

A plaintiff who lives near a factory has sued the company that owns it, alleging that a toxin released from the factory caused the plaintiff to suffer a respiratory disease. The company contends that only a small amount of the toxin was released for a brief period, and that in any event the toxin is not known to cause any respiratory disease. The plaintiff has not disputed the minimal amount and brief length of the exposure.

At trial, the plaintiff seeks to call an expert who will testify that in her opinion the toxin released from the factory caused the plaintiff's respiratory disease. The company has objected to the admission of the expert's testimony.

At a pretrial hearing to determine the admissibility of the expert's testimony, the expert testified that she based her opinion on several studies provided by the plaintiff's attorney about another substance that is similar to the toxin at issue. These studies show that prolonged exposure to high doses of the similar substance can cause the respiratory disease that the plaintiff suffers from. On cross-examination, the company's attorney elicits from the expert an admission that she did not consider, in forming her opinion, two recent clinical studies, both of which concluded that there was no connection between the toxin at issue and any respiratory disease.

Should the court allow the plaintiff's expert to testify at trial?

- A. No, because the expert is relying on studies that she read for purposes of preparing her testimony in this litigation. (3%)
- B. No, because the plaintiff has failed to show by a preponderance of the evidence that the expert based her opinion on sufficient facts and data and that she employed a reliable methodology. (52%)
- C. Yes, because the company has not met its burden of showing that the expert's opinion is unreliable. (11%)
- D. Yes, because the sufficiency of an expert's basis for an opinion and the reliability of an expert's methodology are questions of weight for the jury. (32%)

Incorrect

Correct answer B

52% Answered correctly

01 min, 51 secs Time Spent

2023 Version

Explanation:

An **expert witness** is one who possesses specialized knowledge, skill, experience, education, or training in a subject that pertains to an issue in litigation. Expert witness **testimony is admissible** if it is both:

relevant – the testimony will **help the trier of fact** (1) understand the evidence OR (2) **determine a fact** in issue *and*

reliable – the testimony is (1) **based on sufficient facts** or data AND (2) the **product of reliable principles and methods** that the expert reliably applied to the facts of the case.

A party seeking to admit expert testimony must prove that the testimony is reliable by a preponderance of the evidence. Reliability is a preliminary question for the *court* to determine, not a question of weight for the jury **(Choice D)**.

Here, the plaintiff was briefly exposed to a small dose of the toxin at issue. However, the expert relied on studies about the respiratory effects of *prolonged* exposure to *high* doses of a *different* (albeit similar) toxin to form her opinion. And she failed to consider studies that found no connection between the toxin at issue and any respiratory disease. This shows that the expert's opinion was not based on sufficient data and that she failed to apply reliable principles to the facts of the case. As a result, the court should *not* allow the expert to testify at trial.

(Choice A) An expert *may* rely on studies that the expert read for purposes of testifying, so this is not a proper basis to exclude the expert's testimony.

(Choice C) The burden is on the party calling the expert to prove that the expert's opinion is reliable. No burden is placed on the opposing party to prove unreliability.

Educational objective:

Expert testimony is admissible if it will help the trier of fact understand the evidence or determine a fact in issue (ie, relevant) AND is based on sufficient facts/data and the product of reliable principles/methods reliably applied by the expert (ie, reliable).

References

Fed. R. Evid. 702 (expert witness testimony).

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Admissibility of expert testimony

