

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
500 North King Street, Suite 10400
Wilmington, Delaware 19801-3733
Telephone (302) 255-0665

March 26, 2014

Ian C. Bifferato, Esq.
David W. de Bruin, Esq.
John Z. Haupt, Esq.
Kevin G. Collins, Esq.
Bifferato, LLC
800 N. King Street, 1st Fl.
Wilmington, DE 19801

Robert J. Katzenstein, Esq.
Smith, Katzenstein & Jenkins
800 Delaware Avenue
Suite 1000
P.O. Box 410
Wilmington, DE 19899

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**RE: Aundre Michael Anderson by his Natural Mother and Next Friend,
Cantana Anderson, and Cantana Anderson, Individually
v.
ATMI, Inc., Advanced Technology Materials, Inc.
C.A. No. 10C-07-271-JRJ**

Dear Counsel,

After consideration of Plaintiffs' Motion for Clarification, Reargument and Reconsideration Regarding the Order Granting Motion to Exclude Dr. Bearer and Dr. Frazier, Defendant's opposition thereto, and a review of the record, the Court concludes that it has not overlooked or misapprehended the experts' opinions, or the applicable principles or law, nor has it misunderstood the differences between this case and *Tumlinson*.¹ As noted by Defendant in its response, the fact that there

¹ *Tumlinson v. Adv. Micro Devices, Inc.*, 2013 WL 7084888, at *1 (Del. Super. Oct. 15, 2013) (Silverman, J.), *aff'd*, 81 A.3d 1264 (Del. 2013).

are differences between the facts here and those in *Tumlinson* does not remedy or mitigate the flaws in the experts' methodology or analytical reasoning.

With regard to Mrs. Anderson's preeclampsia (a condition the Plaintiff in *Tumlinson* did not have), Defendant correctly notes that Drs. Bearer and Frazier's "attempts to connect up the chemical exposures and preeclampsia are ... the kind of analytical 'gap' that prompted the Court to exclude their opinions." Moreover, the Court determined that Drs. Bearer and Frazier are unqualified to render expert opinions as to the cause of the preeclampsia.²

While Plaintiffs correctly note that Dr. Bearer was not the subject of preclusion in *Tumlinson*, she and Dr. Frazier issued a *joint* opinion, and at her deposition, Dr. Bearer stood behind all the opinions in that joint opinion. Thus, Dr. Bearer embraced and adopted the flawed methodology and analytical reasoning that resulted in the exclusion of Dr. Frazier's causation opinions in *Tumlinson*.

Although *Tumlinson* did not involve mercury, one of the three chemicals at issue here, Drs. Bearer and Frazier did not present a scientific study demonstrating that inorganic mercury exposure can cause the kind of injuries sustained by minor Plaintiff Aundre Anderson. As the Court noted in *Tumlinson* and in this case, Drs. Bearer and Frazier cite studies involving other chemicals and other injuries (not

² Defendant's Resp. ("Resp."), Trans. ID 55023547, at 2. Notably, Drs. Bearer and Frazier are unable to cite to one reliable scientific study showing that any of the workplace exposures alleged here cause preeclampsia by virtue of oxidative stress. *See id.* at 4. *See Anderson v. ATMI, Inc.*, 2014 WL 603254, at *1, fn. 1 (Del. Super. Feb. 5, 2014).

suffered by the minor plaintiff here), and “attempt to make it all ‘fit’ by invoking general ideas about oxidative stress.”³

Drs. Bearer and Frazier opine that Defendant violated occupational health standards by exposing the minor plaintiff to mercury, IPA and acetone. This opinion is now irrelevant because as correctly noted by Defendant, “[i]f it cannot be proven by reliable admissible testimony that the Plaintiff’s exposure to the specific chemicals caused the specific outcomes, then it does not matter whether the defendants may... have violated occupational health standards.”⁴

The Court recognizes that the exclusion of Drs. Bearer’s and Frazier’s causation opinions was a huge blow to Plaintiffs, and the Court did not make that decision lightly. The Court assures Plaintiffs that neither complexity of the material nor time constraints caused the Court to disregard, overlook, ignore, or misapprehend relevant principles, case law, or facts. The Court, as gatekeeper, carefully scrutinized the expert opinions at issue and performed the analysis required under *Daubert* and its progeny and *Tumlinson*. Having done so, the Court finds the Plaintiffs’ motion must be **DENIED**.

³ *Id.* at 3. *See Anderson*, 2014 WL 603254, at *1.

⁴ *Id.* at 4.

IT IS SO ORDERED.

Very truly yours,

Jan R. Jurden
Judge

JRJ:mls

cc: Prothonotary