JUDGE RANDA'S SIGNIFICANT *DAUBERT* RULINGS

CHRONOLOGICAL ORDER

Noskowiak v. Bobst, No. 04-C-642, 2005 WL 2146073 (E.D. Wis. Sept. 2, 2005)

- The Plaintiff's hand was injured while cleaning a roller in a flexographic printing press. The Plaintiff's little finger was eventually amputated. She brought products liability claims for defective design (strict liability) and breach of duty (negligence theory).

- An expert opined that the injury "could have been prevented if the printing press was designed for more fail-safe operation. It is my opinion the Bobst press has a high safety risk in contrast with the benefits or utility obtained in its operation, according to risk-utility principles. The lack of proper guarding of this machine was a proximate cause of Ms. Noskowiak's injuries due to design defects, which were present when the machine left the manufacturer. In my opinion, it is unreasonably dangerous in its design . . . "

- An expert's testimony **excluded** under **Rule 702(c) because it wasn't the product of reliable principles and methods.**

- "Studney's reports and testimony fail under *Daubert* for lack of reliability. . . . Absent any type of systematic analysis or reference to any authoritative materials. Studney's testimony regarding proposed improvements is little more than conjecture and speculation." *Citing Cummins v. Lyle*, 93 F.3d 362 (7th Cir. 1996).

State Farm v. Toshiba Am. Cons. Prods., Inc., No. 04-C-359, 2006 WL 897781 (E.D. Wis. March 31, 2006)

- Liability insurers alleged that fire at a Lake Drive residence in Milwaukee was caused by defective design in television set.

- An expert would testify that, based on his investigation, "the origin of the fire at or near the television set indicates a malfunction within the television set which was the ignition source of the fire." The expert would also testify that a component in the television malfunctioned.

- Motion to exclude expert testimony **denied because it was relevant (assist/help the trier of fact), Rule 702(a), and also was the product of reliable principles and methods, Rule 702(c).**

- "The Court is satisfied, based on the record before it, that Hansen will provide expert testimony that is both relevant and derived from a reliable methodology. Hansen has experience in investigating fires generally and has ample experience in investigating fires generally and has ample experience with fires related to television sets. . . . Any deviations, omissions, or defects in Hansen's methodology are best subjected to examination through cross-examination."

Glazer v. Brookhouse, **No. 05-C-130, 2007 WL 543454 (E.D.Wis. Feb. 16, 2007)**

- The Plaintiff brought a legal malpractice and breach of contract action against attorneys and law firms involved in the amendment that was made to the trust established by his mother. The Plaintiff claimed that counsel knew that his mother's physician had declared her incompetent and that, subsequently, counsel had negligently amended her trust.

- The Defendants moved to exclude the testimony of an attorney on whether counsel's actions fell within the standard applicable to an attorney's duty of care in assessing the testamentary competency of the Plaintiff's mother.

- Motion to exclude expert testimony **denied because the attorney expert was qualified as an expert in estate planning by knowledge, experience and training; was based on sufficient facts and data under Rule 702(b); was the product of reliable principles and methods under Rule 702(c); and the expert reliably applied the principles and methods to the facts of the case under Rule 702(d)**.

Lyman v. St. Jude Medical S.C., Inc., **580 F. Supp. 2d 719 (E.D. Wis. 2008)**

- Claim alleging improper termination of ten-year sales representative agreement just two years into the contract. The Plaintiff sold Cardiac Rhythm Management products (CRM) (pacemakers and defibrillators).

- The Defendant's expert on damages based his projections on a summary of Plaintiff's CRM sales data. The expert "never talked to anyone at St. Jude to verify the accuracy of the information in any of the documents he reviewed. Wilson's information was received solely from St. Jude's counsel." Expert also "never talked to a single St. Jude employee about the facts of this case."

- The defendant's damages expert **excluded because his opinion was not based upon sufficient facts or data. Fed. R. Evid. 702(b).**

- The "data which forms the basis for Wilson's projections are not reliable. Wilson should have independently verified the reliability of the data before opining on plaintiff's future sales, as opposed to accepting it at the word of St. Jude's counsel."

***Masel v. Mansavage,* No. 07-C-454, 2008 WL 5134916 (W.D. Wis. July 2, 2008)**

- The plaintiff alleged unreasonable search and seizure after being arrested for illegal campaigning at the Memorial Union Terrace at UW-Madison

- An expert witness on reasonableness of officers' conduct **excluded because it would not assist or help the trier of fact. Fed. R. Evid. 702(a).**

- "There is little use in allowing such testimony to reach a jury. It is the jury's own charge to evaluate whether the conduct of [the defendants] was objectively reasonable. The danger of unfair prejudice in allowing a law enforcement officer to opine on the reasonableness of the conduct of fellow law enforcement officers counsels against the admission of this evidence. Fed. R. Evid. 403." *Citing Thompson v. City of Chicago*, 472 F.3d 444 (7th Cir. 2006).

***Harris v. Clarke,* No. 06-C-230, 2008 WL 4866683 (E.D. Wis. Nov. 10, 2008)**

- A pre-trial detainee in Milwaukee County Jail died of pulmonary embolism-blood clot relating to the lungs. Section 1983 deliberate indifference (8th/14th amendment) and state law claims brought by plaintiff's estate and spouse.

- Defendants moved to exclude opinions of the Plaintiff's expert, a licensed psychiatrist, who opined that the deceased should have been cared for in a clinical psychiatric facility and not in the County Jail.

- The Court granted the motion holding that "Jackson's opinions about the type of care provided at the Jail were not sufficiently linked to the facts of this case to be reliable" and that [h]is opinion that a clinical psychiatric setting would have afforded better treatment for [pre-trial detainee[would not aid the trier of fact in this case."

- Evidence excluded under **Rule 702(a) because it was not helpful to trier of fact, and Rule 702(d) because expert did not reliably apply the principles and methods to the facts of the case.**

***Cyrus v. Mukwonago*, No. 07-C-1035, 2009 WL 1110413 (E.D. Wis. April 24, 2009)**

- Individual with mental illness resisted arrest and died after being subdued by two officers and the use of a taser. Parents and individual's estate brought Fourth Amendment, ADA, Rehabilitation Act, and supplemental state law claims against officers, police chiefs, and two municipalities.

- The Defendants moved to exclude the testimony of Plaintiff's liability expert who offered **four opinions** on the reasonableness of the force used:

  (1) "Instead of taking a calm, patient, treatment-oriented approach to assist an individual variously identified as 'crazy boy '10-96' or mentally ill person . . . Czarnecki gave forcible commands, applied the TASER twelve times to Cyrus and forcibly held him down in a prone position until he died."

  (a) Opinion **excluded under Rule 702(b) because the testimony was not based on sufficient facts or data**.

  (2) That the "training provided by the Town regarding mentally disturbed persons, positional asphyxia, and excited delirium was inadequate or Czarnecki did not use that training."

  (a) Opinion **allowed under Rule 702(b) because the testimony was based on sufficient facts or data.** The expert "had sufficient knowledge of Czarnecki's training."

  (3) That Czarnecki's conduct "exhibited deliberate and reckless indifference for the well-being and rights of Cyrus and other citizens, is shocking to the conscience of professional, trained police officers, and was outside of the bounds of acceptable conduct in a civilized society and inconsistent with state and nationally accepted standards of police training and practice."

  (a) Opinion **excluded under Rule 702(b) because the testimony was not based on sufficient facts or data.** It was based upon an inaccurate understanding of critical facts; i.e., the taser wasn't deployed 12 times, and it wasn't continuously applied.

  (4) Assuming that Nelson "was aware of the continuing twelve applications of the Taser by Czarnecki, Nelson failed to intervene to prevent the unnecessary, inappropriate and excessive use of force by Czarnecki."

  (a) Opinion **excluded under Rule 702(b) because the testimony was not based on sufficient facts or data and, under Rule 702(a), because it was not**

helpful to the trier of fact. Nelson did not know how many additional times Czarnecki applied the taser, so the opinion did not "fit" the evidence.

(b) Opinion also **excluded under Rule 403 because of the danger of unfair prejudice**. The decision relied on the rule in *Thompson*, discussed above in *Masel*: "the danger of unfair prejudice in allowing a law enforcement officer to opine on the reasonableness of the conduct of fellow law enforcement officers would counsel against the admission of Waller's opinions on the issue."

- The Defendants also moved to exclude expert medical testimony on the cause of death. Expert identified eight factors that she believed led to Cyrus' death, but was of the opinion that the factors were not separable; that is, she did not know whether any of the factors individually could have caused death absent the others or whether any other combination other than all eight could have caused death.

- This opinion was **excluded under Rule 702(c) because the testimony was not the product of reliable principles and methods; under Rule 702(d) because the expert did not reliably apply the principles and methods to the facts of the case; and under Rule 702(a) because the testimony not helpful to the trier of fact.** Evidence "which supplies nothing except the bottom line is not helpful to the jury." The "courtroom is not the place for scientific guesswork, even of the inspired sort. Law lags science; it does not lead it."

Lees v. Carthage College, No. 10-C-86, 2011 WL 3844115 (E.D. Wis. Aug. 29, 2011)

- A hearing-impaired Plaintiff was sexually assaulted by two unknown assailants in her dorm room during a fall semester of her freshman year at Carthage College. She brought negligence claim against Carthage for failure to provide adequate security.

- Expert testimony on the applicable standard of care was **excluded under Rule 702(c) because it was not the product of reliable principles and methods.**

- "Dr. Kennedy's opinion that the security at Tarble Hall should have been improved is based on his corresponding conclusion that the attack on Ms. Lees was foreseeable. This is an unreliable conclusion, which means that Dr. Kennedy's testimony on the standard of care is inadmissible" pursuant to *Daubert*.

- Expert failed to connect the prevalence of acquaintance rape on college campus with the foreseeability of stranger rape. "'Nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence which is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.'" *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).