


Evidence in the Personal Injury Case
A Survey of Assorted Evidentiary Issues

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Daubert v. Merrell Dow

- Trial judge to ensure that:
 - Expert’s testimony is “relevant”
 - Testimony rests on a “reliable foundation”



Daubert Factors:

1. Empirical testing
2. Subject to peer review and publication
3. Known or potential error rate
4. Existence and maintenance of standards and controls concerning its operation
5. Degree to which theory and technique is generally accepted by scientific community



Testimony Must Be Based On:

1. Sufficient facts or data
2. It is the product of reliable principles/methods, and
3. Witness has applied the principles and methods reliably to the facts of the case



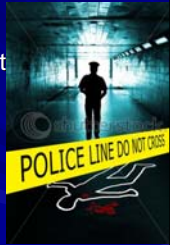
Housley Presumption

- Plaintiff claiming disability following accident must prove (1) "good health" before accident, (2) symptoms of alleged injury appeared/manifested after accident, and (3) produce evidence to establish reasonable possibility of causation between accident and injury.
- To defeat presumption of causal connection or disability to accident, defendant must show some other particular incident could have caused injury in question



Robertson v. Hessler

- 4th Circuit reverses bench trial judgment in favor of plaintiff in wrongful death action re: man shot by off-duty officer.
- Court says trial judge erred in denying defendant's limine motion
- Court finds that "expert's" training and experience was extensive but did not include training re: crime scene investigation.



Taylor v. Progressive



- Defendants argue on appeal to 3rd Circuit that trial court erred in allowing chiropractor to testify as expert in biomechanics re: chiropractic treatment and chiropractor's use of demonstrative evidence re: biomechanics of low-speed crash to the cervical spine
- Defendants had not filed Daubert motion prior to trial
- Appeals court found trial court properly performed gate keeping function in finding chiropractor's testimony reliable and relevant
- Court notes chiropractor's previous qualification as expert and significant training re: biomechanics.



Taylor vs. Progressive (cont.)

- Court further noted that chiropractor's failure to have performed independent investigation of the accident at issue went to the weight and credibility of his testimony - not its admissibility.
- Court also finds that demonstrative evidence used by chiropractor at trial was not prejudicial since it helped jury understand the mechanics of rear-end collisions and the human neck



Versluis v. Gulf Coast Transit

- Plaintiff seaman seeks recovery against shipping company and fumigator for injuries sustained re: exposure to phosphide gas used on ship transporting food commodities
- Trial court grants defendant's motion to exclude testimony of toxicology expert and grants fumigator's MSJ
- 4th Circuit affirms ruling of limine motion but reverses trial court's grant of MSJ
- In affirming limine motion Court notes Plaintiff physician's theory of causal connection did not reach the level of expert testimony envisioned by Daubert



Breitenbach v. Stroud



- Jury verdict in favor of Defendants where jury found plaintiff was not injured as a result of MVA and thus not entitled to damages
- On appeal, Plaintiff argues that orthopedic surgeon's testimony should have been struck or limited because physician had not physically examined plaintiff.
- 1st Circuit deems testimony admissible notwithstanding no physical exam of Plaintiff by physician.
- Court noted that jury was aware that physician did not examine Plaintiff or have the benefit of certain medical records



Thompson v. Bellow

- Plaintiff seeks to exclude testimony of state trooper who had investigated accident
- Trial Court determined that unless trooper qualified as expert in accident reconstruction his testimony regarding causation and liability would be excluded
- In trial testimony trooper says action of motorist C in turning lane was "improper". On cross exam by Defendant trooper says actions of motorist B was likely cause of the accident
- 5th Circuit Court of Appeals finds that trial court did not err in allowing trooper's testimony since the majority of his testimony was pertinent facts about the accident scene



Hunter v. City of Shreveport

- Motorists sue municipality for officer's alleged failure to secure accident scene
- Trial court finds that Plaintiff failed to prove officer was grossly negligent
- Plaintiffs say trial court erred by allowing expert opinion testimony of officer from city's accident unit
- Plaintiffs note that expert had never been qualified as expert before and had no formal training in accident reconstruction
- Citing officer's lengthy experience the 2nd Circuit Court of Appeal finds no error in trial court's decision to allow officer to testify as the legal cause of the accident when he stated motorists (i.e. plaintiffs) had violated state statutes



Moody v. Cummings

- Trial Court determines Plaintiff entitled to Housley presumption re: right knee injury
- 4TH Circuit Appeals Court notes that Defendants presented no evidence that Plaintiff experienced right knee condition before trial
- Court notes further that treating physician and IME's opinions were "equally plausible"
- Court says where two permissible views of causation exist the Trial Court's choice of one was not clearly wrong



Layssard v. State Department of Public Safety and Corrections

- On appeal Defendants argue that jury's award for total hip replacement was erroneous - Defendants argue Plaintiff failed to meet burden to prove causal link
- Defendants say Plaintiff's hip was not in good health prior to MVA
- 3rd Circuit rejects Defendant's argument citing the fact that although Plaintiff had intermittent issues with his hip over 10 years before MVA this did not require jury to find Plaintiff was not in good health prior to the MVA
- Court also noted Plaintiff's claim of normal activities before the MVA



Ladner v. GEICO

- After \$10K award at trial Plaintiff appeals seeking increase - Plaintiff argues that trial court failed to apply Housley presumption of causation to her injuries
- 4th Circuit says Housley presumption inapplicable
- Court notes Plaintiff's extensive medical records pre this MVA
- Court also notes credibility issues of Plaintiff re: medical history
- Based on record as a whole, Plaintiff failed to prove her disabling conditions manifested after this MVA