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BLOG

# Fourth Circuit Finds Abuse of Discretion in Admitting Expert Testimony, Reversing Multi-Million-Dollar Verdict

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The Fourth Circuit recently reversed a decision to admit expert evidence in a products liability matter involving the packaging of garage doors/hoods in *Sardis v. Overhead Door Corp*. There, without expert evidence, the Court found that the Plaintiff-Appellee could not succeed on any of its claims and, therefore, entered judgment in Defendant-Appellant's favor. 2021 WL 3699753 (4th Cir. Aug. 20, 2021). The case reaffirms the significance of courts making explicit *Daubert* findings on the record. It also underscores the potential import of making relevance arguments under *Daubert*, as Defendant was successful in arguing that experts' failures to establish an industry standard or use the applicable standard for a manufacturer's duties under state law made their opinions irrelevant.

In *Sardis*, Plaintiff was the administrator of the estate of her husband, who died after falling when the handhold for one of Defendant Overhead Door Corporation's ("ODC") packages broke. *Id*. at *1–2. "Essentially, the Estate alleged that ODC was negligent in designing the Container's handholds, and that this defective design caused [decedent's] injuries." *Id.* at *2. The Estate offered two experts in support of its claims: Dr. Sher Paul Singh, a packaging design engineer, and Dr. Michael S. Wogalter, an expert in human factors. *Id.* at *2, *16. Both experts were able to testify at trial, and the jury found in favor of Plaintiff. *Id.* at *1. ODC appealed, arguing that the expert testimony presented at trial should have been excluded under Federal Rule of Evidence 702. The Fourth Circuit agreed. *Id.*

As an initial matter, the Circuit concluded that the court below failed to conduct its gatekeeping functions when it "cursorily dismissed each of ODC's reliability and relevance arguments as only going to weight, not admissibility." *Id.* at *7. Instead, the Circuit stated that "[w]here the admissibility of expert testimony is specifically questioned, Rule 702 and *Daubert* require that the district court make explicit findings." *Id.* at *8. Further, the Circuit held that this error was not harmless, because the testimony offered by Drs. Singh and Wogalter was the only expert "evidence necessary to establish the Estate's causes of action." *Id.* at *9.

The Circuit then turned to the substantive *Daubert* challenges and found that neither expert could be admitted under the pertinent gatekeeping requirements.

Dr. Singh "opined that the [packaging] Container should have been designed according to what he claimed was the relevant industry standard," "that the Container failed to satisfy this standard," "that ODC breached industry standards by failing to test the Container," and "that these failures proximately caused" the death of the decedent. *Id.* at *3. The Circuit found Dr. Singh's analysis to be both irrelevant and unreliable. First, his testimony could not be

relevant where it "failed to establish an industry standard governing the Container, much less a breach of that alleged standard." *Id.* at *14. His methods were also unreliable, because he failed to conduct any testing to come to his opinion; thus, "district court [] abused its discretion by allowing the jury to receive Dr. Singh's *ipse dixit* opinion." *Id.* at *16.

Dr. Wogalter offered the opinions that "(1) ODC should have done a 'hazard analysis' … ; (2) the lack of warnings about the hazards of pulling on the wooden handholds made it unreasonably dangerous; and (3) ODC's failure to perform a hazard analysis and to warn consumers not to pull on the Container's handholds proximately caused" the decedent's death. *Id.* at *3. Defendant argued that the testimony from Dr. Wogalter was at odds with the requirements for a Virginia-law failure to warn claim and, therefore, was irrelevant under *Daubert*. In Virginia, a plaintiff must show a "manufacturer 'knows or has reason to know that the [product] is or is likely to be dangerous for the use for which it is supplied.'" *Id.* at *17 (quoting *Featherall v. Firestone Tire & Rubber Co.*, 252 S.E.2d 358, 366 (Va. 1979)) (alterations in original). The Circuit concluded that Dr. Wogalter's testimony, however, was applied on a "should" know standard instead, because it was premised on the manufacturer owing a duty of ascertaining the fact in question. *Id.* Such a duty of ascertaining knowledge, however, does not exist under Virginia's "reason to know" standard. Dr. Wogalter's testimony was irrelevant because it was just speculation "as to *how* ODC should have gone about discovering if such a condition was present." *Id.* Dr. Wogalter's testimony was also unreliable because he did not use any "specified methodology"—indeed, "he conceded that there is no existing literature on how to test human factors" of which he was aware. *Id.* at *18.

Without this expert testimony, Plaintiff's claims—design defect, failure to warn, breach of implied warranty, and negligence—could not otherwise survive. *Id.* at *19–21. Despite the multi-million-dollar jury verdict against the Defendant, the Circuit entered judgment as a matter of law in its favor. *Id.* at *1, *22.

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