

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

IN RE: )  
AREDIA and ZOMETA PRODUCTS )  
LIABILITY LITIGATION )  
)  
This Document Relates to: )  
Case No. 3:06-0377 (Thomas) )  
Case No. 3:06-0381 (Hogan) ) NO. 3:06-MD-1760  
Case No. 3:06-0521 (Brodie) ) JUDGE CAMPBELL  
Case No. 3:06-0550 (White) )  
Case No. 3:06-0659 (Crews) )  
Case No. 3:08-0068 (Fussman) )  
Case No. 3:08-0069 (Forman) )  
Case No. 3:08-0071 (Deutsch) )  
Case No. 3:08-1157 (Anderson) )  
Case No. 3:08-1156 (Melau) )

ORDER

Pending before the Court is Defendant's *Daubert* Motion to Exclude Testimony of Plaintiffs' Expert Dr. James Vogel (Docket No. 2359). For purposes of summary judgment, Defendant's Motion is DENIED in part and MOOT in part.

Dr. Vogel is an oncologist and hematologist who has practiced medicine for more than 35 years. He is an Associate Professor at the Mount Sinai School of Medicine. Plaintiffs have offered Dr. Vogel as an expert to give opinions concerning the general causation connection between Aredia/Zometa and osteonecrosis of the jaw ("ONJ") and the adequacy of Novartis' warnings concerning that connection. Defendant argues that Dr. Vogel is not qualified under *Daubert* to present any of his expert opinions.

EXPERT TESTIMONY UNDER RULE 702 AND *DAUBERT*

Rule 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as

an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Fed. R. Evid. 702.

A trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable. *Daubert*, 113 S.Ct. at 2795. This requirement entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology can be applied properly to the facts in issue. *Sigler v. American Honda Motor Co.*, 532 F.3d 469, 478 (6th Cir. 2008); *Bland v. Verizon Wireless, LLC*, 538 F.3d 893, 896 (8th Cir. 2008).

Under *Daubert*, the proponent of an expert witness must demonstrate that (1) the witness is qualified by knowledge, skill, experience, training or education, (2) the testimony of that expert witness is relevant, meaning that it will assist the trier of fact to understand the evidence or to determine a fact in issue, and (3) the testimony of that expert witness is reliable. *In re Scrap Metal Antitrust Litigation*, 527 F.3d 517, 529 (6th Cir. 2008).<sup>1</sup>

The Sixth Circuit Court of Appeals has stated that “*Daubert* attempts to strike a balance between a liberal admissibility standard for relevant evidence on the one hand and the need to


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<sup>1</sup> The Court in *Daubert* identified several factors that may bear on the inquiry, but it took care to emphasize that the inquiry is a flexible one. *See Nelson v. Tennessee Gas Pipeline Co.*, 243 F.3d 244, 251 (6th Cir. 2001). The trial court must consider whether the factors are reasonable measures of reliability in a given case. *Id.* Those factors are (1) whether a theory or technique can be or has been tested; (2) whether it has been subjected to peer review and publication; (3) whether a technique has a known or potential rate or error and the existence of standards controlling its operation; and (4) whether the theory or technique enjoys general acceptance in a relevant scientific community. *Id.* at 251, n. 5.

upon those opinions in ruling on the pending dispositive motions, so Defendant's Motion with regard to those opinions is moot.

For these reasons, Defendant's Motion to Exclude the testimony of Dr. Vogel is DENIED in part and MOOT in part.

IT IS SO ORDERED.

  
TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE