No. 18-1153

IN THE

SUPREME COURT OF THE UNITED STATES

Timothy Rizzo - PETITIONER

v.

Applied Materials, Inc., Globalfoundries, US, Inc.,

Globalfoundries, Inc., AM Technical Solutions, Inc., - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT US COURT of APPEALS 2nd Circuit

PETITION FOR REHEARING

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BACKGROUND HISTORY

HISTORICAL CASE LAW IS VOIDED FOR SOME UNKNOWN REASON

Write of Certiorari filed with the US Supreme Court on February 26, 2019 is well-founded and supported by vast amounts of case law and science. Denial of Writ of Certiorari on April 29, 2019 Orders List. The crux of the case revolves around a 'Well-Founded Methodology' where the Lower Courts failed to review the science proving theories and methodologies by Experts. Though the Lower Court continual denied the evidence while utilizing FRCP 56 where all aspects of Respondents arguments are unsubstantiated and null, due to the admittance at Oral Argument on November 6, 2018 and the true science. The Audio of the hearing can also be heard from Courtlistner when searching Rizzo v. Applied Materials Oral Argument (URGE the Court to hear the discussion at conference and compare to the Writ).

Background history within the Audio of the Oral Argument November 6, 2019 and conflict to US Supreme Court Rule 10;

1. Silica has some form of relationship to ANCA/GPA (general causation is established).
2. Justice Lynch states that Rizzo's treating doctors are not out to lunch.
3. Attorney Amanda Rice confirms that there is something else that should have been concentrated on, yet Applied Materials own Experts never discussed what it was, 'playing charades with the legal system'. This acknowledgment voids FRCP 56 "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In determining whether genuine issues of

material fact exist, the court "construe[es] all facts and reasonable inferences in a light most favorable to the nonmoving party" *Pub. Serv. Co. of Colo. v. Cont'l Cas. Co.*, 26 F.3d 1508, 1513-14 (10th Cir. 1994). If sufficient evidence exists on which a trier of fact could reasonably find for the plaintiff, Summary Judgment is inappropriate, see *Prenalta Corp. v. Colo. Interstate Gas Co.*, 944 F.2d 677, 684 (10th Cir. 1991). Attorney Amanda Rice identifies there is **something of material fact** but denied to inform the Lower Courts.

4. Admittance to the exposures while denying ALL exposures from the initial proceedings muddying the waters for the Experts and the litigation. Answers to the Complaint are 'Fraudulent' and FRCP 59 should have been enforced by the Lower Courts.
5. Additionally, voiding all OSHA and Workers Compensation determination where the Respondent uses it as leverage knowing it s misleading.
6. Bradford-hill Criterial is **NOT** a methodology upon 'Complex Toxic Tort' as detailed in *Milward v. Acuity Specially Products*, 639 F 3.d 11, 15 (2011).

    a. Where FRE 702 is not dependent upon the Hill criteria. "No algorithm exists for applying the Hill guidelines to determine whether an association truly reflects a causal relationship or is spurious." *Restatement § 28 cmt. c(3).* Because "[n]o scientific methodology exists for this process reasonable scientists may come to different judgments about whether such an inference is appropriate." *Id. § 28 reporters' note cmt. c(4). Milward.*

FRCP 56 cannot be fulfilled by the Respondents due to misleading the courts in numerous situation where criminal actions are present. Yet, the Lower Court will not address the facts of the case, science, or Rizzo's medical. Applied Materials

skewed the facts (lied/fraudulent) to gain Summary Judgment through FRCP 56. As an alternative action, criminal proceedings can vacate the entirety of these judgments and should be the next recourse because the ipse dixit standard that is being applied is erroneous.

Lexis Legal News (3-20-19) 'Petitioner Says Exclusion Of Experts In Chemical Exposure Suit Warrants Review' has recently proffering support towards Rizzo and detailed out core issues for review which challenge historical case law (1a-2a). The Writ clearly details said information but Lexis Legal News identified conflicts within case law against the Lower Courts ruling upon Daubert based on 'Well-Founded Methodology' which was majority of the argument within the Writ.

> Rizzo further asserts that the Second Circuit's decision affirming the trial court conflicts with its opinion in *McCullock v. H.B. Fuller Co.*, 61 F.3d 1038, 1044 (2d Cir. 1995).
>
> "The Second Circuit in McCullock, affirmed the admission of a treating doctor's testimony despite the fact that he 'could not point to a single piece of medical literature that says glue fumes cause throat polyps,'" Rizzo says.
>
> "At minimum," he continued, 'when the factual underpinning of an expert's opinion is weak, it is a matter affecting the weight and credibility of the testimony - a question to be resolved by the jury,'" as stated in *Int'l Adhesive Coating Co. v. Bolton Emerson Int'l*, 851 F.2d 540,545 (1st Cir.1988). ***Lexis Legal News 3-20-19***

Second Circuit in *McCullock*, the Federal Rules of Evidence permit opinion testimony by experts when the witness is "qualified as an expert by knowledge, skill, experience, training, or education," and "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine the fact in issue." Fed.R.Evid. 702. Thorny problems of admissibility arise when an

expert seeks to base his opinion on novel or unorthodox techniques that have yet to stand the tests of time to prove their validity. Until 1993, the overwhelming majority of courts followed the so-called Frye test and excluded such innovative testimony unless the techniques involved had earned "genuine acceptance" in the relevant scientific community. *Frye v. United States*, 293 F. 1013 (D.C.Cir. 1923)...etc. The trial court's assessment will include such factors as the ability to be tested, peer review and publication, and potential rate of error, *Iacobelli Constr., Inc. v. County of Monroe*, 32 F.3d 19, 25 (2d Cir. 1994). As detailed in *McCullock* also supporting why the Lower Courts fail to raise issue with Dr. Wang's specialty - pulmonary - due to its ability to prove specific causation, as noted in the ROA but all aspect of causation were detailed in the Writ.

First Circuit in *Int'l Adhesive Coating Co.*, if in arriving at his opinion the expert has reasonably relied on facts or data before trial, the basis for the opinion need not be disclosed as a condition to admitting the testimony. The burden is on opposing counsel through cross-examination to explore and expose any weaknesses in the underpinnings of the expert's opinion. *Coleman v. DiMinico*, 730 F.2d 42, 47 (1st Cir.1984); *Knightsbridge Marketing Services, Inc. v. Promociones y. Proyecectos*, S.A., 728 F.2d 572, 576-77 (1st Cir.1984); see also *Smith v. Ford Motor Co.*, 626 F.2d 784, 793 (10th Cir.1980) (the effect of Rules 703 and 705 is to "place the full burden of exploration of the facts and assumptions underlying the testimony of an expert witness squarely on the shoulders of opposing counsel's cross-examination"), cert. denied, 450 U.S. 918, 101 S.Ct. 1363, 67 L.Ed.2d 344 (1981). Moreover, the fact that

an expert's opinion may be tentative or even speculative does not mean that the testimony must be excluded so long as opposing counsel has an opportunity to attack the expert's credibility. *Payton v. Abbott Labs*, 780 F.2d 147, 156 (1st Cir.1985); Coleman, 730 F.2d at 46-47. **When the factual underpinning of an expert's opinion is weak, it is a matter affecting the weight and credibility of the testimony - a question to be resolved by the jury.** ***Payton*****, 780 F.2d at 156.**

In ***Whitlock v. Pepsi Americas***, 9th Cir., No. 11-16958, 5/16/2013, the district court abused its discretion in excluding the expert testimony, finding among other things that the basis of the chemist's opinions were more properly subject to attack by cross examination as opposed to exclusion, that the lower court erroneously interpreted the testimony. Whether it proves causation is not a question of admissibility, see *Primiano*, 598 F. 3d at 564 ("Shaky but admissible evidence in to be attacked by cross examination, contrary to evidence, and attention to the burden of proof, not exclusion.").

The Lower Courts deliberately failed to discuss the facts listed in *McCullock*, *Int'l Adhesive Coating Co.*, and *Whitlock* due to Rizzo's claims being substantiated by the science, treating doctors, doctors reports, medical test (biopsy, CT scans, blood records, cANAC...etc.) and the Writ of Certiorari supports these claims along with the Supplemental Appendix provided to the US Supreme Court.

Rule 10 of the US Supreme Court concentrates on three forms of review;

> (a) a United States court of appeals has **entered a decision in conflict with the decision of another United States court of appeals on the same important matter**; has decided an important federal question in a way that conflicts with a decision by a state

> court of last resort; or has so far departed from the accepted and **usual course of judicial proceedings**, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
> (b) **a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;**
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

It is clear and evident, that Rule 10 (a) and (b) have been impacted due to conflict with testimonies of doctors, science, case law, fundamentals of *Frye*, *Daubert*, *Kumho Tire*, and erroneous Lower Court Orders which defies the science and facts of the case (example; timing of exposures, known exposures...etc.). Though Rule 10 (c) can become impacted due to a DENIED review of scientific references by the Lower Courts (ipse dixit), impacting the procedural obligations, where science is colliding with the judicial system and FRCP 56 and 59 or FRAP 10(e)(2). The Lower Courts makes no reference (LOCATION) in ECF or document that supports the review let alone details of Rizzo's medical, which is substantial. Journals were NEVER entered violating the Trial Courts obligation of review or Appeals Court de novo review. The ipse dixit is somewhat pointing at the Lower Courts and Respondents.

The Supreme Court's direction for ruling on summary judgment motions found in *Celotex*, *Anderson*, and *Matsushita* and concluded that the common denominator of those cases is "that summary judgment may only be decided upon an adequate record." *WSB-TV v. Lee*, 842 F.2d 1266, 1269 (11th Cir.1988).

DC wrote "to place all of this evidence before the Court and permitting additional evidence in support of the motion for reconsideration, that was already in plaintiff's position, is inappropriate" (ECF 206). Rule 26(A)(2)(B) provides that when experts testify before a court, they must submit a report disclosing "the data or other information" they have considered in reaching their conclusions. FRCP 26(A)(2b)(ii), see *Ecuadorian Plaintiffs v. Chevron Corp.*, No 10-20389, (5th Cir 2010). The US Supreme Court should identify this concern under Rule 10(c) where said evidence invalidated FRCP 56. The US Supreme Court should take the case, test the fraudulent actions by Respondent, test the Lower Courts obligations, and provide a fair and just preceding. Ultimately, the Lower Courts have voiding the true meaning of *Frye, Daubert, Kumho...etc.* and the FRE within this case.

No Order or Judgment acknowledges this fact which was described by BOTH parties that the risk is well within "General Causation" guidelines as a fundamental part of *Daubert* and *Kumho*, reducing the need of reliability and methodologies where such studies are controlled under selected criteria. As Wang testified, such controlled testing would be unethical and dangerous on humans. ANCA/GPA annual incident rate is 3/100,000. Silica has a 2.0 plus RR (from multiple studies up to 14) and Solvents have as high as 3.4 OR for ANCA/GPA. Disproving the null hypothesis – positive association consistent with inference of causation. ANCA/GPA is caused from silica and solvent exposure, with inclusion of kidney, lung, and blood disorders. "General causation exists when a substance is capable of causing a disease." *Reinstatement (third) of Torts: Liability for Physical and Emotional Harm* §28 cmt.

c(3) (2010) ("Reinstatement"). The biological relationship between the kind of exposure and kind of injury is well established and is consistent with peer review and OR/RR above 2.0.[1] The odds ratios favor Rizzo detailed by Experts moving the case to Specific Causation. As "specific causation exists when exposures to an agents caused a particular plaintiff's diseases, Id. § cmt. c(4), while GF does not dispute Rizzo's' written claims, announced at Oral Argument inducing Summary Judgment. Amanda Rice Oral Argument stated **"we'll take what he alleges in the complaint is true"**, signaling that the answers to the Complaint are 'fraudulent', FRCP 59.

Additionally, in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error, see, e.g., *United States v. Smith*, 869 F.2d 348, 353-354 (CA7 1989).

Study et al.	OR/RR	Location
Nuyts	5,6.5	171sa
Gregorini	14	47sa
Beaudreuil	2.6,3.4,6.9	4sa
Hogan	2.1	59sa-60sa
Lane	4.8,3.4	88sa
Miller	2.0 plus	109sa
Cooper	Autoimmunity	19sa-25sa
Maede	Biologically plausible	94sa-105sa
Napierska	Biologically plausible	137sa-168sa

[1] *Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1321 (9th Cir. 1995) (for epidemiological testimony to be admissible to prove specific causation, there must have been a relative risk for the plaintiff of greater than two); *In re Bextra*, 524 F. Supp. 2d at 1172 (epidemiological studies "can also be probative of specific causation, but only if the relative risk is greater than 2.0, that is, the product more than doubles the risk of getting the disease").

When an expert relies on such data as epidemiological studies, the trial court should review the studies, as well as other information proffered by the parties, to determine if they are of a kind on which such experts ordinarily rely. The court should then determine whether the expert's opinion is derived from a sound and well-founded methodology that is supported by some expert consensus in the appropriate field, *Rubanick, supra*, 125 N.J. at 449, 593 A.2d 733, universal precedent across the United States, Justice Stevens dissent "The District Court, however, examined the studies one by one..." *General Elec. Co., v. Joiner*, 522 U.S. at 152.

The Writ of Certiorari clearly identifies the legalities of the argument and the science 'Railroads' the Lower Courts rulings and the Supplemental Appendix supports that the judgments are erroneous (ipse dixit). If the science exist and Specific Causation exist how can General Causation be denied? ANSWER: 'Attack on Methodology' with paid experts to sway the court to their client's desires.

Write of Certiorari DENIED on April 29, 2019, Order List.

REASONS FOR GRANTING THE PETITION

PRODUCT LIABILITY REDEFINED FOR RIZZO'S CAUSATION AND COMPLAINT

On March 19, 2019, the United States Supreme Court redefined the scope of a manufacturer's liability under General Maritime Law for asbestos-related injuries caused by third-party integrated parts. *In Air & Liquid Sys. Corp v. Devries,* Case No. 17-1104, 2019 US LEXIS 2087 (03/19/2019), see 3a-25a attached. the Supreme Court held that a manufacturer has a **duty to warn** users when its product requires subsequent incorporation of another part - such as asbestos material. Accordingly, the Supreme Court held that "[i]n the maritime context, a product manufacturer has

a duty to warn when (1) its product requires incorporation of a part, (2) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (3) the manufacturer has no reason to believe that the product's users will realize that danger." **In other words, a manufacturer has a duty to warn users when its product requires the integration of a likely dangerous part in order for the product to properly function for its intended use.** The *Devries* opinion leaves some question to products liability law, including whether a duty to warn of integrated manufacturing. Knowing that the semiconductor workplace is a chemical plant producing computer chips for weapons, navigation, computers...etc. and the entire factory is INTEGRATED. The **hazardous effects of production start at the industrial level** and the semiconductor industry is a huge part to the military and Air Liquide and GE are MAJOR contractors for gas yards, cabinets, pumps, blowers, skids...etc. within the factories (similar to naval ships). Air Liquide and GE, have numerous contracts with multiple semiconductor facilities and is a contractor to GlobalFoundries just like Applied Materials (all similar). Each manufacture is integrated to another by some form. The integration of a semiconductor facility involves hazardous materials which are required for completion of the end product. When the defendants' equipment was used on the ships as expected and intended (including during maintenance and repair), the equipment released asbestos fibers into the air. The plaintiffs **allegedly inhaled** or ingested the asbestos fibers and developed cancer and later died. Secondly, ANCA/GPA (Wegener's Disease) is similar to asbestos exposure as described in *Meade, et al.*, and referenced by Justice Lynch

at Oral Argument but based on silica and solvents (listen to audio). **A cleanroom is TRYING to remove the particles that are RELEASED by the equipment as was with *Devries*, (nano particles, VOC's, SVOC's, heavy metals...etc.). There is a direct FACTUAL correlation with *Devries* and the semiconductor industry and Rizzo's case.** A naval ship is a contained vessel and a cleanroom is a contained room - trying - to remove nano particles and vapors that are released from 1000's production tools, cabinets, pumps, skids, blowers, switches...etc. While contractors and tool owner's repair the tools daily or replace parts - as needed. Machines break! A primary exposure is silica, solvents, ion radiation, particles, and vapors written within the Writ - explaining causation. Rizzo's illness is one of the hierarchies of illnesses in the semiconductor industry (besides leukemia though are similar) and has been identified in the military by the Department of Energy in online publications. Another correlations to the *Devries* case via production and usage.

> "The Electronics Industry Study focused its research on the unique characteristics of the semiconductor and defense electronics industries and their ability to support U.S. national security objectives during peacetime and war. Because the semiconductor is the backbone of the defense electronics industry, the health of the integrated circuit market serves as an indicator of the ability of the U.S. to sustain economic growth and maintain competitive advantage in producing the best technology and products for the nation and the war-fighter... Semiconductors are found in many defense related electronics components such as computers, sensors, switches and amplifiers. Semiconductors are critical to the way the U.S. military fights and to the functioning of the global economy. Electronics content in military ordnance, fighter planes, bombers, tanks, armored personnel carriers, and a range of other weapons systems is all increasing, according to analysts."
>
> ***The Industrial College of the Armed Forces.***[2]

[2] Electronics Industry Study Report: Semiconductors and Defense Electronics (2003), National Defense University Fort McNair, Washington, D.C. 20319-5062

The Lower Courts rejected the Product Liability portions of Rizzo Complaint upon Summary Order (ECF 106). Where Counts III, IV, V, and VII are product liability, warranty, hazardous exposures, willful and wanton misconduct - all revolving around the Respondents expressive knowledge of the hazard and failure to warn with reckless disregard. Rizzo's specific causation is a true measure for the GVR to accompany the expansion of the *Devries* case into the semiconductor industry protecting the medically ill victims where the scenarios are ALMOST identical, if not, ARE IDENTICAL with same manufacturers involved, release of particles, vapors, and a necessity for the military. Please take notice that the Writ of Certiorari was written prior to *Devries* and there is a direct similarity referencing inhalation of particles by similar product failures (tools, cabinets, skids, pumps, blowers, replacement parts...etc.) which makes the end product 'the chip' and these parts and equipment release particles, vapors...etc., at a micro and nano levels.

Applied Materials admittance of these 'exposures and machine failures' opens the door for the US Supreme Court to expand *Devries* in civil toxic tort due to; same contractor's equipment, inhalation of particles and vapors. Applied Materials would proffer retaliation against this GVR as a 'Trade Secret' that the courts or the employees are not privileged to know as detailed in the ROA or ECF. Further, exemplifying the hazards of the semiconductor industry, which is probably more harmful than a naval ship on a day-to-day bases, with exception to war, though the semiconductor industry is internally 'Legalized Chemical Warfare'.

The case of Rizzo is the hallmark of tricks, tactics, and fraud that is played by the semiconductor industry going against *Frye*, *Daubert*, *Kuhmo*...etc. and multiply litigants similar to *Devries*.

BANISHING THE IPSE DIXIT IN RIZZO'S PROCEEDING

From a view point of conventional science, true science, and medical science the system is shoddiest science offered to the courts due to the foul play and standardization of the term ipse dixit, promoted by the Respondent and continual semiconductor litigations. The reason for this shortcoming is due to Respondent's testimonies being admitted without proper scientific analysis of review where FRE 706 was valuable to assist the Lower Courts. Together *Daubert* and *Kumho Tire*, are not being properly applied in Rizzo's application of review where the science 'Railroads the Legal Review' and the claim of ipse dixit. The intellectual energy and creativity of Rizzo's case is far more likely to be employed in finding ways to avoid having to engage scientific and empirical issues in a serious way. It is hard to believe that the requirements of *Daubert* and *Kumho Tire* are satisfied by replacing ipse dixit by experts with ipse dixit by the Lower Courts.

Legal cases within the semiconductor industry will continue and similar forms of fraud, misguidance, and ill references will plague the legal system. Rizzo's Writ of Certiorari is a hallmark for identification of the problems within this industry. Within this litigation, at this very moment, the highest court in the United States is the FIRST Court House to obtain the scientific journals of interest in Rizzo's case and have direct correlation to the case of *In Air & Liquid Sys. Corp v. Devries,* which is proof that the ipse dixit and de novo review - is erroneous.

CONCLUSION

Respectfully request, for the US Supreme Court to GRANT and accept the Petition for Rehearing, give Rise to the Petition for Writ of Certiorari (filed prior), and Call for Response from the Respondents - at minimum.

If the Writ of Certiorari is incorrect, the Respondent should identify what facts are inaccurate within the Writ of Certiorari and where the science is ill against Rizzo's medical, knowing that specific causation has already been documented challenging the Lower Courts rulings. This will be highly unlikely to produce, knowing what the science has established for Rizzo's ANCA/GPA, glomerulonephritis, and diffuse ground glass opacities, and is filed with the US Supreme Court via the Supplemental Appendix.

Please revisit the Writ of Certiorari and its Supplemental Appendix, it is genuine and the case of *Devries* is comparable where a continuation of the standard should be implemented for toxic tort specifically 'semiconductor industry' where highly 'toxic materials and processes' are utilized. Rizzo's case it the ideal vehicle for this necessity.

Respectfully Submitted,

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CERTIFICATE OF COUNCEL

As Pro se, Timothy Rizzo, I hereby certify, to the best of my knowledge, that this Petition for Rehearing from denial of certiorari is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 44.2, namely intervening circumstances of substantial or controlling effect and substantial grounds not previously presented.

Respectfully Submitted,

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Additional material from this filing is available in the Clerk's Office.