FOLEY HOAG LLP

Product Liability **Update**

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Foley Hoag LLP publishes this quarterly Update primarily concerning developments in product liability and related law from federal and state courts applicable to Massachusetts, but also featuring selected developments for New York and New Jersey.

MASSACHUSETTS

First Circuit Finds No Personal Jurisdiction Over Breach Of Contract Claims Against Alabama Online Educational Institution Where Contract Was Created While Plaintiff Was Alabama Resident And His Massachusetts Residence When Dispute Arose Was Result of His Unilateral Action And Did Not Constitute Defendant's "Purposeful Availment" Of Benefits Of Conduct In Massachusetts

In *Chen v. United States Sports Acad., Inc.*, 956 F.3d 45 (1st Cir. 2020), a Massachusetts plaintiff sued an online educational institution, incorporated and headquartered in Alabama, in Massachusetts superior court, asserting breach of contract, unfair and deceptive practices and other claims after the school allegedly reneged on an agreement that plaintiff could obtain his doctoral degree in sports management by submitting a capstone portfolio, and instead insisted that he complete a comprehensive examination. Plaintiff was an Alabama resident when he enrolled and entered into the alleged contract but a Massachusetts resident when the dispute arose. Defendant removed the case to the United States District Court for the District of Massachusetts based on the parties' diversity of citizenship, and moved to dismiss for lack of personal jurisdiction. The court granted the motion and plaintiff appealed to the United States Court of Appeals for the First Circuit.

In support of its dismissal motion, defendant had attached an affidavit from its president attesting to its lack of any physical presence in Massachusetts, that plaintiff spent his first two years after enrollment completing courses in Alabama and that, at the time of the affidavit, defendant only had two enrolled students in Massachusetts. Plaintiff argued the district court should not have relied on the affidavit because it was extraneous to the complaint and also both disputed and "unchecked" by discovery. The appellate court, however, noted it was clear that courts facing jurisdictional motions must look beyond the pleadings to consider undisputed facts offered by defendants, the affidavit here was undisputed as plaintiff had provided no contradictory evidence and plaintiff had also not moved for jurisdictional discovery or even to strike the affidavit. Accordingly, the district court was justified in relying on it.

As to the jurisdictional merits, Massachusetts courts did not have general jurisdiction over defendant as such jurisdiction is limited to states where a corporation is incorporated or has its principal place of business, or is for some other reason "at home." The former did not apply, nor was defendant "at home" in Massachusetts merely because it "affect[ed] the Massachusetts economy by drawing students away from Massachusetts educational institutions."

As to specific jurisdiction over plaintiff's particular claims, the controlling issue was whether by maintaining an online learning platform that could be used by students in Massachusetts defendant had "purposefully availed" itself of the benefits of Massachusetts law, which due process requires to support jurisdiction. There was no evidence, however, that defendant specifically targeted students in Massachusetts or derived any significant revenue from the state. In addition, the specific Massachusetts contacts that related to plaintiff's claim, *i.e.*, his tuition payments to and communications with defendant, stemmed entirely from plaintiff's unilateral move to Massachusetts, and there was no evidence defendant even knew he was there at the time. Accordingly, the lower court's dismissal was proper.

Massachusetts Federal Court Holds In Collective Action Under Fair Labor Standards Act That Due Process Only Requires Claims Of Named Plaintiffs, Not All Class Members, To Arise Out Of Defendant's Contacts With Forum, Applying Court's Prior Similar Ruling In Class Action Under Federal Rules Of Civil Procedure

In *Waters v. Day & Zimmermann NPS, Inc.*, 2020 U.S. Dist. LEXIS 97013 (D. Mass. June 2, 2020), a former mechanical supervisor brought a collective action under the Fair Labor Standards Act (FLSA) against his former power plant employer in the United States District Court for the District of Massachusetts, alleging he and other similarly situated workers were improperly classified as "exempt" employees and were thus owed unpaid overtime. Unlike class actions under Fed. R. Civ. P. 23(b)(3), which require potential class members who wish to pursue their own lawsuits to affirmatively opt out or they will be automatically included in the class, the FLSA requires potential class members to opt in in order to be part of the collective action. When many out-of-state employees opted in, defendant moved to dismiss their claims for lack of personal jurisdiction.

Defendant relied for its motion on *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017) ("BMS"), in which the United States Supreme Court, in the context of a coordinated mass tort proceeding comprised of multiple numerous-plaintiff cases, held due process permits the exercise of personal jurisdiction over an out-of-state defendant only if a plaintiff's claims arise out of or relate to defendant's contacts with the forum state (*see August 2017 Foley Hoag LLP PLU*). Here, defendant argued the non-Massachusetts plaintiffs' claims by definition did not arise out of any contacts by defendant with the state.

The district judge had ruled in prior cases that BMS does not apply to Rule 23(b)(3) class actions because the class action requirements of numerosity, commonality, typicality, adequacy of representation, predominance and superiority provide additional procedural safeguards not found in mass tort cases and because, unlike the proceedings in BMS where all claimants were named plaintiffs, in class actions one or more named plaintiffs seek to represent other class members who are not themselves named in the action. The court then ruled that, although other federal district courts were split on the issue, FLSA collective actions are more similar to class actions than coordinated mass tort proceedings in that only the named plaintiffs are real parties in interest, while in BMS all claimants were real parties in interest as they were all individually named. In addition, prior federal court opinions had commented that Congress' purpose in enacting the FLSA was to address "nationwide" employment practices and avoid "duplicative" lawsuits. Accordingly, the fact that the out-of-state opt-in claimants' claims did not arise out of in-state contacts by defendant did not negate personal jurisdiction over the full class, and the court denied the motion to dismiss.

First Circuit Holds Consumer Plausibly Alleged Deceptive Practices Claim Where Vegetable Oil Containing GMOs Was Labeled "100% Natural," And Claim Not Permitted By FDA Labeling Policy Or Preempted By National Bioengineered Food Disclosure Standard Because, Although They Do Not Require Disclosure Of GMOs, They Do Not Address Nondisclosure In Context Of "Natural" Labeling

In *Lee v. Conagra Brands, Inc.*, 958 F.3d 70 (1st Cir. 2020), a repeat purchaser of vegetable oil filed a putative consumer class action in Massachusetts Superior Court against the oil's manufacturer, alleging it violated Mass. Gen. L. ch. 93A,

the state unfair and deceptive practices statute, by labeling the oil "100% Natural" even though it contained genetically modified organisms ("GMOs"). After defendant removed the case to the United States District Court for the District of Massachusetts, the court granted defendant's motion to dismiss, agreeing that as a matter of law the label was not unfair or deceptive because it conformed to the United States Food and Drug Administration (FDA)'s labeling policy, which neither required the disclosure of GMOs nor defined "natural" in a way that excluded GMOs.

On plaintiff's appeal, the United States Court of Appeals for the First Circuit reversed. While the district court had analyzed whether the label was "unfair," it had not cited or analyzed any standard regarding whether the label was "deceptive." Based on interpretations of that term under the analogous Federal Trade Commission Act, the complaint stated a claim because it plausibly alleged "100% Natural" could have enticed a reasonable customer into buying by misrepresenting that the oil did not contain GMOs. At the pleading stage, the court did not need to determine whether GMOs are in fact "natural"; it was sufficient for plaintiff to have alleged that consumers consider whether products are natural in their purchasing decisions, surveys show many consumers (and experts) do not consider GMOs to be natural, plaintiff herself understood "100% Natural" to mean GMO-free, and she repeatedly bought defendant's oil before learning it contained GMOs and switching to another brand.

The court then rejected the trial court's finding that the label was protected by FDA labeling policy. The agency's informal policy not to restrict use of the term "natural" did not mean that the term could never be deceptive, and indeed FDA's recent request for public comment regarding whether GMOs are "natural" meant it had not decided whether GMO-containing products could be truthfully so labeled. Moreover, while FDA does not currently require labels affirmatively to disclose the presence of GMOs, the failure to do so could still be deceptive in the face of a representation implying their absence.

The court then disposed of three additional arguments for dismissal the district court had not reached. First, the defense under ch. 93A, § 3 that the labeling was "otherwise permitted under law as administered by any regulatory board or officer acting under statutory authority of . . . the United States," was inapplicable as FDA had not approved the affirmative labeling of GMOs as "100% Natural."

Second, neither of the federal statutes cited by defendant preempted plaintiff's claim. The fact that the National Bioengineered Food Disclosure Standard ("NBFDS"), 7 U.S.C. § 1639 *et seq*., does not require the affirmative disclosure of GMOs was not preemptive because the standard does not establish requirements for labeling about GMOs' absence. And while the Nutrition Labeling and Education Act, 21 U.S.C. § 343-1, contains an express preemption provision that bars state labeling requirements that are "not identical" to certain specified types of federal labeling requirements, defendant did not identify either in its brief or at oral argument any federal labeling requirement of those types that were implicated by plaintiff's claims.

Finally, plaintiff adequately asserted a cognizable injury by citing studies that consumers pay more for foods that do not contain GMOs.

Massachusetts Appeals Court Holds No Triable Claim Against Manufacturer Of Allegedly Contaminated Drug Vial Where Plaintiff Had No Evidence To Contradict Manufacturer's Sterility Tests, Medical Defendants Made No Implied Warranties Where Sale Of Vial Was Merely Incidental To Provision Of Medical Services, But Doctor's Failure To Inspect Vial Before Injection Created Triable Medical Malpractice Claim

In *Laporte v. Vlad*, 97 Mass. App. Ct. 1121 (2020), plaintiff sued a physician, hospital, medical practice group and pharmaceutical manufacturer in Massachusetts Superior Court after plaintiff's wife died from an infection allegedly transmitted at the hospital where the doctor injected her knee with the manufacturer's anti-inflammatory drug. Plaintiff brought multiple product liability claims against the manufacturer, all based on the theory that a manufacturing defect led the drug's vial to be contaminated with staphylococcus A bacteria. Plaintiff also sought to hold the doctor, hospital and medical group liable for selling the vial under theories of breach of the implied warranties of merchantability and fitness for a particular purpose, as well as violation of Mass. Gen. L. ch. 93A (the state unfair and deceptive practices statute), and asserted a malpractice claim against the doctor for failing to inspect the vial for

contamination. After the court granted summary judgment for all defendants on various grounds, plaintiff appealed.

As to plaintiff's claims against the manufacturer, the Massachusetts Appeals Court noted that plaintiff needed to prove that the drug container had a defect that was created before leaving defendant's hands, which then allowed the drug to become contaminated with bacteria, which in turn caused plaintiff's injury. Because the manufacturer had produced records showing that all vials were tested for sterility before leaving its control, however, plaintiff had no evidence the vial at issue was defective before leaving defendant's hands, and summary judgment was proper.

As to plaintiff's claims against the medical defendants, the breach of warranty claims failed as a matter of law because such warranties do not arise where the predominant purpose of the transaction is provision of a service—here medical treatment—and any goods that are sold are merely incidental to that service. In addition, plaintiff's ch. 93A claim failed because, under established precedent, such a claim cannot apply to medical services unless it raises an issue with "entrepreneurial or business aspects" of the services such as advertising or billing.

Lastly, plaintiff's malpractice claims required proof that his wife's injury was caused by the physician's breach of the applicable standard of care. Although the doctor had sterilized the injection site, he relied on the manufacturer to ensure integrity of the vial itself. Viewing the evidence in the light most favorable to plaintiff, however, a reasonable fact-finder could find the standard of care required inspecting the vial for cracks or other compromises prior to injection. The court further found a triable issue as to whether such malpractice caused decedent's harm since, even though there was no evidence of a manufacturing defect, the vial could have become contaminated after leaving the manufacturer's hands. Accordingly, the court vacated summary judgment on the malpractice claims and remanded them for trial.

Massachusetts Federal Court Holds Massachusetts Contacts of Defendant's Subsidiaries Not Basis For Personal Jurisdiction Over Defendant, As Overlapping Management Personnel Was Insufficient To Pierce Corporate Veil Between Defendant And Subsidiaries Where Management Acts Were Not Contrary to Subsidiaries' Interest And Instead To Parent's Advantage

In *Warren Envtl., Inc. v. Source One Envtl., Ltd.*, No. 18-11513-RGS, 2020 U.S. Dist. LEXIS 72529 (D. Mass. Apr. 24, 2020), a Massachusetts corporation sued two English companies and their parent Michigan corporation in Massachusetts Superior Court for failing adequately to protect plaintiff's European rights in its patented spray epoxy application system. Plaintiff had by written contracts assigned its European patent rights to one English subsidiary, which agreed to arrange for their protection, and simultaneously licensed marketing rights to the other English company, itself a subsidiary of the first, which agreed to be responsible for maintaining and policing the patents within Europe. Plaintiff alleged that due to miscommunications between the English subsidiaries and their counsel, its European patent rights lapsed, allowing "knock-off" epoxy products to be marketed and thus causing economic damages. In addition to asserting breach of contract claims against the English companies, plaintiff asserted claims for violation of Mass. Gen. L. ch. 93A (the state unfair and deceptive practices statute) and interference with plaintiff's contractual relations against the Michigan parent, alleging it directed the subsidiaries to breach their contracts by secretly designing "knock-off" products of their own. The Michigan defendant then moved to dismiss for lack of personal jurisdiction.

Plaintiff conceded defendant had virtually no contacts with Massachusetts, but argued its control over its subsidiaries created a principal-agent relationship that conferred jurisdiction based on the subsidiaries' in-state contacts, which included contracting with plaintiff and meeting at its Massachusetts facility. Plaintiff pointed to the parent's complete ownership of its subsidiaries and intermingling of management, as the parent's CEO was a director of one subsidiary and officer of the other, and plaintiff alleged he controlled the subsidiaries by scrutinizing their budgets and overseeing new product development which required his approval.

The court noted that to impute the subsidiaries' activities to the parent plaintiff needed to establish that its control over the

subsidiaries was so pervasive as to overcome Massachusetts' strong presumption against piercing the corporate veil between distinct legal entities, because despite the differing contexts the factors for holding a parent liable for its subsidiary's actions also inform the jurisdictional issue. Under this standard, a shared officer is presumed to be acting on the subsidiary's behalf unless the officer's actions are plainly contrary to the subsidiary's interests but advantageous to the parent. Here, the conduct cited by plaintiff did not meet that test, but rather more closely resembled the "normal badges of ownership." Accordingly, the court granted defendant's motion to dismiss.

First Circuit Affirms Forum Non Conveniens Dismissal of Suit Against Massachusetts Nuclear Reactor Designer For Japanese Disaster, Holding Japan Is Adequate Forum Even Though Statutory Scheme Only Allows Recovery Against Plant Operator, And Court Could Properly Consider Availability Of Administrative Compensation In Addition To Litigation

In *Shinya Imamura v. GE*, 957 F.3d 98 (1st Cir. 2020), multiple Japanese individuals and businesses sued a Massachusetts-headquartered nuclear reactor designer in the United States District Court for the District of Massachusetts for property damage and economic loss caused by the 2011 tsunami and resulting nuclear disaster at the Fukushima Daiichi Nuclear Power Plant. Plaintiffs alleged defendant negligently designed the plant's reactors and safety mechanisms, including by lowering the bluff over the ocean where the plant was built, placing emergency generators and seawater pumps in the basement without protection against flooding, not ensuring a backup power source in case the generators failed, and not including sufficient space for emergency equipment. The district court granted defendant's motion to dismiss for forum non conveniens, holding Japan was the appropriate forum despite the fact that relief in Japan was limited by statute to claims against the plant operator (*see July 2019 Foley Hoag LLP PLU*).

On plaintiffs' appeal, the United States Court of Appeals for the First Circuit affirmed. For an adequate alternative forum to exist under forum non conveniens doctrine, the forum must have both personal jurisdiction over defendant and subject matter jurisdiction over plaintiffs' claims. Here, the former requirement was met because defendant conceded it was amenable to service of process in Japan. As for the latter requirement, the appellate court agreed with the trial court that the key question was whether Japan offered adequate relief for plaintiffs' injuries, not whether it afforded relief against defendant specifically. Nor had the district court abused its discretion in taking into account Japan's scheme for administrative compensation as opposed to litigation, as case law held such compensation inadequate only if it was improbable plaintiffs could obtain relief through that route. Here, there was no evidence plaintiffs could not recover in Japan through either the administrative scheme or by suing the plant operator in Japanese courts, so the alternative forum was adequate.

NEW YORK/NEW JERSEY SUPPLEMENT

Second Circuit Holds Plaintiffs Seeking Medical Monitoring Costs From Alleged Groundwater Polluter Sufficiently Alleged Physical Harm Through Elevated PFOA Blood Levels, Property Owners Suffering Groundwater Contamination Plus Remediation Costs Sufficiently Alleged Property Damage Beyond Mere Diminution In Value For Negligence And Strict Liability Claims And Private Well Owners Alleged Sufficient Injury For Trespass And Private Nuisance Claims

In *Benoit v. Saint-Gobain Performances Plastics Corp.*, 959 F.3d 491 (2d Cir. 2020), plaintiffs in multiple cases brought suit in the United States District Court for the Northern District of New York against the current and past owners of a manufacturing facility that used and disposed of perfluorooctanoic acid ("PFOA") in a manner that contaminated the local water supply. Most plaintiffs brought negligence and "ultra-hazardous activity" strict liability claims alleging elevated blood levels of PFOA that increased their risk of several serious health problems, and sought orders requiring defendants to establish protocols for medical monitoring of potential PFOA-related symptoms. In addition, many plaintiff landowners brought negligence and strict liability claims for property damage due to PFOA contamination on their land and sought orders requiring

testing and remediation of their drinking water, and landowners with private wells included trespass and private nuisance claims. After defendants moved to dismiss, the district court consolidated the cases for the purpose of deciding the motions and ultimately denied them. The court then certified its order for appeal under 28 U.S.C. § 1292(b) as involving a controlling legal question as to which there was substantial ground for difference of opinion and an immediate appeal might materially advance the lawsuit's resolution.

After defendants' subsequent appellate application, the United States Court of Appeals for the Second Circuit granted the application but affirmed the district court's order. As to plaintiffs' personal injury claims, defendants argued the mere accumulation of PFOA in plaintiffs' blood, without actual symptoms, did not constitute a physical injury for which they could recover. While the court agreed that New York does not recognize an independent equitable action for medical monitoring, the costs of such monitoring can be part of damages in a personal injury claim, for which there is sufficient physical harm if "in [plaintiffs'] body there is either a clinically demonstrable presence of toxins or some physical manifestation of toxin contamination." Here, because plaintiffs' claims of "elevated" PFOA levels implied such levels were measurable—i.e., clinically demonstrable—plaintiffs had sufficiently alleged physical harm.

Defendants also argued that plaintiffs' negligence and strict liability property damage claims failed because they required physical harm to plaintiffs' property, and a mere diminution in value was insufficient. The court noted, however, that plaintiffs sought damages not just for diminution in value but also expenses to remedy their drinking water's physical contamination. The court also rejected defendant's argument that New York law does not recognize a tort action for property damage consisting of groundwater contamination because groundwater is not privately owned, citing case law permitting negligence actions for contaminated groundwater despite lack of groundwater ownership.

Lastly, the court held that the private well-owning plaintiffs had viable property damage claims for trespass and private nuisance, finding cases rejecting such claims because groundwater does not belong to property owners inapposite because they did not involve private wells, the contamination of which could, under New York case law, support trespass and nuisance claims.

New Jersey Federal Court in Multi-District Litigation Claims Of Ovarian Cancer From Asbestos In Talc Products: (1) Allows Admission Of In Vitro Ovarian Cell Experiments But Not Opinion Of Human Causation Based On Same; (2) Allows Some Microscopy Findings Of Trace Asbestos In Defendants' Talc But Not Opinion Of "Significant Exposure" From Same; And (3) Permits Opinion Of General Causation Of Ovarian Cancer From Perineal Talc Use Despite Public Health Agencies' Failure To Find Association And Arguments Of Unsupported "Bradford Hill" Causation Criteria

In *In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Litigation*, 2020 U.S. Dist. LEXIS 76533 (D.N.J. Apr. 27, 2020), numerous plaintiffs, whose suits were aggregated in a multi-district litigation in the United States District Court for the District of New Jersey, alleged their ovarian cancer was caused by prolonged perineal use of defendants' talcum powder products containing traces of asbestos and other heavy metals. After the parties designated more than 35 experts and each side moved to exclude the testimony of all opposing experts as scientifically unreliable and hence inadmissible under Fed. R. Evid. 702, the court held a hearing involving a subset of eight experts representative of the relevant scientific fields. The court then issued a 141-page opinion—which cannot be fully summarized here—applicable to the representative experts and all others in those same fields, leaving open the possibility that supplemental expert reports in response to newly published studies could cause the court to amend its rulings.

Regarding plaintiffs' experts, the court first permitted a professor and director of ovarian cancer research with a Ph.D. in molecular biology to testify that his in vitro experiment demonstrated that exposure to talc causes inflammation in ovarian cells, but excluded his "admittedly critical" opinion that exposure to talc can cause ovarian cancer in humans. Because the expert's experiment used "immortalized" cells that could not, and did not, transform into cancer cells, there was no basis for him to extrapolate that talc exposure could transform human ovarian cells into cancer cells. On the other hand, defendants' attacks on the expert's lab practices and recordkeeping went only to the

weight the finder of fact might accord the direct results of his experiment.

As to plaintiffs' materials science expert, holder of a Ph.D. in materials science and engineering, the court permitted him to testify that he found "ultra-trace" amounts of asbestos in over half of 72 samples of defendants' talc from the 1960s to 2000s that he examined using a transmission electron microscope ("TEM"). The court, however, excluded the expert's testimony that polarized light microscope ("PLM") examination supported the findings of the more powerful TEM, as the expert conceded the PLM method has a "primary weakness" in assessing samples with asbestos concentrations at the low levels involved, failed to disclose data essential to reproducing his PLM results, and offered no explanation why a third-party lab he engaged to replicate his methodology found no asbestos in each of the 22 samples it tested. More significantly, the court excluded the expert's testimony that individuals who used the tested products would have been exposed to "significant levels" of asbestos, as he had not analyzed actual exposure from the "ultra-trace" levels involved and instead relied solely on his finding that more than half the samples he examined contained some asbestos. On these facts, an opinion of any exposure, let alone significant exposure, had too attenuated a basis.

The court next addressed collectively three of plaintiffs' experts—an M.D./Ph.D. epidemiology researcher, an academic physician who was board-certified in obstetrics/gynecology and gynecologic oncology, and a public health professor with an M.D. and Ph.D. in toxicology—each of whom applied the generally accepted "Bradford Hill" criteria to opine that perineal use of talcum powder can increase the risk of and/or cause ovarian cancer in humans. While the court analyzed all nine criteria addressed by the experts, three seemed of greatest import.

First, regarding the strength of any association, the court rejected defendants' argument that the relative risk from talc exposure the experts cited of 1.2 to 1.6 times the general population risk was too weak an association to support general causation, holding the strength of the association goes to the causation opinion's weight but not its admissibility. The court also rejected the argument that the experts' relative risk calculation overly relied on case-control studies, which compare the extent of prior talc exposure in patients with ovarian cancer to exposure in patients without ovarian cancer, and dismissed cohort studies, which compare the subsequent incidence of ovarian cancer in talc-exposed subjects with the incidence in the general population. Defendants contended that under an accepted epidemiology hierarchy cohort studies are more reliable than case-control ones, while plaintiffs responded the hierarchy is not rigid and experts should consider all studies. The court agreed plaintiffs' experts had reviewed the cohort studies and offered reasonable grounds for relying on the case-control studies instead, including that they provided more detail about exposure levels, the cohort studies were unlikely for various reasons to be representative of the general population and those studies were also already included in meta-analyses the experts cited.

Second, regarding biological plausibility, the court rejected defendants' argument that plaintiffs' experts' had not adequately established a mechanism by which externally applied talc could cause or increase the risk of ovarian cancer. The experts suggested that the uterine peristaltic pump—which has been demonstrated to help propel the fetus out during childbirth and to operate in retrograde during menstruation to help pull the egg into the fallopian tube—is believed to pull sperm inward and could likewise pull talc toward the ovaries. Although they could cite no studies establishing such talc migration, the criterion only required the expert to identify a plausible biological mechanism, not prove it. On the other hand, the court excluded the experts' theory that inhaled talc could enter the bloodstream and then circulate to the ovaries, as they failed to provide any scientific basis beyond their own assertions for the belief this theory was plausible.

Third, in addressing the dose-response relationship, the court rejected defendants' argument that because only some of the epidemiologic studies showed a relationship between the amount of exposure and increase in risk, and even those showed only a weak relationship, the criterion was not satisfied. The court held that a strong dose-response relationship was not necessary to find causation so long as the expert identifies some reliable dose-response evidence. Here, the experts interpreted meta-analyses and pooled studies as demonstrating a dose-response relationship and that was sufficient, with any disagreement over the interpretation being left to the factfinder.

Beyond the Bradford Hill criteria, the court rejected defendants' global argument the experts' general causation opinions were unreliable because public health agencies including the Food and Drug Administration, National Cancer Institute and International Agency for Research on Cancer have not found any association between ovarian cancer and perineal talc use. The court agreed with plaintiffs there was no scientific consensus on the issue, so case law excluding expert opinion as contrary to all epidemiologic evidence was distinguishable.

Lastly, the court denied plaintiffs' motions to exclude the opinions of defendants' epidemiology, gynecologic oncology and cancer biology experts, concluding plaintiffs' arguments only raised disagreements over how to weigh competing scientific evidence and such disagreements should be resolved by the factfinder.

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