeeping" under Daubert/Kumho/rule 702: historical development and assessment**

5 Handbook of Fed. Evid. § 702:5 (7th ed.)

...The United States Supreme Court has declared that the trial court has a gatekeeping obligation to determine whether the explanative theory underlying every expert witness' testimony, regardless of whet...

See More Secondary Sources

**Briefs**

**BRIEF FOR PETITIONERS**

1998 WL 541944

Kumho Tire Company, Ltd., Kumho U.S.A., Inc., Hercules Tire & Rubber Company, Inc. v. Patrick Carmichael, Father, Next of Kin to Patrick Carmichael, Jr., a Minor, Luzviminda Carmichael, Mother, Next Friend of Carina Horn, a Minor, Administratrix of Estate of Janice Horn, Carina Horn, A Minor, Leona Carmichael, Shameela Carmichael, Natimah Carmichael  
 Supreme Court of the United States  
 Aug. 25, 1998

...The opinion of the court of appeals is reported at 131 F.3d 1453 and reprinted at JA 95-104. The opinion of the district court (JA 26-47) is reported at 923 F. Supp. 1514. The district court's unpubl...

**BRIEF FOR RESPONDENT**

1993 WL 445380

Daubert (William, Joyce), Guardian for Daubert (Jason), De Young (Anita), Guardian for Schuller (Eric) v. Merrell Dow Pharmaceuticals, Inc.  
 Supreme Court of the United States  
 Jan. 19, 1993

...An appendix to this brief reprints a number of the Federal Rules of Evidence at issue in this case. These are two consolidated product liability cases alleging that the drug Bendectin caused petitioner...

**BRIEF OF RESPONDENTS**

1998 WL 734422

Kumho Tire Company, Ltd. Kumho U.S.A., Inc., Hercules Tire & Rubber Company, Inc.