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Sixth Circuit Tackles Insufficient Expert Testimony in Litigation

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The Johnson & Johnson logo is displayed at company offices in Irvine, Calif.
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In product liability and toxic tort cases, defendants spend much time and attention challenging the admissibility of expert opinions, and rightfully so. Proof of causation is an essential element of these claims, for which expert testimony is often required. Without admissible expert testimony on causation in a case in which expert testimony is required, a plaintiff can't meet their burden of proof to avoid summary judgment.

But the US Court of Appeals for the Sixth Circuit's recent decision in [*Buchanan v. Johnson & Johnson Consumer, Inc.*](#) reminds us that separate and apart from the question of admissibility, plaintiffs must establish that their experts' opinions are sufficient to create a genuine dispute of material fact from which a jury could find in favor of plaintiff.

The facts of *Buchanan* are straightforward. Plaintiff Cyndi Buchanan brought claims against Johnson & Johnson alleging that its OGX shampoo and conditioner products caused her hair loss. In support of her claim, she offered the expert testimony of Dr. Robert Schwartz, a dermatologist. In both his report and at his deposition, however, Schwartz refused to testify that the shampoo and conditioner were a cause or substantial contributing factor of plaintiff's hair loss.

Instead, Schwartz testified only that it was possible the shampoo and conditioner caused the hair loss: He could neither "rule it in" nor "rule it out."

Johnson & Johnson challenged Schwartz's opinions as inadmissible under Rule 702, but it separately argued the opinions in any event weren't sufficient to meet plaintiff's substantive burden of proof to establish causation.

The district court seized upon this second argument, holding that Schwartz's failure to opine that the shampoo and conditioner was a substantial cause of plaintiff's injury doomed her case—especially given Buchanan's prior history of hair loss, the presence of other potential causes that Schwartz couldn't rule out, and the temporal relationship between her hair loss and those other potential causes.

Citing Tennessee substantive law, the district court explained that, "[w]here, as in the instant case, two or more possible causes for an injury are identified, 'the plaintiff must establish with reasonable certainty that his injury resulted from a cause for which the defendant would be liable.'" Because Schwartz didn't do so, the district court granted summary judgment to Johnson & Johnson based on the insufficiency of plaintiff's evidence.

In its unpublished opinion, the Sixth Circuit affirmed the district court's grant of summary judgment, correctly noting that Schwartz's speculative testimony was insufficient to create a genuine dispute of material fact on causation under [Federal Rules of Civil Procedure 56](#).

"While Dr. Schwartz's statements suggest that the OGX products *could* have been the cause, they don't ever indicate that the OGX products *were* the cause of Buchanan's hair loss," the court wrote, adding, "Neither does the rest of Buchanan's evidence. On this record, no juror could conclude that the OGX products caused Buchanan's hair loss."

In addition to providing a reminder of a plaintiff's independent obligation to proffer expert testimony that is sufficient to establish causation, the Sixth Circuit highlights potential choice-of-law questions that could arise when a defendant challenges the sufficiency of the evidence under FRCP 56.

First, the court questioned, under [*Erie Railroad Co. v. Tompkins*](#), whether the Tennessee state law requirement for expert testimony to establish causation in complex medical cases is substantive or procedural.

The court declined to answer the question based on its conclusion that “[e]ven considering *all* of Buchanan’s evidence—both expert and non-expert—no juror could conclude that the OGX products were a substantial factor in her hair loss.” But defendants should be prepared to address this question in cases where plaintiffs seek to proffer substantial non-expert evidence in support of causation claims.

Second, the Sixth Circuit noted a “possible *Erie* issue” in resolving questions about what kind of expert testimony is sufficient to create a question of fact about whether a product causes an alleged harm.

According to the court, the Tennessee rule that speculative expert testimony isn’t evidence that establishes causation “is likely procedural because Tennessee courts treat it as an evidentiary requirement.” However, because speculative testimony is also insufficient to create a genuine dispute of material fact under federal law, the court again declined to answer the question.

But the court’s comments indicate a willingness to take a closer look at these potential conflict-of-law issues in ways that could be determinative in other litigation.

The case is [Buchanan v. Johnson & Johnson Consumer, Inc.](#), 6th Cir., No. 25-5044, decided 8/4/25.

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