UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Larry Patterson and Tammy Patterson v. Covidien, Inc., et al.

Patterson · No. 22-cv-10153-PBS; MDL No. 22-md-03029-PBS · Decided April 28, 2026

SUMMARY

The United States District Court for the District of Massachusetts ruled on Covidien's motion to exclude the testimony of Dr. Laura Plunkett in the first bellwether case in the Covidien hernia mesh multidistrict litigation. The court allowed exclusion of her opinions concerning Covidien's postmarket surveillance and complaint handling, but otherwise denied the motion, subject to limits barring opinions on FDA processes, legal conclusions, and Covidien's state of mind.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Patti B. Saris
JURISDICTION	United States District Court for the District of Massachusetts
DECIDED	April 28, 2026
DOCKET	22-cv-10153-PBS; MDL No. 22-md-03029-PBS
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs offered Dr. Laura Plunkett as an expert witness in a multidistrict products-liability action. Defendants moved under Federal Rule of Evidence 702 to exclude her testimony concerning FDA regulation, preclinical testing, labeling, marketing, postmarket surveillance, and complaint handling.
STANDARD OF REVIEW	Admissibility of expert testimony under Federal Rule of Evidence 702, including whether the expert is qualified, whether the testimony is relevant and helpful, and whether it rests on reliable methodology and sufficient facts or data.
PRECEDENTIAL VALUE	unpublished district court memorandum and order; persuasive authority only
PARTIES	Larry Patterson and Tammy Patterson v. Covidien, Inc., et al.

TOPICS

expert testimony | daubert standard | products liability | fda regulation | evidence

PRACTICE AREAS

products liability | evidence | health law | administrative law

QUESTIONS PRESENTED

1. Whether Dr. Plunkett's weight-of-the-evidence methodology was reliably applied under Federal Rule of Evidence 702.
2. Whether Dr. Plunkett's regulatory, preclinical-testing, labeling, and marketing opinions would assist the jury.
3. Whether Dr. Plunkett could testify about information in Covidien's possession without improperly expressing opinions about Covidien's state of mind.
4. Whether Dr. Plunkett could testify about FDA regulatory requirements or characterize Covidien's conduct as violating those requirements.
5. Whether Dr. Plunkett had sufficient facts or data to offer opinions on Covidien's postmarket surveillance and complaint handling for Symbotex.

HOLDINGS

1. Dr. Plunkett's opinions concerning the resorption period of the porcine collagen barrier were sufficiently reliable for admission under Rule 702 because she reviewed the preclinical studies and applied her toxicological expertise in assessing the data.
2. Dr. Plunkett may provide background testimony concerning the applicable FDA regulatory schemes and may explain deficiencies she identifies in Covidien's preclinical testing, labeling, and marketing of Symbotex.
3. Dr. Plunkett may not offer opinions criticizing the FDA, its regulations, or the § 510(k) process because such opinions would not assist the jury.
4. Dr. Plunkett may not testify about the adequacy of Covidien's postmarket surveillance or complaint handling for Symbotex.
5. Dr. Plunkett may testify about information contained in Covidien's documents or otherwise in Covidien's possession, but she should not characterize Covidien as having 'known' or been 'aware' of the information as an opinion about the company's state of mind.
6. Dr. Plunkett may describe regulatory requirements and explain deficiencies in Covidien's testing, labeling, and marketing, but she may not testify that Covidien violated regulatory requirements.

KEY QUOTATIONS

> *"The fact that the role of judgment in th[is] . . . approach is more readily apparent than it is in other methodologies does not mean that the approach is any less scientific."* (Discussion § II.A)

> *"To police the boundary between proper and improper testimony in this area, Dr. Plunkett "should refrain from using words like 'knew' or 'aware' and should use . . . language[] such as possessing information or acknowledging information.""* (Discussion § II.C)

> *"For the foregoing reasons, Covidien's motion to exclude the testimony of Dr. Plunkett (Dkt. 43) is ALLOWED with respect to her opinions about the adequacy of Covidien's postmarket surveillance and complaint handling and otherwise DENIED."* (Order)

FACTUAL BACKGROUND

Larry Patterson was implanted with Covidien's Symbotex Composite Mesh during a 2017 hernia-repair operation. The mesh allegedly adhered to his bowel and eventually caused a bowel obstruction and hernia recurrence, requiring another operation in 2020. Dr. Laura Plunkett opined that Covidien's testing, labeling, marketing, and postmarket practices were inadequate, particularly concerning degradation of the porcine collagen barrier and adhesion risks.

PROCEDURAL HISTORY

This was the first bellwether case in multidistrict litigation concerning hernia mesh products. Plaintiffs asserted Alabama-law products-liability, negligence, warranty, concealment, and misrepresentation claims. After a hearing, the court allowed defendants' motion in part and denied it in part, excluding opinions concerning postmarket surveillance and complaint handling while permitting the remaining testimony subject to limitations concerning state-of-mind language and legal conclusions.

DISPOSITION

other

CASES CITED

- In re Covidien Hernia Mesh Prods. Liab. Litig. No. II, 2026 WL 1129617 (D. Mass. 2026)
- Milward v. Acuity Specialty Prods. Grp., 639 F.3d 11, 17-19 (1st Cir. 2011)
- Bitler v. A.O. Smith Corp., 391 F.3d 1114, 1124 n.5 (10th Cir. 2004)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152 (1999)
- United States v. Galatis, 849 F.3d 455, 462 (1st Cir. 2017)
- Tang Cap. Partners, LP v. BRC Inc., 757 F. Supp. 3d 363, 391 (S.D.N.Y. 2024)
- Nieves-Villanueva v. Soto-Rivera, 133 F.3d 92, 99-101 (1st Cir. 1997)
- In re Zofran (Ondansetron) Prods. Liab. Litig., No. 15-md-2657-FDS, 2019 WL 5685269, at *9 (D. Mass. Nov. 1, 2019)
- Hunt v. Covidien LP, No. 22-cv-10697, 2024 WL 2724144, at *7 (D. Mass. May 28, 2024)
- Doe ex rel. Pike v. Pike, 405 F. Supp. 3d 243, 250 (D. Mass. 2019)
- OneBeacon Am. Ins. Co. v. Com. Union Assurance Co. of Can., 804 F. Supp. 2d 77, 85 (D. Mass. 2011)
- Williams v. Poulos, 11 F.3d 271, 282 n.20 (1st Cir. 1993)

- In re Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Prods. Liab. Litig., No. 18-md-2846, 2021 WL 3617152, at *7 (S.D. Ohio Aug. 16, 2021)
- In re Mirena IUD Prods. Liab. Litig., 169 F. Supp. 3d 396, 479 (S.D.N.Y. 2016)
- In re Zofran (Ondansetron) Prods. Liab. Litig., 57 F.4th 327, 340 (1st Cir. 2023)
- Birkenstock US BidCo, Inc. v. White Mountain Int'l LLC, 806 F. Supp. 3d 156, 162 (D. Mass. 2025)
