



Motorola v. Murray, 147 A.3d 751 (DC 2016)

Topics Covered: Abusive Litigation Against Physicians, Expert Witnesses

Outcome: Highly Favorable

Body

Issue

The issue on appeal was whether expert witnesses should be allowed to testify on a subject as to which the present state of scientific knowledge is insufficient to formulate a reasonably sound conclusion.

AMA Interest

The AMA supports state medical societies in combating lawsuit abuse.

Case summary

Twenty-nine lawsuits were brought in the Superior Court for the District of Columbia against cell phone manufacturers, alleging that the plaintiffs incurred brain cancer as a result of using their cell phones. To prove their cases, the plaintiffs were required, as a threshold matter, to proffer experts who could testify “to a reasonable degree of scientific certainty” that cell phones were more likely than not to cause or promote brain cancers.

Based on the information provided, the court determined that (a) some isolated strands of scientific data suggested a possible causal connection between cell phone use and brain cancer, (b) further research might add to this data and, perhaps, more definitively demonstrate such a connection, but (c) based on the research to date, there was inadequate data for any scientist to opine to a causal connection with the requisite degree of scientific certainty.

The court observed that most jurisdictions, including the federal judiciary, follow the formulation of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), in which the trial court is to allow expert testimony if it appears to be reasonably reliable. Under the *Daubert* standard, as the court interpreted it, the proffered testimony from the plaintiffs’ experts would have to be excluded on account of the lack of necessary scientific data. However, the judge found, the District of Columbia courts had not explicitly adopted *Daubert*. Rather, the District of Columbia courts followed an older line of cases, based on *Frye v. United States*, 293 F. 1013 (DC Cir. 1923). Under these older cases, the testimony would be admissible so long as the expert employed a methodology that is generally accepted in the relevant scientific community and the expert opinion would not unduly prejudice the jury. The court held that the offered testimony of certain plaintiffs’ experts regarding the causal link between cell phone usage and brain cancers would be admissible.

The trial court judge certified, for immediate appeal, his decision to allow the plaintiffs' experts to testify. The Court of Appeals accepted the appeal, and the trial court proceedings have been stayed pending the Court of Appeals determination.

On October 20, 2016, the Court of Appeals, agreeing with the reasoning of the trial judge, replaced the *Frye/Dyas* evidentiary standard with the FRE 702 standard. The case was remanded for further proceedings.

Litigation Center Involvement

The Litigation Center, along with the Medical Society of the District of Columbia joined an amicus brief, which argued that the trial court should have found the testimony of the plaintiffs' experts inadmissible.

District of Columbia Court of Appeals brief