

A plaintiff sued the manufacturer of his lawn mower, alleging that, as the result of a design defect, he was injured when the mower's blade flew off after striking a sprinkler head in the lawn.

At trial, the manufacturer has called as an expert witness a product safety engineer, who testifies that the manufacturer retained him for a fee to test identical mowers and, if his opinion was helpful, to testify in the case. The expert then testifies that he did test the mowers, and that the blade, as designed and installed by the manufacturer, could not fly off in the manner claimed by the plaintiff. Assume that the expert has used a reliable method for reaching his conclusion.

Should the court admit the expert's testimony?

- A. No, because it goes to an ultimate issue that only the jury can decide.
- B. No, because the manufacturer paid the expert to render a certain opinion, in violation of rules barring paid testimony.
- C. Yes, because expert testimony on such issues of causation is relevant and helpful to the jury.
- D. Yes, provided that the plaintiff had notice and an opportunity to participate in the testing process.

Explanation:

Under Federal Rule of Evidence 702, **expert testimony** is **admissible** at trial if it is both:

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

reliable – is (1) based on sufficient facts or data and (2) the product of reliable principles and methods that have been properly applied by the expert to the facts of the case.

Here, it is assumed that the expert's testimony is reliable. That expert testimony is also relevant because it will help the trier of fact determine if the manufacturer's lawn mower caused the plaintiff's injury. Therefore, the court should admit this testimony.

(Choice A) An ultimate issue is a final question that must be decided by the trier of fact to resolve the case—eg, whether the manufacturer was negligent. Although witnesses were precluded from testifying about such issues at common law, this rule has been abolished and therefore would not prevent the admission of the expert's testimony.

(Choice B) The rule barring a party from paying a witness to testify in a certain manner was not violated here. That is because the manufacturer retained the expert to testify *if* his opinion would be helpful—not to render a certain opinion.

(Choice D) Before trial, a party must disclose the identity of any expert witness it may use at trial and, among other things, the opinions the expert will express. But a party need not notify the opposing party of its intention to conduct pretrial tests or allow the opposing party to participate in such tests.

Educational objective:

Expert witness testimony is only admissible if it is (1) relevant—ie, the expert's knowledge will help the trier of fact understand the evidence or determine a fact in issue—and (2) reliable—ie, based on sufficient facts or data and the product of reliable principles and methods that the expert has properly applied to the facts of the case.

References

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

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Admissibility of expert testimony

