

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-00091-WYD-CBS

WAYNE WATSON and
MARY WATSON,

Plaintiffs,

v.

DILLON COMPANIES, INC., d/b/a/
KING SOOPERS, also d/b/a
INTER-AMERICAN PRODUCTS, INC., et al.,

Defendants.

ORDER

THIS MATTER comes before the Court in light of a recent Tenth Circuit opinion involving issues surrounding *Daubert* challenges of expert testimony in a product liability case.

On August 16, 2012, in *Hoffman v. Ford Motor Co.*, No. 10-1137, 2012 WL 3518997 (10th Cir. August 16, 2012), the Tenth Circuit reversed the jury's verdict for plaintiff and remanded the case for entry of judgment in favor of the defendant based on the district court's erroneous admission of expert testimony. Prior to trial, the district court denied defendant's motion to exclude plaintiff's expert witness's testimony as unreliable and irrelevant under *Daubert v. Merrill Dow Pharms., Inc.*, 509 U.S. 570 (1993). As set forth in a detailed 39-page opinion, the Tenth Circuit found that the trial court "was not a sufficiently exacting gatekeeper" as *Daubert* requires more precision. *Id.* at *1.

After reviewing the Tenth Circuit's recent pronouncement on *Daubert* challenges

and the admissibility of expert testimony at trial, I reexamined pertinent documents in this matter. Specifically, I reread Judge Miller's June 22, 2011 order denying the motions to exclude expert testimony of Plaintiffs' expert witnesses along with the opinion issued by the United States District Court for the Eastern District of Washington in *Newkirk v. ConAgra Foods, Inc.*, 727 F. Supp. 2d 1006 (E.D.Wash. 2010). I also revisited the material submitted by Defendants surrounding the issue of the reliability of Dr. Martyny's testing of diacetyl levels at Plaintiffs' home, as Plaintiffs' expert witnesses based some of their opinions on these test results.

I find that the *Hoffman* opinion may impact previous expert witness rulings including, but not limited to, Dr. David Egilman's opinions. Accordingly, on Tuesday, September 4, 2012, prior to the commencement of jury selection in this matter, the parties shall be prepared to discuss these issues and how they may impact the trial.

Dated: August 29, 2012

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge