
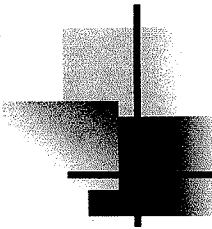


EXPERT WITNESS

Excluding Expert Witness Testimony

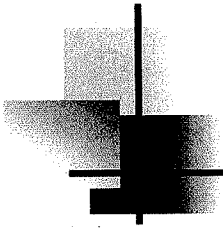
- Where expert's trial testimony goes beyond opinions at his deposition, trial court properly excluded testimony on such new matters. (*Jones, V. Moore*, 80 Cal.App.4th 557 (2000))
- Important goal of CCP §2034 to enable parties to properly prepare for trial; and new and unexpected testimony at trial is contrary to that purpose.
- Plaintiffs' experts must focus their presentation upon this requirement.
- Where did the water come from?
- How did the mold get there?
- Why is there moisture on the kitchen floor?

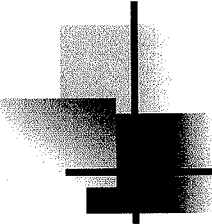
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- Courts and juries focus on this question.
 - Failure to prove causal nexus will cost you time and expense, and net very little recoverable damage.
 - The most effective use of Joel's new-fangled graphics is to show the direct impact of the "punch in the nose".

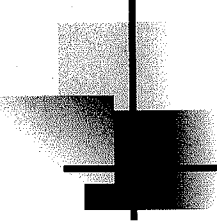


What are the Limits of "Junk Science"?

- Basically none. "Causation" is the key.
- California adopted "Kelly/Frye Rule"
- Party offering an expert conclusion or deduction must show "consensus of scientific opinion" on the reliability of the process, procedure or tests advanced by expert (People v. Leahy, 8 Cal. 4th 587 (1994)).
- Party offering tests, conclusions or analysis must use qualified expert to establish its general acceptance in the field and, that "correct" scientific procedures were used.
- Issue is "reliability" of test methods or analysis, established through expert testimony, plus general acceptance of new technique in the relevant scientific community.

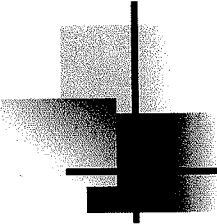
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- Much latitude allowed regarding relatively new areas of scientific enquiry.
 - Exemplified by growth of "toxic mold" allegations in construction defect litigation.
 - Can plaintiff show presence of "toxic molds" actually causes illness?
 - Courts regularly allow experts to testify regarding the presence of so-called toxic mold
 - California has not adopted the court's "gatekeeper" function, whereby it is not necessary to prove "rigorous relevance and reliability" of experts' tests, etc.

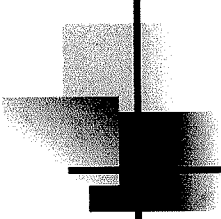
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- Issue is not one of admissibility of expert testimony so much as whether expert's findings of toxic mold contamination has actually "caused injury"



What are the Limits of "Junk Science"?

- California has adopted the so-called "Kelly/Frye Rule" where the party offering an expert conclusion or deduction must show a consensus of scientific opinion on the reliability of the process or tests, procedure or manner of proof advanced by the expert in court. (People v. Leahy 8 Cal.4th 587 (1994))
- The party offering the tests, conclusion or an analysis must use a qualified expert to establish its general acceptance in the field and must demonstrate, in addition, that correct scientific procedures were used in the particular case
- The issue is largely of one or by the reliability of a method is established through expert testimony, by showing general acceptance of the new technique of the relevant scientific community

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- Much latitude has been allowed in California allowing experts to testify regarding relatively new areas of scientific inquiry
 - This is exemplified by the growth of toxic mold allegations in construction defect litigation · No one has really shown that the presence of the so-called toxic molds actually cause illness
 - Nonetheless, courts regularly allow experts to testify regarding the presence of so-called toxic mold, in an effort to place the fear of God into the jury
 - California has not adopted the "gatekeeper" function of the court concerning such evidence whereby in California is not necessary to make a rigorous relevance and reliability utilizing the same level of intellectual rigor that characterizes the practice of an expert in the relevant field

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- In California the field of engagement is not necessarily the admissibility of expert testimony but as to whether the phenomenon which is the topic of the expert testing has actually caused injury
 - Therefore, the issue is not one of admissibility of expert testimony so much as to whether the expert's findings of the presence of a toxic substance have actually caused injury.