
IN THE

Superior Court of Pennsylvania Philadelphia District

2811 EDA 2024

PAUL GILL and DIANE GILL, H/W,

— v. —

EXXON MOBIL CORP., *et al.*

APPEAL OF EXXON MOBIL CORP.

*On Appeal from the Judgment of The Court of Common Pleas of
Philadelphia County, Pennsylvania at No. 200501803
Honorable Carmella G. Jacquinto*

**BRIEF FOR *AMICUS CURIAE* THE ATLANTIC LEGAL FOUNDATION
IN SUPPORT OF APPELLANT EXXON MOBIL CORPORATION'S
APPLICATION FOR REARGUMENT EN BANC**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Atlantic Legal Foundation (“ALF”) filed an amicus brief before the panel urging that the trial court failed to perform the gatekeeping required by Pa.R.E. 702 and *Walsh v. BASF Corp.*, 234 A.3d 446 (Pa. 2020). The panel never reached those arguments, leaving a \$725.5 million verdict resting on expert testimony whose methodology no court has examined.¹

SUMMARY OF ARGUMENT

Under Pa.R.C.P. 227.1(b)(2), a post-trial motion must specify the “grounds” for relief, and the motion “shall state how the grounds were asserted in pre-trial proceedings.” ExxonMobil did exactly that. It identified the denial of its *Frye* motion to exclude plaintiffs’ causation experts, Drs. Laumbach and Shallis, and the denial of its motion to exclude the “no safe threshold” theory, as separate grounds for a new trial, and incorporated the supporting memoranda by reference.

The panel nonetheless split the preserved grounds on the inadmissibility of unreliable causation testimony into a list of “new theories” and held all but one waived. That approach confuses grounds for relief with the arguments that support them, finds no support in Rule 227.1, and produced the result this Court warned

¹ ALF states that no counsel for a party authored this brief in whole or in part, and no person or entity other than ALF, its members, and its counsel made a monetary contribution to its preparation or submission.

against in *Blum v. Merrell Dow Pharmaceuticals, Inc.*, 705 A.2d 1314, 1322 (Pa. Super. 1997), *aff'd*, 764 A.2d 1 (Pa. 2000): A jury was left to evaluate complex science through cross-examination after the court declined to act as gatekeeper. Reargument en banc is warranted.

ARGUMENT

I. ExxonMobil Specified Its *Frye* Grounds Exactly as Rule 227.1 Requires.

Rule 227.1 requires that post-trial “grounds” be “specified in the motion,” and that “[t]he motion shall state how the grounds were asserted in pre-trial proceedings or at trial.” Pa.R.C.P. 227.1(b)(1)–(2). The purpose is to ensure that the trial court “will know what it is being asked to decide.” *Id.*, Note (quoting *Frank v. Peckich*, 391 A.2d 624, 632–33 (Pa. Super. 1978)). The Rules are to be “liberally construed,” and a court “may disregard any error or defect of procedure which does not affect the substantial rights of the parties.” Pa.R.C.P. 126; *see also* Pa.R.A.P. 1925(b)(4)(v) (each error identified in a Rule 1925(b) statement “will be deemed to include every subsidiary issue that was raised in the trial court.”). The Rule asks for grounds, not a catalog of every subsidiary argument.

ExxonMobil’s post-trial motion identified, as distinct new-trial grounds, the denial of its motion to exclude plaintiffs’ causation experts and the denial of its motion to exclude “no safe threshold” testimony, identifying each motion and order by date and docket number. Def. ExxonMobil Corp.’s Mot. for Post-Trial

Relief ¶¶ 95–115, 178, *Gill v. ExxonMobil Corp.*, No. 200501803 (Pa. Ct. Com. Pl. Phila. Cnty. filed May 17, 2024) (Post-Trial Mot.). It stated the *Frye* grounds: The experts’ methodology was “exclusively devoted to the analysis of benzene,” “conflate[d]” exposure to ExxonMobil gasoline with benzene, and produced “untrustworthy, misleading science.” *Id.* ¶¶ 100–03. It expressly incorporated its memorandum of law, *id.* ¶¶ 45, 181, which presented the full causation and *Frye* analyses and incorporated them into the new-trial arguments. Def. ExxonMobil Corp.’s Br. in Supp. of Mot. For Post-Trial Relief at 22–35, 61–62 (May 20, 2024) (Post-Trial Br.); Def. ExxonMobil Corp.’s Reply Br. in Supp. of Mot. for Post-Trial Relief at 59–60 (July 22, 2024) (Post-Trial Reply).

The trial court understood what it was being asked to decide. Its Rule 1925(a) opinion addressed whether the experts’ “methodologies” were “generally accepted” under Rule 702 and whether the no-safe-threshold testimony was properly admitted. *Gill v. ExxonMobil Corp.*, No. 200501803, slip op. at 325–43 (Pa. Ct. Com. Pl. Phila. Cnty. May 8, 2025) (Trial Ct. Op.). The purposes of preservation—giving the trial court “the opportunity to consider a potential appellate issue and correct any error,” *Trigg v. Children’s Hosp. of Pittsburgh of UPMC*, 229 A.3d 260, 269 (Pa. 2020)—were fully served.

II. The Record Refutes Each of the Panel's Waiver Findings.

The 2% benzene assumption. The panel asserted that ExxonMobil “did not argue to the trial court” that Dr. Laumbach’s exposure opinion rested on an unproven benzene concentration. Slip op. at 15 (citing only Post-Trial Br. at 23–29). The panel appears to have reviewed only pages 23–29 of the post-trial brief. The same causation argument continues at pages 34–35, where ExxonMobil argued that Dr. Laumbach’s exposure estimate rested on “unsubstantiated assumption[s]” regarding, among other things, “the percentage of benzene in gasoline during the relevant time period of 1974 through 1979.” Post-Trial Br. at 34–35. ExxonMobil’s reply brief went further, arguing that “Plaintiffs have no evidence supporting their assertion of a ‘high’ benzene concentration” and that the only admitted evidence showed “between 0.5% and 1.0% benzene content in the relevant time frame.” Post-Trial Reply at 1–2; *see id.* at 26–28. That is the argument the panel mistakenly deemed new.

The no-safe-threshold challenge. Having deemed the 2% argument waived, the panel erroneously declared the no-safe-threshold challenge moot. Slip op. at 15–16. ExxonMobil’s threshold motion, renewed post-trial, argued that Dr. Shallis reached a specific-causation opinion “without any quantification” of dose—the dose-response failure that *Betz v. Pneumo Abex LLC*, 44 A.3d 27, 55–58 (Pa. 2012), and *Howard ex rel. Estate of Ravert v. A.W. Chesterton Co.*, 78 A.3d 605,

608 (Pa. 2013), forbid. Post-Trial Mot. ¶¶ 105–15; Post-Trial Br. at 29–31, 61–62; Def. ExxonMobil Corp.’s Mot. in Limine to Exclude References to the No Safe Threshold Theory at 10–12 (Mar. 26, 2024); Post-Trial Reply at 16–18, 22–24, 59–60 (noting plaintiffs’ admission that their experts relied on an “any exposure” theory, which Dr. Laumbach told the jury was the same as substantial-factor causation). The panel never decided whether the trial court abused its discretion by admitting a theory the Supreme Court has rejected as a basis for substantial-factor causation.

Bradford Hill and “non-standard” application. The panel accepted that ExxonMobil preserved the argument that the experts applied Bradford Hill to benzene rather than gasoline. It asserted, however, that the related contention that the experts used standard methodologies “in non-standard ways” was new. But these are the same argument. Under *Betz*, 44 A.3d at 53, general acceptance requires both an accepted methodology and its application “in a conventional fashion.” ExxonMobil’s motion to exclude plaintiffs’ causation experts called their approach “an inherently flawed methodology that is not generally accepted in the scientific community.” Def. ExxonMobil Corp.’s Mot. *in Limine* to Exclude Pls.’ Med. Causation Experts ¶ 7 (Mar. 26, 2024) (Frye Mot.); *see also* Post-Trial Br. at 23–29; Post-Trial Reply at 16–17, 59. An analysis that runs the Bradford Hill factors on the wrong agent is a non-standard application by definition.

Alternative exposures and specific causation. ExxonMobil’s *Frye* motion built its factual record around Mr. Gill’s heavy use of Liquid Wrench, which Dr. Laumbach said contained up to 30% benzene, and around the experts’ practice of casting “a blanket of benzene information” over every product rather than assessing gasoline. *Frye* Mot. Memo. at 10–11; *see* Post-Trial Mot. ¶ 100 n.5; Post-Trial Br. at 23 n.4, 60. In reply, ExxonMobil showed that Dr. Laumbach could not apportion causation among products, even though his own estimates attributed more than four times as much benzene exposure to Liquid Wrench as to Mobil gasoline. Post Trial Reply at 23–24, 54–55. The failure to account for other exposure sources is part of that same challenge.

III. The Panel’s Approach Forecloses *Frye* Review and Leaves the Integrity of the Trial Process Tainted.

The reliability of the testimony underlying a \$725.5 million verdict has never been reviewed. The trial court concluded the experts’ approach was acceptable because “all they did is what an ordinary expert witness would do” without determining whether the expert is offering methodologically reliable testimony. Trial Ct. Op. at 341–42; *see Walsh*, 234 A.3d at 458–60. The panel, in turn, credited a single sentence of ExxonMobil’s appellate brief (on Bradford Hill) and deemed the rest waived or moot. Between the two, Rule 702’s gatekeeping inquiry was never performed.

This is precisely what *Blum* warned against. When no gatekeeper decides whether the science is “good enough to serve as the basis for the jury’s findings of fact” or merely “dressed up to look good enough,” cross-examination cannot fill the gap, and “the integrity of the trial process” is “tainted.” *Blum*, 705 A.2d at 1322.

Where a party has filed targeted *Frye* motions, obtained adverse rulings, renewed those grounds by name and docket number in its post-trial motion, and incorporated the underlying briefing, demanding that the post-trial motion re-plead every subsidiary argument elevates form over the substance Rule 227.1 protects.

CONCLUSION

The Court should grant reargument *en banc*, hold that ExxonMobil preserved its *Frye* challenges, and decide the admissibility of the experts’ testimony on the merits.

Respectfully submitted,

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Dated: October 29, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Pa.R.A.P. 531 and 2135, I certify that this brief contains 1,500 words, excluding the parts of the brief exempted by those rules.

/s/ Steven M. Coren

CERTIFICATE OF COMPLIANCE – PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

/s/ Steven M. Coren

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Paul Gill and Diane Gill

v.

Exxon Mobil Corporation et. al.

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