

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

In re)	
)	
Appeal of Michael D. Hays)	Case No.20452
)	
Appeal of Dupont East Civic Action Association)	Case No. 20453
)	
)	

**OPPOSITION OF DUPONT EAST CIVIC ACTION ASSOCIATION
TO PERSEUS TDC’S MOTION TO EXCLUDE
ARCHITECT RAVI RICKER FROM TESTIFYING**

COMES NOW the Dupont East Civic Action Association (DECAA) and files this Opposition to Perseus’ Motion to Exclude Architect Ravi Ricker from Testifying as an expert witness on July 28, 2021.

Perseus seeks to bar Mr. Ricker from testifying at the July 28 hearing solely on grounds Mr. Ricker is not licensed in the District of Columbia:

“Mr. Ricker does not appear to be licensed in the District at all nor does he appear to have worked on any projects in the District. Rather, Mr. Ricker appears to handle work located almost exclusively in Chicago, Illinois, with no relevant experience within or even near D.C.

Accordingly, Perseus respectfully requests that the Board exclude Mr. Ricker from testifying at the public hearing in the above-referenced appeals and appropriately discount Mr. Ricker’s purported “Expert Report” submitted by DECAA.”¹

It is worth noting that Ms. Roddy in her motion cites *no* legal authority whatsoever in support of her argument that Mr. Ricker, a prominent award winning Chicago architect with 28

¹ The standards for the admission of expert testimony were clearly laid out by the DC Court of Appeals in 2016 in *Motorola v. Murray*, 147 A.3d 751 (DC. 2016) when it adopted adopting the federal standards on admissibility of expert testimony in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 The unsupported legal argument by Ms. Roddy that an expert should be barred from testifying on the grounds that the expert’s licensure is in a different jurisdiction from DC is so frivolous and so completely unwarranted under existing case law that it would likely be the subject of a Rule 11 motion for sanctions had it been filed in the DC Superior Court. Indeed, the motion is devoid of any legal analysis and cites no case law in support of the relief sought.

years of experience in architecture and construction, is not qualified to testify in this appeal, concerning the findings and opinions contained in Mr. Ricker's report, because Mr. Ricker is not licensed in DC. *See* Architect Ricker's Report and CV at IZIZ's Exhibit 7

In 2016 in *Motorola v. Murray*, 147 A.3d 751 (DC. 2016) the District of Columbia Court of Appeals adopted the standards contained in Federal Rule of Evidence 702 regarding the admissibility of testimony from expert witnesses. DCCA's adoption of the standards in FRE 702 reflect United States Supreme Court decisions pertaining to expert witness testimony, such as *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999); and *General Electric v. Joiner*, 522 U.S. 136 (1997).

FRE 702 Testimony by Expert Witnesses, states:

“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.”

The Court of Appeals in its decision in *Motorola v. Murray* directed future litigants and judges to review closely FRE 702, the Advisory Committee Notes to Rule 702, and the cases cited therein when making Rule 702/*Daubert* challenges to the admissibility of expert testimony.

In *Daubert*, the Supreme Court held that Rule 702 had replaced the former standard for admission of expert witness testimony with a “flexible” inquiry focused on determining whether the proffered expert testimony is both *relevant* and *reliable*. *Daubert*, 509 U.S. at 589, 594-95.

As stated above, Rule 702 requires that an expert have sufficient qualifications to testify, looking at the person's "knowledge, skill, experience, training, or education" and requires that the proffered "expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue...The standard for qualifying expert witnesses is liberal." *Weinstein's Federal Evidence* Chapter § 702 ("Testimony by Expert Witnesses") (2nd ed. 2018) As an award winning licensed Chicago architect with 28 years of professional experience including project design and code compliance Mr. Ricker meets the "knowledge, skill, experience, training, or education" requirement of FRE 702 to be able to testify concerning the matters presented in this appeal. *See* Mr. Ricker's CV at IZIS Exhibit 7 That he is licensed in Illinois but not licensed in DC is not a proper basis to exclude Mr. Ricker's testimony. It would be reversible error to exclude otherwise admissible testimony on the ground Mr. Ricker is not licensed in this forum jurisdiction.

Perseus' Motion simply fails to address *any* of the above four factors (a) thru (d) found in Rule 702 which would be necessary in a proper analysis and *Daubert* challenge.

A review of the case law, post-*Motorola*, *supra*, found *no* published DC case supporting the position Perseus has taken in its Motion.

A review of the case law post-*Daubert* found no published federal court case supporting the licensure argument Perseus has taken in its Motion.

Many states have also rejected the argument made by Perseus in its Motion.

Indiana – Expert witness does not need to be licensed in the state to testify.

In *State v. Maudlin*, 416 N.E.2d 477 (Ind. App. 1981), the court held that an engineer

licensed to practice in another jurisdiction but not admitted to practice in Indiana could testify as expert witness. The Court observed:

“In order for a witness to qualify as an expert, two elements must be met: (1) the subject of the inference to be drawn from the facts must be so distinctly related to some science, profession, business, or occupation as to be beyond the ken of laymen; and (2) the witness must have sufficient skill, knowledge, or experience in that field so as to make it appear that his opinion or inference will probably aid the trier in his search for the truth.”

See also State v. Willian, 423 N.E.2d 668, 671 (Ind. App. 1981)

“Thus, we are of the opinion that it is the education, training, knowledge, and experience in a given field rather than licensing by the state of the forum which renders a witness competent to testify as an expert and qualified to give an opinion upon a subject within the scope of his expertise.” (Emphasis added)

Kansas - Expert witness does not need to be licensed in the state to testify.

In *Dickey v. Corr-A-Glass*, 601 P.2d 691 (Kan. App. 1979), the Court held that it was a reversible error for the trial court to exclude, on the sole ground that the witness was not licensed as a professional engineer in Kansas, expert testimony by a civil engineering professor:

“The propriety of one acting in a certain capacity contrary to a licensing statute is not relevant to the ability of an expert to impart knowledge within the scope of his special skill and experience that is otherwise unavailable to the jury. We hold that a witness may not be disqualified from testifying as an expert solely because he is not licensed in this state.” *Dickey v. Corr-A-Glass* at 694.

North Dakota – Expert witness does not need to be licensed in the state to testify.

In *Kluck v. Kluck*, 561 N.W.2d 263 (N.D. 1997) a psychologist was qualified to give expert opinion on child custody. The fact that psychologist was not licensed in the state did not render him unqualified to give expert testimony on child custody.

Colorado – Architect does not need to be licensed in the state to testify as expert witness.

In *Corcoran v. Sanner*, 854 P.2d 1376 (Colo. App. 1993) the Colorado Court of Appeals held:

“First, plaintiff contends that the trial court erred in allowing Richard Olson, an architect, to testify as an expert witness because Olson is not licensed in Colorado and does not perform any architectural services here. *We reject plaintiff’s contention that expert witnesses are disqualified from testifying in Colorado merely because they are not licensed here or do not perform their services here.*”

In summary, Perseus in its Motion has failed to do any proper four factor analysis under *Daubert*, and instead relies on an improper basis to try to exclude the expert testimony of award winning architect Ravi Ricker.

DECAA respectfully requests that this Board deny Perseus’ Motion to exclude the testimony and report of architect Ravi Ricker.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on this date I served a copy of this Opposition of Dupont East Civic Action Association to Perseus’ Motion to Exclude Architect Ravi Ricker from Testifying

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