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1 This paper is geared toward toxic and environmental torts, but the discussion is applicable to any case where toxicological evidence may be used.
While epidemiological evidence has been the subject of a significant number of cases, see e.g., Landrigan, supra; Caterinicchio v. Pittsburgh Corning Corp., 127 N.J. 428, 605 A.2d 1092 (1992), the use of toxicological evidence by plaintiffs and defendants, per se, has garnered little comment in the case law provided that the requirements of N.J.R.E. 702 are met. See, e.g. Vassallo v. American Coding & Marking Ink Co., 345 N.J. Super. 207, 784 A.2d 734 (App. Div. 2001) (if epidemiological or toxicological studies are to provide the basis for experts’ opinion, they must be soundly and reliably generated and be of a type reasonably relied on by comparable experts in the particular field). The significance of toxicology to causation issues, however, may be underscored by the fact one of New Jersey’s mass tort judges reportedly audits toxicology classes at the State’s medical school. She Keeps Jersey’s Mass Torts Moving, 11 NJL 2370 (Dec. 9, 2002).

N.J.R.E. 702 reads as follows:

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.

New Jersey Courts apply a so-called “relaxed standard” to the Frye “general acceptance” test in toxic tort and other complex causation cases. Under the “relaxed standard” general acceptance of a scientific or medical theory is not required for admissibility, so long as the proffered theory is “based on a sound, adequately-founded methodology involving data and information of type reasonably relied on by experts in the scientific field.” Rubanick at 449, see also Landrigan, supra; State v. Kelly, 97 N.J. 178; 478 A.2d 364 (1984). The “relaxed rule” is not the Daubert rule, however. See Kemp v. State, 174 N.J. 412, 809 A.2d 77 (2002) (noting that N.J.R.E. 702 is identical F.R.E. 702 prior to amendment of the latter to include Daubert criteria.

While the New Jersey Supreme Court has expressed caution in applying the “relaxed standard” beyond toxic torts, it has done so where similarly difficult causation problems arise. Kemp, supra at 429.
and specifically disclaiming incorporation of Daubert criteria into N.J.R.E. 702). The preferred means for a court to determine whether a novel scientific theory is derived from “sound and well-founded methodology” and thereby sufficiently reliable to be admitted into evidence, is through an evidentiary hearing conducted under N.J.E. 104 outside the presence and hearing of the jury. Id.

The United States Court for the District of New Jersey will look to New Jersey statutory and common law, as appropriate, in products liability and toxic and environmental torts where applicable, but utilize Daubert criteria for the admissibility of scientific and medical evidence. See, e.g., Magistrini v. One Hour Martinizing Dry Cleaning, 109 F.Supp. 2d 306 (D.N.J. 2000). As in state court practice, challenges to the reliability of challenged scientific and other expert evidence will be conducted in evidentiary hearings outside the presence and hearing of the jury.


In James the New Jersey Supreme Court adopted the “frequency, regulatory and proximity” test for exposure in non-asbestos toxic torts provided that there is “medical and/or scientific proof of a nexus between the exposure and the plaintiffs condition.” James, 155 N.J. at 304. The “frequency, regulatory and proximity” test had previously been adopted for asbestos cases in Sholtis v. American Cyanamid Co., supra.

In James, the New Jersey Supreme Court reversed a summary judgment by the trial court in favor of a group of petroleum defendants finding that plaintiffs had established sufficient facts on exposure to certain of the defendants’ product and sufficient medical and scientific evidence linking those products to plaintiff’s cancer to withstand the challenge. Id. at 307. Plaintiff relied upon reports and affidavits of a toxicologist, among others, who cited “numerous scientific
studies and reports linking benzene and PAHs contained in the petroleum-based products to cancer in animals and humans.” Id. at 306.

Toxicology, alone or with other medical and scientific evidence, has been used in other circumstances as well. See Ayers, supra (toxicological evidence used in support of establishing causation for and against medical monitoring claim); Clark v. Safety-Kleen Corp, 179 N.J. 218, 845 A.2d 587 (2004) (research chemist allowed to testify regarding basic toxicological effects of chemicals on human skin); State v. Smith, 167 N.J. 158, 770 A.2d 255 (2001) (toxicology used to prove amount of cocaine in bloodstream); Harris v. Peridot Chem (NJ) Inc., 313 N.J. Super 257, 712 A.2d 1181 (App. Div. 1998) (chemical engineer and pathologist both allowed to testify regarding toxicity of sulfur dioxide and hydrogen sulfide); Vassallo, supra, (work place exposure to solvents and inks); Lewis v. American Cyanamid Co., 155 N.J. 544, 715 A.2d 967, cert. denied. 175 N.J. 77 (2002) (exposure to pesticides); Salemke v. Sarvetnick, 352 N.J. Super. 319, 800 A.2d 177 (App. Div. 2002) (alcohol in bloodstream in death case). The foregoing examples are intended to be illustrative and not exhaustive of the types of cases and the ways in which toxicological evidence may be used in New Jersey courts.

Lawyers participating in mass torts or other toxic or environmental tort matters in New Jersey State Courts should be aware of the Track System established in Rule 4:5B of the N.J. Court Rules (1969). Such actions are listed as Track IV matters and subject to active case management. It also suggested that the practitioner consult the New Jersey Judiciary webpage at njcourtonline.com or www.Judiciary.State.NJ.US/Mass-Tort/Index.htm.

Case Management Conferences are called by the judge assigned to the matter on a regular basis. Case Management Orders are entered which establish procedures for all aspects of the case, including matters relating to the case of scientific evidence. Most courts rely on the Manual for Complex Litigation (West Group) and the Reference Manual On Scientific Evidence (2d. Ed West Group) to guide procedures, some incorporating the manuals by reference into case management orders.