

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DANIEL G. PADILLAS,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
STORK-GAMCO, INC.,	:	NO. 95-7090
	:	
Defendant.	:	

MEMORANDUM

Reed, J.

September 17, 1997

While cleaning machinery at the Pennfield Farms poultry processing plant, plaintiff Daniel Padillas ("Padillas") seriously cut his left arm on the blade of one of the machines. He brought this action against defendant Stork-Gamco, Inc. ("Stork-Gamco"), the manufacturer of the machine, claiming relief under theories of strict products liability, negligence, and breach of warranty. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332 as the parties are diverse and the amount in controversy exceeds \$50,000.00, exclusive of interests and costs, which was the statutory requirement at the time this case was filed. Stork-Gamco has moved for summary judgment and for the exclusion of the expected testimony of Ralph A. Lambert ("Lambert"), an expert witness for Padillas (Document No. 26). Stork-Gamco claims that the Lambert Report does not satisfy the requirements of Federal Rule of Evidence 702 and the guidelines set forth in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). For the reasons that follow, the motion of Stork-Gamco to exclude the expert testimony and for

summary judgment will be granted.

I. BACKGROUND¹

Pennfield Farms is in the business of processing poultry. The company utilizes an automatic poultry cutting system, which is a series of stations designed to sever particular sections of the birds as they travel through the system hanging from the shafts of their legs on an overhead conveyor. At one particular station, the Drum and Thigh Cutter, the drums of the birds are separated from the thighs by passing across a horizontally rotating blade located approximately seventy-one inches off the floor. Stork-Gamco designed, manufactured, and sold the Drum and Thigh Cutter to Pennfield Farms.

It is no surprise that processing poultry can be a messy business. Pursuant to government regulations, the policy of Pennfield Farms is to clean its cutting system daily during the night shift while the workers are on break. The person assigned to clean the Drum and Thigh Cutter uses a high-powered water hose to blast the bits of poultry from the working parts of the machine while it is running.

Padillas had been working at Pennfield Farms as a cleaner for approximately one month and was cleaning the Drum and Thigh Cutter at the time of his accident. On July 15, 1994, the water hose Padillas was using to clean the machine became entangled in the overhead conveyor, and Padillas severely injured his left forearm and wrist when it came in contact with the rotating blade. Padillas filed a complaint in this Court alleging that Stork-Gamco is liable for his injuries

¹ The parties' memoranda in support of and in response to the motion for summary judgment are the source for the following facts. I have, as I am required, made all reasonable inferences in favor of Padillas, the nonmoving party; however, the facts that follow are largely undisputed.

under theories of strict products liability, negligence, and breach of warranty.² Padillas claims that the Drum and Thigh Cutter was defective in its design and in its failure to warn the user of the potential for harm. Stork-Gamco filed a motion for summary judgment. Its motion for summary judgment includes a motion to exclude expert testimony, which is also before the Court at this time.³

Padillas enlisted the services of his expert, Ralph Lambert, to investigate the accident and render an opinion as to the cause of the accident and the defective condition of the Drum and Thigh Cutter. Lambert is a mechanical engineer with over twenty-five years experience in industrial operations, maintenance and construction systems, and manufacturing process design. He listed on his curriculum vitae that he has experience with cutting machines for food processing. Lambert wrote a report detailing his findings regarding the Drum and Thigh Cutter and his conclusions about the cause of the accident. In the report, he stated that the machine was designed such that the birds travel on a outward curve track system during the cutting process, which presents a hazardous condition because this section of the track is also a work station. He

² Padillas indicates in his complaint and Stork-Gamco argues in its motion that the analysis for the negligence and breach of warranty claims under the facts of this case are consistent with the analysis for the strict liability claim. It is evident from its motion and memorandum that Stork-Gamco clearly intended its summary judgment motion to encompass all three theories of liability despite the brevity of its treatment of the negligence and breach of warranty claims. (See Def.'s Motion for Summ. J. at 1; Def.'s Mem. Supp. Summ. J. at 6, 18.) The plaintiff in his memorandum did not argue in any way in opposition to the motion for summary judgment on the negligence or breach of warranty claims. Because Padillas' success under any of these theories hinges on causation and whether the product was defective for its intended use, which are the subjects of the Lambert Report, the admissibility of the Lambert Report and the extent to which it supports the response of Padillas to this summary judgment motion are the same under a strict liability, negligence, or breach of warranty theory. Thus, because the parties focused on the products liability theory and the motion for summary judgment by Stork-Gamco can be resolved by examining only that claim, I will not specifically address the negligence and breach of warranty claims. My discussion and conclusions are equally applicable, however, to all three theories.

³ As neither party requested a hearing to determine the admissibility of the Lambert opinion, I will decide this issue based on the pleadings, motions, supporting memoranda, affidavits, the Lambert Report itself, and all other discovery that is before me.

then opined that there are "four recognized levels of analysis in the evaluation of a work zone shown to be hazardous," which are (1) design out the hazardous condition, (2) locate the hazardous condition where it is not in the normal work zone, (3) properly guard the hazardous condition, (4) and provide adequate, obvious, and properly identified signed and worded warnings and notices. (Lambert Report at 5.) According to Lambert, the first two methods by which to increase the safety of the work station are not applicable to the Drum and Thigh Cutter because the work station must be located where it presently is in order for the machine to serve its intended cutting function. (Lambert Report at 5.) However, Lambert contended that the nip point, the place where the bird runs across the blade, and the zone of travel around the outside turn are not adequately guarded. He referred to another model of cutting machine manufactured by a Holland company as "provid[ing] direction in cover design and placement to limit direct access to the incoming nip point at the work zone." (Lambert Report at 5.) In addition, Lambert observed that the central shaft of the outward turn displayed a warning decal, but that the existing guard on the blade did not. Thus, Lambert concluded that the lack of adequate guards and warnings "resulted in a defective machine with hazardous and dangerous conditions that were causes of the Padillas accident." (Lambert Report at 5, 6.)

II. STANDARD FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure provides that "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" then a motion for summary judgment may be granted.

The moving party has the initial burden of illustrating for the court the absence of a genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-161 (1970). The movant can satisfy this burden by “pointing out to the district court that there is an absence of evidence to support the nonmoving party’s case;” the movant is not required to produce affidavits or other evidence to establish that there are no genuine issues of material fact. Celotex, 477 U.S. at 323-25.

Once the moving party has made a proper motion for summary judgment, the burden switches to the nonmoving party. Under Rule 56(e),

[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The court is to take all of the evidence of the nonmoving party as true and to draw all reasonable inferences in his favor in determining if there is a genuine issue of material fact. See Adickes, 398 U.S. at 158-59. In order to establish that an issue is genuine, the nonmoving party must proffer evidence such that a reasonable jury could return a verdict in his favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A proper motion for summary judgment will not be defeated by merely colorable or insignificantly probative evidence. See id. at 249-50.

Stork-Gamco argues in its motion for summary judgment that Padillas is unable to establish the elements of a strict liability cause of action with evidence upon which a jury could

reasonably find in his favor.⁴ To support its motion for summary judgment, Stork-Gamco points to the complete absence of support for several elements of the prima facie case that Padillas would have to prove. Stork-Gamco also contends that the Lambert opinion does not support any of the elements of Padillas' case because it is inadmissible under Federal Rule of Evidence 702 and Daubert due to Lambert's failure to include his methodology and reasoning behind his conclusions. Specifically, Stork-Gamco observes that the Lambert Report does not competently address whether the Drum and Thigh Cutter was the cause of Padillas' injury or whether the machine was defective when it left Stork-Gamco's control, which are essential elements of Padillas' claim. Stork-Gamco argues that Padillas has no other evidence to support these elements or to suggest that the Drum and Thigh Cutter was unsafe for its intended use: separating the thigh of a chicken from its leg. Stork-Gamco also points to the deposition testimony of Padillas and the lack of any other evidence that a failure to warn caused Padillas' injury.

To defend against a properly supported motion, Padillas must proffer evidence significantly probative of the validity of his claims. Thus, a discussion of the elements of a strict liability cause of action is needed to determine what Stork-Gamco and Padillas have to show and whether they have met their respective burdens.

III. DISCUSSION

⁴ Padillas alleges four theories of product defect: three based on the design of the Drum and Thigh Cutter and one based on the failure to warn. Padillas argues that because Stork-Gamco did not address two of his four theories in its motion for summary judgment, its motion should be denied as to those theories. Stork-Gamco claims that Padillas has failed to come forward with evidence necessary to support any cause of action for products liability. Because the nonmoving party bears the burden of producing supporting affidavits, documents, admissions, or discovery to defend against a motion for summary judgment under Federal Rule of Civil Procedure 56(e) regardless of whether the movant specifically addressed all of the nonmoving party's arguments, this memorandum and order applies to all four theories of products liability that Padillas asserts.

A. STRICT PRODUCTS LIABILITY IN PENNSYLVANIA

The parties agree that Pennsylvania law governs the underlying merits of this case. The Pennsylvania courts have adopted section 402(A) of the Restatement (Second) of Torts as setting forth the requirements for strict products liability. See Webb v. Zern, 220 A.2d 853, 854 (Pa. 1966). Section 402A states:

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer . . . is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if (a) the seller is engaged in the business of selling such a product, and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

Restatement (Second) of Torts § 402A (1965). Thus, to establish a claim for strict products liability in Pennsylvania, the plaintiff must establish that the product was defective and that it proximately caused the harm to the plaintiff. See Berkebile v. Brantly Helicopter Corp., 337 A.2d 893, 898 (Pa. 1975).

Defect is determined through two separate analyses. First, it must be determined if the product is unreasonably dangerous. The question of whether the product is unreasonably dangerous is a threshold matter of law for the court to decide. See Surace v. Caterpillar, Inc., 111 F.3d 1039, 1044 (3d Cir. 1997); Azzarello v. Black Bros. Co., 391 A.2d 1020, 1026 (Pa. 1978). The court must determine, through a risk/utility analysis drawing on Pennsylvania social policy, whether the condition of the product justifies placing the risk of loss on the manufacturer or supplier. See Surace, 111 F.3d at 1044. The second analysis is whether the product was defectively designed in fact. On the question of whether the product is defectively designed, the courts in Pennsylvania have rejected a risk/utility analysis for the "intended use" test. See Surace, 111 F.3d at 1045; Lewis v. Coffing Hoist Div., Duff-Norton Co., 548 A.2d 590, 593 (Pa.

1987). The jury determines whether the product lacked an element necessary to make it safe for its intended use when it left the defendant's control. See Surace, 111 F.3d at 1046. In addition to the question of defect, it is up to the jury to decide whether the product was in the control of the defendant while defective and if the product proximately caused plaintiff's injury. See id. at 1053; Pacheco v. Coats Co., 26 F.3d 418, 422 (3d Cir. 1994).

The only evidence of defect that Padillas proffered to defend against the motion of Stork-Gamco for summary judgment was the report from his expert, Ralph Lambert. Stork-Gamco argues that this report should be excluded because it does not meet the rigors of Federal Rule of Evidence 702 and the Supreme Court's interpretation of the Rule in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). Because this is the only evidence that Padillas has offered to defend against the motion of Stork-Gamco, Stork-Gamco argues that if the report is excluded it is entitled to summary judgment. In considering a motion for summary judgment, although this Court must take as true all evidence of the nonmoving party and accept all reasonable inferences from it, because the evidence proffered is expert testimony, it must first pass muster for admissibility under Rule 702 of the Federal Rules of Evidence.

B. DAUBERT ANALYSIS OF THE LAMBERT REPORT

Rule 702 of the Federal Rules of Evidence governs the admissibility of expert testimony.

The Rule states:

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.

The process of determining the admissibility of expert testimony is twofold: first, the expert must be qualified to testify,⁵ and second, the testimony of the expert must meet the requirements of Daubert. See Dennis v. Perdec Computer Corp., 927 F. Supp. 156, 159 (D.N.J. 1996). The satisfaction of the second step rests on two inquiries: first, whether the opinion has good grounds in scientific knowledge, such that the "reasoning or methodology underlying the testimony is scientifically valid," and second, whether the opinion is helpful to the fact finder. Daubert, 509 U.S. at 590-93.

The Supreme Court in Daubert stated that the validity and reliability of expert opinion should be determined using the following factors: (1) whether it can and has been tested, (2) peer review and publication, (3) the known or potential rate of error of a particular technique, (4) existence and maintenance of standards controlling the technique's operation, (5) general acceptance within the scientific community. See id. at 593-95. In its decision in In re Paoli R.R. Yard PCB Litig., 35 F.3d 717 (3d Cir. 1994), the Court of Appeals for the Third Circuit instructed the district courts to incorporate the additional factors stated in United States v. Downing, 753 F.2d 1224, 1238-39 (3d Cir. 1985) into this analysis. Those additional factors are (1) the relationship of the technique to methods which have been established to be reliable; (2) the qualifications of the expert witness testifying based on the methodology; and (3) the nonjudicial uses to which the method has been put. See Paoli, 35 F.3d at 742 & n.8. These eight factors are not to be applied so strictly, however, as to exclude expert testimony that is helpful to the understanding of the jury, which is the "touchstone" of the admissibility requirements under

⁵ For the purposes of the disposition of this motion for summary judgment, I will presume but not decide that Lambert qualifies as an expert in the field of food processing machine design.

Rule 702. See United States v. Velasquez, 64 F.3d 844, 850 (3d Cir. 1995); Paoli, 35 F.3d at 744.

The Daubert decision marked a change from the approach articulated early in this century by the Supreme Court in Frye v. United States, 293 F. 1013 (D.C. Cir. 1923). Under Frye, the testimony of an expert was only admissible if its basis had been generally accepted by the relevant scientific community. The test set out in Daubert was designed to include novel but reliable scientific theories in the range of admissibility. Because the scientific community is no longer the litmus test for what theories are admissible as expert testimony, judges must act as gatekeepers in determining the reliability and thus the admissibility of these theories.⁶ See Daubert, 509 U.S. at 585-86, 589-91; Dennis, 927 F. Supp. at 160.

The party offering the expert testimony has the burden to establish the reliability of its expert opinion by a preponderance of the evidence. A prima facie showing is not enough. See Downing, 753 F.2d at 1240 n.21; Dennis, 927 F. Supp. at 160 (citing Paoli, 35 F.3d at 743-44). Thus, although Daubert embraced a more open approach to novel expert opinions, such opinions cannot be based on "subjective belief or unsupported speculation." Paoli, 35 F.3d at 742; see also Cummins v. Lyle Indus., 93 F.3d 362 (7th Cir. 1996) (excluding engineer's testimony that alternative design would have been safer under a Daubert analysis because he had never tested it to determine feasibility and efficiency); Finley v. NCR Corp., 964 F. Supp. 882, 886-87 (D.N.J. 1996)(excluding testimony of engineer regarding causation of plaintiff's injury under a Daubert analysis because he did not cite any studies and failed to eliminate other possible causes);

⁶ In this Circuit, with higher responsibility comes higher scrutiny of my analysis and exercise of my discretion. See Paoli, 35 F.3d at 749-50. But see Buckner v. Sam's Club, Inc., 75 F.3d 290, 292-93 (7th Cir. 1996).

Dennis, 927 F. Supp. at 160-61 (excluding testimony of ergonomic engineer under a Daubert analysis because he was unable to support it with other scientific studies and he failed to reveal his research technique).

Some courts have not applied Daubert to areas of expert testimony that are less "scientific" and more technical in nature, explaining that the requirements of Daubert, such as peer review, testability, and known error rates, are too stringent for these areas of expertise. See McKendall v. Crown Control Corp., No. 95-56657, 1997 WL 448265 (9th Cir. Aug. 8, 1997) (refusing to apply Daubert to testimony of engineer regarding design of a forklift); Compton v. Subaru of America, Inc., 82 F.3d 1513 (10th Cir. 1996) (stating that Daubert applies only to expert testimony based on principles or methodologies, not experience or training); Iacobelli Constr., Inc. v. County of Monroe, 32 F.3d 19, 25 (2d Cir. 1994)(holding that Daubert is inapplicable to geotechnical and underground construction experts); Tamarin v. Adam Caterers, Inc., 13 F.3d 51, 53 (2d Cir. 1993)(same conclusion for accountant's report). However, after noting the Iacobelli and Tamarin decisions, the Court of Appeals for the Third Circuit in Velasquez applied the Daubert tests for qualification, reliability, and fitness to the testimony of the handwriting expert before it. Since the decision in Velasquez, the district judges in this Circuit in the Dennis and Finley cases, supra, have applied a Daubert, analysis to proffered testimony of engineering experts. Thus, although the Lambert Report covers an area of expertise that is more technical than scientific, I will follow the direction from the Court of Appeals in Velasquez and the reasoning in Dennis and Finley that Daubert applies to the admissibility of

technical but not purely scientific expert testimony governed by Rule 702.⁷

The Lambert Report submitted by Padillas to defend against the motion for summary judgment by Stork-Gamco falls far short of clearing the hurdle of Rule 702 and Daubert.⁸

Lambert provides no basis for the conclusions and observations that he makes. He does not indicate his research or experience in this area. His curriculum vitae indicates he has had experience with cutting machines, but it does not indicate whether he has experience in the design of these machines from which some methodology or design efficacy might emerge. He does not set forth in his report the methodology by which he made his determinations in this case. He does not indicate that he conducted any tests or what the testing techniques were. At the top of page 5 of his report, he mentions the four "recognized" levels of analysis of a hazardous work zone on a machine, but he does not provide citations as to where these levels of analysis are derived or by whom they are recognized. Lambert's comparison of the Stork-Gamco

⁷ As the balance of this opinion will make clear, even if I did not apply Daubert to Lambert's technical expert testimony, the traditional analysis under Rule 702 would yield the same result in this case.

⁸ In addition, the Lambert Report is not a proper affidavit as required under the Federal Rules of Civil Procedure, which is a fatal flaw in Padillas' defense against Stork-Gamco's motion for summary judgment. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 & n. 19 (1970) (noting that the nonmoving party's unsworn affidavits were not suitable to oppose a proper motion for summary judgment); Givens v. Prudential-Grace Lines, Inc., 413 F. Supp. 1002 (E.D. Pa. 1976) (refusing to consider an unsworn statement in a memorandum of law submitted in defense to a motion for summary judgment); Fed. R. Civ. P. 56(e) (mandating that "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."). However, the Court of Appeals for the Third Circuit upheld a district court's acceptance of an unsworn report from a public investigation to oppose a motion for summary judgment and explained that although under Rule 56 the nonmoving party is "required to submit more than mere allegations in their pleadings . . . the evidence submitted showing a material factual issue for trial need not have been in the form of an opposing affidavit." See Clark v. Clabaugh, 20 F.3d 1290, 1294 (3d Cir. 1994). However, the fact that, as a public record, the report possessed inherent trustworthiness so as to warrant an exception to the rule against the admissibility of hearsay played a part in the Court's analysis. See id. While a distinction may be made between the more likely reliability of the public record in Clark and the private report of Lambert, I note that although Lambert did not have the report notarized or include an attestation clause, Stork-Gamco did not raise this formality issue. Despite Padillas' failure to follow the technical requirements of Rule 56, I will analyze the substance of the Lambert Report in the interests of efficiency and completeness.

Drum and Thigh Cutter to another model of cutting machine is not helpful, mainly because the other model has a different guard, and I find that the attempt at comparison is confusing.

Lambert does not explain or provide support as to whether this different guard would have been viable on the Drum and Thigh Cutter or how it would have prevented Padillas' injuries.

Moreover, while he criticizes the warnings on the equipment, Lambert does not complete the analysis by providing any explanation as to how or why additional warnings would have made the machine safer. He asserts in conclusory fashion that the “lack of adequate warnings and notices regarding nip points and automatic start-up conditions on fixed members of the device resulted in a defective machine.” (Lambert Report at 6.) His mere reference that additional warnings would render the machines safer without further explanation is insufficient to be deemed reliable expert testimony.

The Lambert Report is filled with conclusory statements about the defective condition of the Drum and Thigh Cutter and how it caused Padillas' injury. However, the only support for these conclusions are Lambert's own beliefs, which as noted above, in totality fail to include any of the Daubert or Downing factors and thus are not enough to sustain the burden upon Padillas in this case.

Due to the complete failure of Lambert to supply support for his conclusions pursuant to the factors outlined in Daubert and Downing, I find that the proffered expert opinion by plaintiff is not reliable and thus does not herald the presentation of admissible expert testimony under Federal Rule of Evidence 702. With the exclusion of the Lambert Report, I am convinced that Stork-Gamco has met its burden under Federal Rule of Civil Procedure 56 by pointing to the lack

of evidence to support essential elements of Padillas' case,⁹ and Padillas is left with no evidence by which to prove his claims.¹⁰ Thus, because Padillas has failed to satisfy his burden to defeat a motion for summary judgment under Rule 56(e), I will grant summary judgment to Stork-Gamco on all theories that Padillas has alleged.

IV. CONCLUSION

For the foregoing reasons, the anticipated testimony of Lambert, the plaintiff's expert, will be excluded, and the motion by defendant for summary judgment will be granted. Judgment will be entered in favor of Stork-Gamco and against Padillas.

An appropriate Order follows.

⁹ Under Celotex this is sufficient. However, Stork-Gamco has also produced evidence sufficient to demonstrate the absence of a genuine issue of material fact, which also satisfies its burden under Rule 56. The record contains the report of the defendant's expert, Dr. Clyde Richard, from which it can be inferred that the Drum and Thigh Cutter was safe for its intended use, that it contained adequate safety warnings, and that the design of the machine was not the cause of Padillas' injury. (See Pl.'s Mem. Ex. D.) As for the failure to warn claim, Stork-Gamco proffered portions of Padillas' deposition, in which he stated he was aware of the danger of the rotating blade on the Drum and Thigh Cutter, and the owner's manual for the Drum and Thigh Cutter, which contains warnings about the proper procedures for the machines, to show that there was no failure to warn as a matter of law.

¹⁰ Expert testimony is not necessarily required to establish a defective product if "all the primary facts can be accurately described to a jury and if the jury is as capable of comprehending and understanding such facts and drawing correct conclusions from them as are witnesses possessed of special training, experience or observation." Reardon v. Meehan, 227 A.2d 667, 670 (Pa. 1967); see also Barris v. Bob's Drag Chutes & Safety Equip., Inc., 685 F.2d 94, 101 (3d Cir. 1982) (noting that "in addition to expert testimony on design defect, a defective condition in a product can be established by the presentation of other types of circumstantial evidence," such as evidence of a malfunction, the same accidents in similar products, or the elimination of other causes of the accident). However, if the subject matter of the case is beyond the ken of ordinary lay people, the aid of expert testimony becomes a necessity. See Reardon, 227 A.2d at 670. This case presents complex and technical questions of product design and causation. A thorough, competent analysis of the adequacy of various blade guards, the positioning of nip points, and the adequacy of safety warnings on the Drum and Thigh Cutter requires a level of technical knowledge and comprehension of poultry processing machines that the average person does not possess. In addition, there is no evidence of similar accidents involving the Drum and Thigh Cutter, no evidence that the machine malfunctioned on the day of Padillas' accident, and no other circumstantial evidence to establish defect. I am content to observe that while theoretically in certain factual circumstances expert testimony might not be necessary, I find in this particular case the facts do not point to an obvious defect or causation, thus expert testimony is necessary.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DANIEL G. PADILLAS,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	
STORK-GAMCO, INC.,	:	NO. 95-7090
	:	
Defendant.	:	

ORDER AND FINAL JUDGMENT

AND NOW, this 17th day of September, 1997, upon consideration of the motion of defendant Stork-Gamco, Inc. for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and for the exclusion of the expert testimony of Ralph Lambert (Document No. 26) as well as the various briefs of the parties relating thereto, and upon review of the pleadings, depositions, affidavits, reports, and discovery of record, and for the reasons set forth in the foregoing memorandum, having found that the only evidence proffered by plaintiff Padillas to sustain his burden under this motion for summary judgment is not admissible under Federal Rule of Evidence 702, it is accordingly hereby **ORDERED** that the motion by defendant for summary judgment is **GRANTED**.

JUDGMENT IS HEREBY ENTERED in favor of defendant Stork-Gamco, Inc. and against plaintiff Padillas.

This is a final Order.

LOWELL A. REED, JR., J.