

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

Evelyn Quester, individually and)	CASE NO. 03-509539
as Executrix of the Estate of)	
Dale A. Quester, Deceased,)	JUSTICE FRANCIS E. SWEENEY
)	
Plaintiff,)	
)	
vs.)	
)	<u>ENTRY AND DECISION</u>
B.F. Goodrich Co., et al.,)	<u>UPON DEFENDANTS'</u>
)	<u>MOTION TO EXCLUDE</u>
Defendants.)	<u>DR. GERALD MARKOWITZ</u>

Dr. Markowitz's opinions as to the conspiratorial actions and motives of "the vinyl industry" are excluded, as both within the ken of lay jurors, and impermissible attempts to introduce expert opinion as to the intent and motive of Defendants.¹

Dr. Markowitz's area of expertise is history. Here the basis for his opinions is – exclusively – the voluminous documentation produced through vinyl chloride injury litigation. Dr. Markowitz neither holds, nor asserts, scientific expertise. In order to put forward admissible expert opinions based upon the documents at issue, those documents themselves must be admitted into evidence. However, Dr. Markowitz's historic expertise, when limited purely to interpretation of the documents in evidence in this case, invades the ken of lay jurors. He is not qualified, nor offered, to testify as to the state of the art, or to the technical/scientific details in the documentation, but rather opines as to

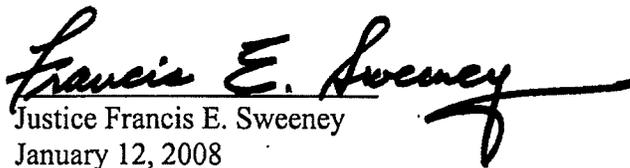
¹ *Evid.R. 702; State v. Koss* (1994), 49 Ohio St.3d 213; *State v. Garcia*, 2002 Ohio 4179; *Zenith Radio Corp. v. Matsushita Elec. Indus. Co.*, 505 F.2d 238 (3d Cir. 1983).

what the documents mean. In this regard, Dr. Markowitz is no more qualified than lay jurors, and as such his "conspiracy" opinions invade the province of the jury.

Moreover, Dr. Markowitz's interpretation of the documents and resultant opinions are replete with discussion of the intent and motives of "the industry" or the authors of the documents. Such opinion is not appropriate for expert testimony in a court of law. Dr. Markowitz has placed evidence in the record that his book is well-regarded and legitimate historical scholarship, which the Court does not dispute. It is merely that the relevant opinions and scholarly arguments that he makes in his book are inherently ill-suited to the role of expert witness in court proceedings. His opinions related to scholarly arguments for the rationale, intent, and motive of various entities individually and collectively is more appropriately within the purview of counsel in argument rather than the expert witness on stand.

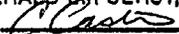
As such, Defendants' Motions to Exclude the Opinions of Dr. Gerald Markowitz are hereby granted.²

IT IS SO ORDERED.


Justice Francis E. Sweeney
January 12, 2008

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JAN 15 2009

GERALD E. FUERST, CLERK
By  Deputy

² All opinions upon Defendants Evid.R. 104 Motions are based upon the evidence adduced through discovery and hearings upon the Motions, and the assumption that consistent evidence would be adduced at trial. The Court acknowledges the possibility that some aspects of these decisions may require revisiting at the time of trial in the event of unforeseen developments.