BOOK REVIEW

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Review of: Science and Litigation: Products Liability in Theory and Practice

Although the book addresses a need in an exploding area, its problem is that it tries to address too many audiences and probably ends up satisfying too few. The theoretical section is too descriptive to interest legal scholars and too broad to appeal to lawyers. Its exposition is sometimes tedious, giving long descriptions of cases without identifying significant points or engaging in much analysis. The author at times gets distracted from his main point, for example, devoting considerable time to discussing bellwether cases, or representative cases for a larger group of cases, which involves more of a procedural case aggregation issue than a scientific question. Further, the first half of the book remains almost completely separate from the second half, with no carryover of themes.

As to the second half of the book, which presumably would be of greater interest to practitioners, its description of many issues is so general that it fails to serve the how-to purpose for which it is intended. Furthermore, although it claims to be of use to judges and defense counsel, and gives lip service to scientific evidence used in criminal cases, it is almost completely directed to plaintiffs’ attorneys. Moreover, there is little discussion of the requirements of the Restatement Third of Torts, which emphasizes the need for a plaintiff to prove a reasonable alternative design to the one being challenged through expert testimony, as well as deemphasizes the consumer expectation test. Although most states have not yet had the occasion to adopt the Restatement, it is likely that many states will do so in some form. In addition, the book devotes lengthy discussion to discovery issues, but there is little to no discussion of the disclosure requirements of the federal and many state courts and their impact on discovery in this setting.

Where the book is helpful, one wishes it would have gone further. For example, the chapter on the problems of peer review is significant, but it would have been useful if it had explored more ways in which peer review could be replaced or improved. Similarly, the list of resources in the appendix is helpful, but these lists change rapidly in the fast-growing world of the internet and may soon be outdated. Although the chapter on discovery is of use, there is no mention of businesses’ traditional document destruction policies, especially with regard to computer generated documents, and how plaintiffs and defendants can address these issues early in the litigation.

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2 Introduction, at xvii.

Most distracting in the book were the numerous grammatical and editing errors found throughout. Even if those errors had been caught, the book is overwritten and should have been shorter. It also occasionally gets bogged down in lingo which distracts from the flow.

Despite these shortcomings, the book is a useful manual especially for newcomers to the field, such as a new lawyer, a lawyer facing his first products liability case, or a first-time expert. It outlines the steps getting from the research stage to the courtroom in an easily accessible way and explicates clearly the issue of the admissibility of scientific evidence.

4 Some examples can be found on page 111 (Despite the blinding process approximately of the reviewers were able to identify the author.); p. 39 (The historian, Carl Becker’s observation on writing history applies with equal force to the investigation and prosecution of a civil case.); p. 84 (Some startling facts about peer review are that reviewers often spend less than two hours reviewing an article.); p. 86 (Each of the specialty journals, some having long pedigrees, have their own, often idiosyncratic editorial standards for publication.); p. 181 (In the absence of statistically significant epidemiological studies to support their general causation theories.)