

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: June 9, 2017]

ROSIE K. SWEREDOSKI, as Personal :
Representative of the Estate of :
DOUGLAS A. SWEREDOSKI, and :
Individually Recognized as Surviving :
Spouse, :
Plaintiff, :

v. :

ALFA LAVAL, INC., et al., :
Defendants. :

C.A. No. PC-2011-1544

DECISION

GIBNEY, P.J. Plaintiff Rosie K. Sweredoski (Plaintiff) filed the instant Motion in Limine to Preclude the Testimony of Defendant Crane Co.’s (Defendant) Expert Witness, Dr. Michael Graham (Dr. Graham). The Plaintiff argues that Dr. Graham is not qualified to provide expert testimony regarding the causation of asbestos-related diseases and that, under Rhode Island Rule of Evidence 702 (Rule 702), the Court should preclude the witness from testifying to matters outside the scope of his expertise. The Defendant contends that Dr. Graham is a qualified pathologist with relevant experience in matters of asbestos-related diseases and causation. The Defendant maintains that this Court should not preclude Dr. Graham’s testimony under Rule 702 or, in the alternative, should withhold ruling until trial when the expert witness can provide his qualifications to the Court. This Court exercises jurisdiction pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

Mr. Sweredoski was diagnosed with malignant mesothelioma on December 2, 2010. He died on January 22, 2013 as a result of his illness. His wife, the Plaintiff, brings the above-captioned action against companies that manufactured or distributed asbestos-containing products, including the Defendant, Crane Co. The Plaintiff alleges that Mr. Sweredoski's mesothelioma was caused by his exposure to the Defendant's asbestos-containing products.

The Plaintiff has moved in limine to preclude the testimony of Defendant's expert witness, Dr. Graham. The Plaintiff anticipates that Dr. Graham will be called to testify that Mr. Sweredoski's exposure to products manufactured and/or supplied by the Defendant did not contribute to the cause of his mesothelioma.

II

Parties' Arguments

The Plaintiff contends that while Dr. Graham is an expert pathologist, an expert medical examiner, and an expert at determining causes of death, he is not an expert regarding the causation of asbestos-related diseases. The Plaintiff maintains that, of all Dr. Graham's publications, only one references asbestos or mesothelioma. The Plaintiff argues that under Rule 702, Dr. Graham's testimony is not relevant, appropriate, or of assistance to a jury. The Plaintiff argues that the matter at hand should be treated like a medical malpractice case, where experts are limited to fields in which he or she is specifically qualified.

The Defendant contends that Dr. Graham's work and experience as a pathologist makes him qualified to provide expert testimony regarding the causation of Mr. Sweredoski's mesothelioma. The Defendant provides the background, history, and expertise of Dr. Graham to

argue that, under Rule 702, Dr. Graham is qualified to testify. The Defendant maintains that Dr. Graham, a board certified pathologist, has been studying asbestos-related diseases for over thirty years, which includes the review of over 1000 cases of asbestos-related diseases in the legal context.

III

Analysis

Rule 702 of the Rhode Island Rules of Evidence governs the admission of expert testimony in Rhode Island courts. Rule 702 provides that:

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of fact or opinion.”

The Rhode Island Supreme Court has held that “[b]efore admitting expert testimony, the trial justice must evaluate whether the testimony that a party seeks to present to the jury is ‘relevant, within the witness’s expertise, and based on an adequate factual foundation.’” Kurczy v. St. Joseph Veterans Ass’n, Inc., 820 A.2d 929, 940 (R.I. 2003) (quoting Rodriquez v. Kennedy, 706 A.2d 922, 923 (R.I. 1998)).

In determining whether an expert is qualified, a trial justice considers “evidence of the witness’s education, training, employment, or prior experiences.” State v. D’Alessio, 848 A.2d 1118, 1123 (R.I. 2004) (quoting State v. Villani, 491 A.2d 976, 979 (R.I. 1985)). In situations where a party proffers “novel or highly complex scientific or technical expert testimony, the trial justice may admit the expert testimony only if the expert proposes to testify to (1) scientific [technical, or other specialized] knowledge that (2) will assist the trier of fact.” Id.

In the present case, the Plaintiff challenges the qualifications of Dr. Graham to argue that his title as a pathologist—and his alleged lack of experience with asbestos-related matters—should preclude him from testifying as an expert to the causation of Mr. Sweredoski’s illness. The Defendant counters that Dr. Graham is qualified to testify to potential causation and asbestos-related illnesses in this matter; the Defendant notes that Dr. Graham is a board certified pathologist who has studied asbestos-related diseases for over thirty years, including the review of over 1000 cases within the legal context. Additionally, the Defendant contends that Dr. Graham has testified in more than 750 cases throughout the United States and that he has specifically reviewed Mr. Sweredoski’s pathology in order to base his opinion.

The Rhode Island Supreme Court has made it clear that an expert witness “need not have a license in a narrow specialty, nor hold a particular title, as long as his or her ‘knowledge, skill, experience, training, or education’ can deliver a helpful opinion to the fact-finder.” See Raimbeault v. Takeuchi Mfg. (U.S.), Ltd., 772 A.2d 1056, 1061 (R.I. 2001). The Plaintiff cites to Soares v. Vestal to argue that expert testimony in the asbestos context should be confined to the expert’s field of expertise, as required in the medical malpractice context. See 632 A.2d 647, 647-48 (R.I. 1993).

However, the Supreme Court in Soares did not hold, broadly, that experts are required to be certified in a specific field in order to testify in medical malpractice cases; rather, the Court affirmed the trial court’s opinion to preclude the testimony, in that particular case, after the trial court found that the witness was not sufficiently qualified in order to deliver an opinion helpful to the fact-finder. See id. In doing so, the Court noted that “the decision on the admissibility of the evidence [was] well within the discretion of the trial justice.” See id. at 648.

In the instant matter, this Court finds that Dr. Graham is sufficiently qualified through his knowledge, skill, experience, and training as a pathologist, in order to aid the fact-finder via his testimony. See Raimbeault, 772 A.2d at 1061. Dr. Graham is board certified in anatomic and clinical pathology, and he serves as the Chief Medical Examiner for the City of St. Louis, Missouri. He received his bachelor degree in biology in 1973 and his medical degree in 1977, both from St. Louis University. While working at St. Luke’s Episcopal Hospital in Houston, Texas, Dr. Graham conducted research on occupational lung diseases, and specifically, asbestos-related diseases. Dr. Graham has published a chapter in “Forensic Lung Pathology” relating to asbestos and he has published an article addressing issues of causation in the mesothelioma context. Finally, Dr. Graham has testified as an expert witness in over 750 cases across the United States.

Therefore, this Court finds that Dr. Graham is sufficiently qualified and skilled in order to testify to issues of causation and/or asbestos-related illnesses under Rhode Island’s Rule 702. See D’Alessio, 848 A.2d at 1123. Furthermore, the anticipated subject of Dr. Graham’s testimony is relevant, within his area of expertise, and—since he has reviewed Mr. Sweredoski’s case—is based on an adequate factual foundation. See Kurczy, 820 A.2d at 940. Accordingly, the Plaintiff’s Motion in Limine to preclude the testimony of expert witness Dr. Graham is denied.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rosie K. Sweredoski, as Personal Representative of the Estate of Douglas A. Sweredoski, et al. v. Alfa Laval, Inc., et al.

CASE NO: PC-2011-1544

COURT: Providence County Superior Court

DATE DECISION FILED: June 9, 2017

JUSTICE/MAGISTRATE: Gibney, P.J.

ATTORNEYS:

For Plaintiff: Robert J. Sweeney, Esq.; Donni E. Young, Esq.

For Defendant: David A. Goldman, Esq.; Kendra A. Bergeron, Esq.