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**Breaking Legal Developments** in Fire Investigation



## Breaking Legal Developments

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**EXECUTIVE SUMMARY:** This weekly newsletter covers:

- [Tennessee Supreme Court Approves Experience-Based Opinions by Engineer](#)

### (1) TENNESSEE SUPREME COURT APPROVES EXPERIENCE-BASED OPINIONS BY ENGINEER

In [Charles Brown v. Crown Equipment Corp., No. W2002-02228-SC-R11-CV](#), Tennessee Supreme Court, the court found experience based opinions by an engineer acceptable. That court overturned the trial judge who had found the testimony of plaintiff's mechanical engineer and biomechanical engineer unreliable.

Charles Brown and Barbara Reynolds sustained injuries while operating two different models of stand up forklifts manufactured by defendant. They brought product liability actions claiming the forklifts were defective. The plaintiff's experts had testified the accidents would not have happened if there were rear doors on the operator compartments of the forklifts.

The trial court excluded the testimony and directed a verdict for the defendant. The intermediate appellate court affirmed. The Tennessee Supreme Court reversed that judgment. Tennessee law closely resembles Federal law on experts to include Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993) 509 U.S. 579. In Tennessee the court considers (1) whether scientific evidence has been tested and the methodology with which it has been tested; (2) whether the evidence has been subjected to peer review or publication; (3) whether a potential rate of error is known; (4) whether ...the evidence is generally accepted in the scientific community; and (5) whether the expert's research in the field has been conducted independent of litigation."

Additionally, the court has identified a court may consider the expert's qualifications for testifying on the subject at issue. That last factor is applicable particularly where the expert's personal experience is essential to the methodology or analysis underlying the opinions.

The court noted this is particularly true when dealing with a highly credentialed expert who has devoted her life's work to the actual exercise of the methodology upon which her testimony is based. There must be a connection between the expert's knowledge and the basis of the expert's opinion. The court reviewed the credentials of the plaintiff's experts. The mechanical engineer had been hired to redesign of sit down forklifts. He had obtained 16 patents for various forklift devices. He later formed a consulting business on designs of various forklifts. The second expert was equally well qualified related to the opinions he expressed.

The Tennessee Supreme Court found the trial court erred because it rigidly applied the five factors precluding the testimony.

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