

[Products Liability Law Daily Wrap Up, EXPERT EVIDENCE—MEDICAL DEVICES—6th Cir.: Exclusion and limitation of expert testimonies in silicone breast implant action proper, \(Jul. 28, 2016\)](#)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

The U.S. Court of Appeals for the Sixth Circuit held, in an unpublished opinion, that a federal district court in Michigan had not abused its discretion when it excluded the testimony of expert witnesses that was unsupported by accepted methodologies and limited another expert's testimony to the chemical properties of silicone gel and its possible effects on the human body (*Ezra v. DCC Litigation Facility, Inc.*, July 27, 2016, Kethledge, R.).

A patient underwent breast augmentation surgery in 1984. At that time, she received silicone breast implants manufactured by Dow Corning. Nine years later, the left implant ruptured, causing the patient a plethora of health issues.

In 1995, Dow Corning filed for Chapter 11 bankruptcy and the bankruptcy court thereafter approved a reorganization plan. Under the reorganization plan, breast-implant claimants were given a choice: either receive fixed payments specified under the plan or litigate their individual claims against Dow's new litigation corporation—DCC Litigation. The patient opted to litigate and sued DCC in 2010, claiming that her silicone implants caused her muscle aches, dizziness, chronic low-grade fevers, and fatigue, among other problems.

In 2013, a federal district court in Michigan granted summary judgment to DCC, holding that the patient lacked proof of general causation. The appellate court reversed, finding that Michigan law did not require proof of general causation in products-liability cases. On remand DCC again moved for summary judgment, this time challenging the admissibility of the patient's expert witnesses. The district court granted DCC's motion, holding that two of the experts had failed to offer any methodology for their conclusions and that the other expert offered no conclusions at all about the patient's condition. The patient appealed, arguing that the lower court abused its discretion by excluding and limiting the testimonies of the identified expert witnesses.

Standard of review. A federal district court's exclusion or limitation of expert testimony must be reviewed under an abuse-of-discretion standard. A decision to exclude expert testimony will be overturned only if it is found to have been "manifestly erroneous."

Expert witness admissibility standard. In order to determine whether an expert witness's testimony is admissible, the court must look at whether the scientific, technical, or other specialized knowledge offered by the expert will assist the trier of fact to understand the evidence or to determine a fact at issue. A witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Dr. Jerry Bush and Dr. Justus Fiechtner. Drs. Bush and Fiechtner were prepared to testify that the patient's health problems were caused by her implants. However, these opinions were not supported by any identifiable methodology or analysis of facts. Based on the lack of supporting information, the lower court's exclusion of both doctors' testimonies was warranted.

Pierre Blais, Ph.D. Dr. Pierre Blais is a chemist with extensive experience researching medical implants and their impacts on human tissue. Dr. Blais offered no opinion as to the cause of the patient's health problems, instead focusing on the history of breast-implant design and the issues associated with the chemicals used in implants. Based on the admission of the witness that his expertise did not include offering diagnoses, the lower

court held that he could testify about the chemical makeup of silicone gel, but not about specific causes of the patient's health problems. The patient objected to that determination, but she failed to offer any reasonable explanation for her challenge. Thus, the limitation of Dr. Blais's testimony was reasonable and not an abuse of discretion.

The case is No. [15-2215](#).

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