

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DOLORES DUNN, et. al.,	:	3:00CV1306 (DJS)
Plaintiffs,	:	
-v-	:	
	:	
ZIMMER, INC.,	:	
Defendant.	:	

MEMORANDUM OF DECISION

Defendant, Zimmer, Inc. (“Zimmer”), has moved the court to exclude the testimony of Dr. Robert Rose (“Rose”) [doc. #157] and Dr. Harold Zeliger (“Zeliger”) [doc. #172]. Dr. Rose is a professor of materials science and engineering at the Massachusetts Institute of Technology while Dr. Zeliger is a professional chemist. Both men have been retained by the plaintiffs as expert witnesses. Zimmer argues that, pursuant to Rule 702 of the Federal Rules of Evidence, neither Dr. Rose nor Dr. Zeliger is qualified as an expert thus rendering their opinions unreliable.

The standard for admitting expert testimony into evidence under Rule 702 involves a three-part inquiry.¹ First, the court must consider whether “the testimony is based upon sufficient facts and data.” F.R.E. 702. Second, the testimony must be the product of reliable principles and methods. F.R.E. 702. Finally, the witness must show that he has applied the principles and methods reliably to the facts of the case. F.R.E. 702. The purpose of the court’s inquiry is to protect the courtroom from “junk science while admitting reliable expert testimony that will assist the trier of fact.” Amorgianos v. National R.R. Passenger Corp., 303 F.3d 256, 267 (2d Cir. 2002).

The issues raised by Zimmer in its motions have previously been considered, and largely

¹Rule 702 to fully incorporate the gate-keeper function outlined for the district courts in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). Implicit in the court’s analysis is an application of the non-exclusive list of factors identified in Daubert as tools for assessing the reliability of expert testimony. Daubert, 509 U.S. at 592-594.

rejected, by another federal district court. Johnson v. Zimmer, No. Civ. 02-1328 JTNFLN, 2004 WL 742038, (D.Minn. March 31, 2004).² The analysis of the Minnesota District Court in Johnson is highly instructive and persuasive regarding the pending motions. The Minnesota court found that Dr. Rose is “extremely well qualified in the fields of materials science and engineering” and that he “applied long established materials science and engineering principles” to the facts when preparing his report. Johnson, 2004 WL 742038 at *4-5. This court substantially agrees with the Minnesota court’s conclusions that Dr. Rose’s report could be admitted in full and that the presence of contradictory expert opinions does not render the testimony inadmissible. Id. at *5. Zimmer is entitled and encouraged to challenge Dr. Rose’s testimony at trial, but the potential for a vigorous cross-examination does not affect the admissibility of evidence. Dr. Rose’s expert opinions are admissible.

Similarly, the Minnesota court in Johnson considered the admissibility of Dr. Zeliger’s conclusions. Dr. Zeliger offered opinions regarding the chemical stability of the pre-coated PMMA layer on the femoral stem, the propriety of testing done on the femoral stem, the quality control procedures used for testing the stem and the regulatory requirements that govern approval of medical devices such as artificial hips. Then Minnesota court found that Dr. Zeliger is an expert in chemistry who applied well-established techniques of chemical analysis to the facts in rendering his opinion regarding the stability of the PMMA layer. Johnson, 2004 WL 742038 at *5. The court also found Zeliger’s opinion regarding the testing of coated coupons to be based on his expertise as a chemist. Id. Dr. Zeliger’s opinions regarding quality control and federal regulatory requirements were deemed beyond his expertise and excluded.

²The court in Johnson was engaged in review of an appeal of a magistrate judge’s order resolving the admissibility of the expert testimony. The Magistrate Judge’s order, dated August 21, 2003, was submitted to this court as Appendix A to the plaintiffs’ notice of decision filed August 25, 2003.

