

NONPRECEDENTIAL

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

KAREN HUSTON,)
)
Plaintiff)
)
v.)
)
VIRGIN ISLANDS ASPHALT)
PRODUCTS CORPORATION, a/k/a)
VIAPCO,)
)
)
Defendant)
_____)

CIVIL NO. 2000/0069

ATTORNEYS:

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Attorney for Plaintiff

MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court on Defendant VIAPCO's Motion in Limine to

Exclude the Testimony of Roger Currier. For the reasons expressed herein, Defendant's motion will be denied.

I. Background

On June 24, 1998, Plaintiff Karen Huston fell while walking on the pavers at Buddhoe Park in Frederiksted. As a result of her fall, Plaintiff fractured her left elbow and suffered other bodily injuries. Plaintiff contends that Defendant VIAPCO caused her accident by being negligent in laying adjacent pavers unevenly. More specifically, Plaintiff asserts that VIAPCO failed to exercise due care, failed to adequately warn her or others, and failed to adequately inspect and supervise with regard to the laying of pavers at Buddhoe Park.

Plaintiff offers the expert testimony of Roger Currier, a civil engineer, in support of Plaintiff's claims that VIAPCO's improper laying of the pavers at Buddhoe Park caused her accident. Defendant seeks to exclude the testimony of Plaintiff's witness Roger Currier through this Motion in Limine. Defendant brings this motion on the grounds of Fed. R. Evid. 104, 402, 403, and 702.

II. Analysis

The determination of whether expert opinion testimony is admissible is a preliminary question for the Court under Fed. R. Evid. 104(a). See Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 592, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). The admissibility of expert testimony is governed in part by Fed. R. Evid. 702, which provides that:

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.

The Third Circuit has held that “Rule 702 embodies a trilogy of restrictions on expert testimony: qualification, reliability and fit.” Schneider ex rel. Estate of Schneider v. Fried, 320 F.3d 396, 404 (3d Cir. 2003) (noting that Federal Rule of Evidence 702 was amended to include this trilogy and referring to In re Paoli Railroad Yard PCB Litigation II, 35 F.3d 717 at 741-743 (3d Cir. 1994) (citing Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993))).

A. Qualification

Roger Carrier is qualified as an expert witness. The Third Circuit has broadly interpreted the “qualification” requirement and found that general knowledge, training, or skill is sufficient. Schneider, 320 F.3d at 404 (citing Paoli II, 35 F.3d at 741-743 (citing Daubert, 509 U.S. at 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993))). See also Belofsky v. General Electric Co., 980 F.Supp. 818 (D.V.I. 1997) (citing Hammond v. International Harvester Co., 691 F.2d 646, 652-53 (3d Cir. 1982)). In Belofsky, the Court found that a witness with an impressive engineering background was qualified as an expert to testify about a refrigerator in a products liability action, even though the witness did not have any expertise in the design or manufacture of household refrigerators. Belofsky, 980 F.Supp. at 821. Similarly, Roger Carrier has an extensive list of credentials in the field of civil engineering. He holds a Master’s Degree in Civil Engineering, is

a licensed Civil Engineer, and has worked on and supervised a wide range of engineering projects. (C.V. of Roger Currier). Therefore, as far as the qualification requirement of Fed. R. Evid. 702 is concerned, Roger Currier should be allowed to testify as an expert.

B. Reliability

Roger Currier has used reliable procedures and methods in reaching his conclusions. To be considered reliable, an expert's principles and methods must have scientific validity. Schneider, 320 F.3d at 404 (citing Paoli II, 35 F.3d at 742 (citing Daubert, 509 U.S. at 590, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993))). Roger Currier employed the following methodology:

(1) Roger Currier reviewed transcripts of the depositions of Joe Pitts (December 12, 2001) and Karen Huston (April 12, 2001). He also reviewed defendant VIAPCO's interrogatory answers and production responses. (Affidavit of Roger Currier at ¶2.)

(2) In July 1999, before this lawsuit commenced, Roger Currier noticed that the pavers were not uniformly level and that there were some gaps between adjacent pavers while walking through Buddhoe Park in Fredericksted. (Affidavit of Roger Currier at ¶4.)

(3) In December 2001, at the request of Plaintiff's counsel, Roger Currier "inspected" the pavers at Buddhoe Park and confirmed that the pavers were not level and that gaps existed between adjacent pavers. Based on this inspection, Roger Currier concluded that these conditions could cause someone to trip at night while walking on the pavers. (Affidavit of Roger Currier at ¶5.)

(4) Upon reading the deposition of Joe Pitts, Roger Currier concluded that the pavers were improperly installed because the bricks were washed with water to fill the gaps after being

laid in the sand and sand must be absolutely dry or absolutely saturated to compact most densely.

(Affidavit of Roger Currier IV, P.E. at ¶2.)

(5) Upon reading the bid documents and June 8, 1998 Construction Contract, Roger Currier concluded that VIAPCO failed to meet its contractual standard of laying adjacent pavers uniformly level, with no gaps. (Affidavit of Roger Currier at ¶7.) He also concluded that VIAPCO failed to meet its contractual obligation of purchasing and installing Hastings #41 Asphaltic Concrete Pavers by instead purchasing more rigid pavers made of concrete and clay.

(Affidavit of Roger Currier at ¶8.)

(6) At the hearing for this matter, Roger Currier indicated that he made a subsequent visit to the accident site and took photographs at that time.

Because these are methods and procedures that an expert would normally rely upon in forming conclusions, Roger Currier has fulfilled the “reliability” prong of Fed. R. Evid. 702. See, e.g., Tormenia v. First Investors Realty Co., Inc., 251 F.3d 128, 135 (3d Cir. 2000) (holding that plaintiff’s account of the accident, defendant’s interrogatory responses, and expert’s own experience provided reliable bases for an expert opinion).

C. Fit

Roger Currier has reliably applied these procedures and methods to this case. Expert testimony must fit the facts of the case so that it is both relevant and helpful to the trier of fact. Daubert, 509 U.S. at 591-92, 113 S.Ct. 2786. In support of this Motion in Limine, Defendant cites Fedorczyk v. Caribbean Cruise Lines, 82 F.3d 69, 75 (3d Cir. 1996), in which the Third Circuit deemed an expert opinion regarding causation to be inadmissible because it was not

based on any evidence of where the plaintiff was standing (whether on or in between strips on the floor of a bathtub) when she fell. Roger Currier admits that he was “not sure exactly where the site of the accident precisely was....” (Roger Currier Dep. At 6.) However, Roger Currier does not need to know exactly which paver or gap Plaintiff was standing on in order to testify as to his expert opinion on how the pavers were laid. In accordance with Fed. R. Evid. 702, Roger Currier’s testimony is “fit.”

III. Conclusion

For the foregoing reasons, Defendant’s Motion in Limine to Exclude the Testimony of Roger Currier will be denied. An appropriate Order is attached.

ENTER:

Dated: August ____, 2003

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

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Attest:

Wilfredo F. Morales
Clerk of the Court

By: _____

Deputy Clerk

cc: Honorable Jeffrey L. Resnick, U.S. Magistrate Judge
Wilfredo A. Geigel, Esq.
Richard H. Hunter, Esq.