

Gooding v. Liberty Mut. Ins. Co.

United States District Court for the Eastern District of Louisiana

February 28, 2023, Decided

CIVIL ACTION NO. 20-1133 SECTION: "L" (1)

Reporter

2023 U.S. Dist. LEXIS 52807 *

GOODING VERSUS LIBERTY MUTUAL INSURANCE
COMPANY

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Core Terms

turbines, asbestos, insurer, exposure, reliable, expert testimony, scientific, exposed

Opinion

[*1] ORDER AND REASONS

Before the Court is a motion in limine by Defendant General Electric Company ("GE"). R. Doc. 795. GE seeks to exclude the opinion testimony of Plaintiffs' expert Kenneth Garza and Cross Claimant Huntington Ingalls Incorporated's ("Avondale") expert Dr. Brent Staggs under

[Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589 \(1993\)](#). Plaintiffs and Avondale have responded in opposition. R. Doc. 805; R. Doc. 807. Having considered the briefing and relevant law, the Court rules as follows.

I. BACKGROUND

This litigation arises from alleged asbestos exposure that occurred while Decedent James Grant Gooding ("Decedent") was employed at various shipyards in Louisiana between 1970 and 1979. R. Doc. 580; R. Doc. 1-1. Decedent allegedly contracted malignant pleural mesothelioma and, ultimately, died due to his

occupational exposure to asbestos.

Plaintiffs in this survival action are Decedent's surviving heirs, Martha Gooding, Helen Leupold, and Caroline Pendergast (collectively, "Plaintiffs"). They assert wrongful death claims against a number of defendants whom they allege are responsible for exposing Decedent to, or failing to protect Decedent from exposure to, asbestos, and therefore are liable for his contracting and dying of malignant [*2] pleural mesothelioma. R. Doc. 580.

From 1970 to 1979, Decedent worked as an engineer for the American Bureau of

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Shipping, performing inspections related to classification requirements in numerous shipyards and on numerous vessels. R. Doc. 1-1 at 10-11. In January 2020, Decedent was diagnosed with mesothelioma. R. Doc. 580 at 2. Following his diagnosis but prior to filing this suit, Decedent was deposed and testified that he was frequently exposed to asbestos while working for the American Bureau of Shipping. R. Doc. 1-2; R. Doc. 1-3; R. Doc. 1-4; R. Doc. 1-5.

On March 4, 2020, Decedent filed this matter in the Civil District Court for the Parish of Orleans, naming the following four broad categories of defendants: (1) Premises Defendants, which he alleged were strictly liable and/or negligent;¹ R. Doc. 1-1; 1-10; (2) "Asbestos Suppliers" and (3) "Asbestos Manufacturers," which both allegedly breached warranties and are therefore negligent and/or strictly liable; R. Doc. 1-10 at 11-14;² and (4) "Insurance Defendant[s]," who allegedly are liable under the Louisiana Direct Action Statute for their insureds' acts and omissions. *Id.* at 18.3

On March 22, 2020, Decedent passed away. Plaintiffs, [*3] as Decedent's successors, were substituted in his place. They filed this survival action

and asserted wrongful death claims. R.

1 Namely: (1) Boland Marine & Industrial, LLC; (2) Marine and Manufacturing Company, LLC; (3) Defendant-Cross Defendant Sank Inc.; (4) Bollinger Shipyards Lockport, LLC; (5) Main Iron Works, LLC; (6) Swiftships Inc., to which Teledyne Inc. and Cross Defendant UNC Capital Corporation are predecessors in interests;

(6) Delta Machine & Ironworks LLC; (7) Defendant-Cross Defendant American Marine Corporation; (8) Huntington Ingalls Incorporated, and its former executive officer, Albert Bossier; (9) Tidewater Inc.; (10) Trinity Industries Inc.; and (11) American Marine Corporation; (12) International Paper Company).

2 Namely: (1) Hopeman Brothers Inc.; (2) Eagle Inc.; (3) McCarty Corporation; (4) General Electric Company; (5) Foster Wheeler LLC; (6) Viacom CBS Inc.; (7) Bayer CropScience; and (8) Taylor-Seidenbach, Inc.;

(8) General Electric Company; (9) Foster Wheeler LLC; and (10) Bayer CropScience.

3 Namely: (1) Liberty Mutual Insurance Company, as the alleged insurer of Hopeman Brothers Inc.; (2) Zurich American Insurance Company, as the alleged insurer of Terminated-Defendant [*4] Marquette Insulations, Inc.;

(3) Travelers Indemnity Company, as the alleged insurer of Swiftships, Inc.; (4) Certain Underwriters at Lloyds, London; (5) Berkshire Hathaway Specialty Insurance Company, as an alleged insurer of Eagle, Inc.; (6) United States Fidelity and Guaranty Company, as another alleged insurer of Eagle, Inc.; (7) Maryland Casualty & Surety Company, as the alleged insurer of Marquette Insulations, Inc., a terminated defendant; (8) Aetna Casualty & Surety Company, as an alleged insurer of Trinity Industries, Inc.; (9) Employers Insurance Company of Wausau, as another alleged insurer of Trinity Industries, Inc.; (10) Fidelity and Casualty Insurance Company of New York, as another

alleged insurer of Trinity Industries, Inc; and (11) Hartford Accident and Indemnity Company, as another alleged insurer of Trinity Industries, Inc.

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Doc. 580 at 2. Certain Defendants removed the matter to this Court on April 7, 2020 pursuant to the federal officer removal statute, [28 U.S.C. § 1442\(a\)\(1\)](#).⁴

This case was reassigned to this Section of the Court on

February 15, 2022. R. Doc. 611.

II. PRESENT MOTION

Pending before the Court is Defendant General Electric's ("GE") motion under *Daubert* to exclude expert testimony [*5] from Kenneth Garza, CIH, a board-certified industrial hygienist offered as an expert by Plaintiff, and Dr. Brent Staggs, a board-certified pathologist that Cross-Claimant Avondale plans to call as an expert. R. Doc. 795-1 at 1; See [Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589 \(1993\)](#). GE argues that the opinions offered by both experts are unreliable and that they do not fit the facts of the case because they contradict Mr. Gooding's testimony about whether or not his exposure to GE turbines on SL5 ships could have increased his risk for developing mesothelioma. R. Doc. 795-1 at 4-5. Specifically, GE contends that these opinions do not satisfy the requirement of *Daubert* that opinions be based on reliable principles or methods because "Mr. Garza and Dr. Staggs have conducted no analysis or calculation as to Mr. Gooding's potential exposure to **asbestos** fibers from GE turbines and the 'facts' on which they rely are nonexistent." R. Doc. 795-1 at 8. Further, GE maintains that these experts' opinions are irrelevant because they "are based on hypotheticals that are not reflective of the specific facts and circumstances of Mr. Gooding's exposures to **asbestos**." *Id.*

Plaintiffs and Avondale both contest the Movant's assertion that the facts are [*6] "nonexistent," arguing that the expert opinions are based on Mr. Gooding's testimony that he "inspected and worked around GE turbines and that at times he breathed dust generated from this

4 The matter was originally allotted to Chief Judge Brown, who recused herself on February 15, 2022, R. Doc. 611.

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work on GE turbines," R. Doc. 807 at 4, and that Mr. Gooding's own testimony "establishes a

prima facie case that he was exposed to **asbestos** from General Electric turbines." R. Doc. 805 at

4. Avondale further contests GE's argument that Dr. Staggs' methods are unreliable, maintaining

that the differential etiology method that Dr. Staggs will use in his testimony has been held to be

reliable by the Fifth Circuit and this Court. R. Doc. 807 at 8.

III. APPLICABLE LAW

Federal Rule of Evidence 702 provides that:

[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 [*7] and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

Under *Daubert*, "the trial judge must ensure that any and all scientific testimony or evidence

admitted is not only relevant, but reliable." [509 U.S. at 589](#). To be reliable, expert testimony must

be based on "scientific knowledge," meaning it must be "ground[ed] in the methods and

procedures of science" and based on "more than subjective belief or unsupported speculation."

[Id. at 589-90](#). However, this rule does not require the testimony to be based on a scientific study,

but allows testimony based on "personal experience" if, in the trial court's view, there is a

sufficient level of "intellectual rigor" underlying the testimony. *Kumho Tire Co. v. Carmichael*,

[526 U.S. 137, 152 \(1999\)](#). Indeed, "reliance upon extensive personal experience or specialized

knowledge is an acceptable ground for the admission of expert testimony." *Derouen v. Hercules*

Liftboat Co., LLC, No. CV 13-4805, 2015 WL 13528499, at *3 (E.D. La. Sept. 4, 2015). When

expert testimony is challenged under *Daubert*, the burden of proof rests with the party seeking to

present the testimony. [Moore v. Ashland Chemical, Inc., 151 F.3d 269 \(5th Cir. 1998\)](#).

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In *Daubert*, the Supreme Court articulated a two-prong test for determining the admissibility of expert testimony. Specifically, when faced with a proffer of expert testimony, [*8] "the 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." [Daubert, 509 U.S. at 592](#). Both prongs of the *Daubert* test must be satisfied before the proffered expert testimony may be admitted. [Id. at 595](#). The Supreme Court in *Daubert* also noted that this analysis "entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." *Id.*

IV. DISCUSSION

Both prongs of the *Daubert* analysis are at issue here.

a. Reliability

"To qualify as an expert, 'the witness must have such knowledge or experience in his field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth.'" [United States v. Hicks, 389 F.3d 514, 524 \(5th Cir. 2004\)](#) (quoting [United States v. Bourgeois, 950 F.2d 980, 987 \(5th Cir. 1992\)](#)). In this instance, GE does not allege that either expert is unqualified based on his knowledge or experience in his field. Rather, GE contends that the opinions of Mr. Garza and Dr. Staggs are unreliable because they suggested that Mr. Gooding could have been exposed to sufficient **asbestos** from GE turbines [*9] to cause long-term harm, despite Mr. Gooding indicating in his deposition that he did not believe that GE turbines were a significant source of his **asbestos** exposure. Plaintiffs and Avondale, in response, point to Mr. Gooding's own statements in his testimony that he was around GE turbines during his inspections. Indeed, Mr. Gooding answered affirmatively when asked if he had worked

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around GE turbines, R. Doc. 807-1 at 16, and when asked if he believed he was exposed to dust by people who were working on GE turbines, *Id.* at 19. There is enough in the factual record regarding Mr. Gooding's work with GE turbines to allow the Court to reject GE's contention that these expert opinions are "completely unreliable" or not based in facts of the case. R. Doc. 795-1 at 1. The Court finds that the opinions of Mr. Garza and Dr. Staggs are reliable and meet the

Daubert standard on this prong.

b. Relevance

GE challenges the relevance of Dr. Stagg's and Mr. Garza's opinions because, it alleges, both opinions are "based on hypotheticals" that do not reflect the actual facts of the case. R. Doc. 795-1 at 8. But the "hypothetical" questions that GE cites in its brief regarding vessels at Avondale in the [*10] 1960s and 1970s, for example at R. Doc 795-1 at 4-5, go to questions of fact that are raised in the record-as Avondale points out in its response, the depositions of GE's own corporate representative has raised a factual question about exposure Mr. Gooding might have had to GE turbines while inspecting States and Lykes Lines vessels at Avondale, in addition to his work on the SL5 ships. R. Doc. 807 at 4. Given the existence of factual disputes raised by Mr. Gooding's testimony and by other evidence in the record, there is no doubt that Mr. Garza and Dr. Staggs have specialized knowledge that is relevant because it will help "the trier of fact to understand the evidence or to determine a fact in issue," [Daubert, 509 U.S. at 591](#) (quoting [Fed. R. Evid. 702](#)). Ultimately, a jury may reject conclusions made by Dr. Staggs or Mr. Garza, but weighing expert opinions is the purview of the jury, not the Court.

V. CONCLUSION

For the foregoing reasons, Defendant General Electric's *Daubert* motion is **DENIED**.

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New Orleans, Louisiana, this 28th day of February, 2023.

UNITED STATES DISTRICT JUDGE

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