Circuit Court for Baltimore City
Case No. 24-X-11-000377

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1975

September Term, 2017

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PATRICIA A. AMENT, ET AL.

v.

JOHN CRANE-HOUDALILLE, INC., ET AL.

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Berger,
Friedman,
Shaw Geter,

JJ.

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Opinion by Berger, J.

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Filed: January 15, 2019

This case is before us on appeal from an order of the circuit court entering judgment in favor of John Crane, Inc. ("Crane"), appellee. This case was premised upon claims brought by Richard Ament and his wife, Patricia (collectively, the "Aments"), alleging that Mr. Ament suffered from mesothelioma caused by exposure to asbestos-containing products manufactured, sold, and/or supplied by Crane. Mr. Ament's alleged exposure occurred exclusively when he was serving aboard Navy ships. The circuit court, therefore, ruled that maritime law governed the Aments' claims against Crane. At trial, the circuit court granted Crane's motion to strike the testimony of the Aments' expert witness, Dr. Arthur Frank, on the basis that Dr. Frank lacked a sufficient factual foundation to offer specific causation opinions relating to Crane's products. The Aments did not present any additional expert causation testimony, and the circuit court subsequently entered judgment in favor of Crane.

The Aments present two questions for our review on appeal, which we have rephrased slightly and reordered as follows:

> I. Whether the circuit court abused its discretion by striking the specific causation opinions of Dr. Arthur Frank.
>
> II. Whether the circuit court erred by determining that the federal Death on the High Seas Act applied to limit the damages available to the Aments.

For the reasons we shall explain herein, we shall hold that the circuit court did not abuse its discretion by striking Dr. Frank's testimony for lack of sufficient factual foundation. In light of our determination of the first issue, we shall not address the Death on the High Seas Act issue in this appeal.

## FACTS AND PROCEEDINGS

The issue before us in this appeal is quite narrow. We shall set forth the facts necessary for our consideration of the issue as well as certain additional facts to provide context to the limited issue on appeal.

Mr. Ament was diagnosed with mesothelioma in June of 2011. The complaint giving rise to the present appeal was filed in September 2011 against Crane and other defendants.[1] Mr. Ament died shortly thereafter before discovery began, and the pleadings were amended to substitute his wife, Patricia, as the personal representative of Mr. Ament's estate, as well as to add Mr. Ament's two sons as wrongful death plaintiffs.

Mr. Ament served in the United States Navy from 1966 through 1970. He served as a boiler tender in the boiler rooms of two aircraft carriers, the *USS Kearsarge* and the *USS Ticonderoga*. He worked in Fireroom No. 4 on the *Kearsarge* from June 1967 until it was decommissioned in February 1970. Thereafter, he worked in Fireroom No. 4 on the *Ticonderoga* until he was honorably discharged from the Navy in December of 1970. The Aments maintain that Mr. Ament's only known exposure to asbestos or asbestos-containing products occurred during his military service.

Crane is a company founded in the early 1900s that has manufactured and/or sold hundreds of different sealing products, including gaskets, packing material, and rope (both asbestos-containing and non-asbestos-containing).

[1] The other defendants were no longer in the case by the time of trial.

Four fact witnesses testified on behalf of the Aments about Mr. Ament's work on the Navy ships.[2] Joseph Lemire testified that he worked in Fireroom No. 4 on the *Kearsarge* with Mr. Ament for approximately six months. Mr. Lemire testified that he was also stationed with Mr. Ament on the *Ticonderoga*, although they did not work in the same fireroom. Mr. Lemire testified that the workers in the firerooms were regularly exposed to asbestos-containing dust from gaskets and insulation. Mr. Lemire did not specifically identify any products supplied or manufactured by Crane on either of the ships on which he worked with Mr. Ament.

Dexter McKinney testified that he served with Mr. Ament on the *Kearsarge* from 1967 until late 1968 or early 1969 and the *Ticonderoga* from early 1970 until Mr. Ament's discharge from the Navy. Mr. McKinney did not work in the same fireroom with Mr. Ament, but he testified that everyone in the firerooms used asbestos rope. Mr. McKinney described the process of installation of asbestos rope and the visible asbestos particles that would be generated when asbestos rope was cut. Mr. McKinney did not specifically identify any products supplied or manufactured by Crane on either of the ships on which he worked with Mr. Ament.

Edward Lenckus served with Mr. Ament on the *Kearsarge* from October 1968 to February 1970. Mr. Lenckus and Mr. Ament occasionally worked the same shift in Fireroom No. 4. Mr. Lenckus testified that all firemen and boiler tenders did exactly the same work in every fireroom. He recalled using asbestos rope to pack steam valves and

[2] None of the four witnesses testified in court. Instead, portions of the four witnesses' depositions were read into evidence as their trial testimony.

seal heaters on the firebox doors and boiler doors. Mr. Lenckus testified that he remembered seeing Mr. Ament remove asbestos-containing boiler door gasket material. Mr. Lenckus described the process of removing old gaskets and cutting new gaskets, which generated visible dust.

Mr. Lenckus was able to recall some of the manufacturers of sealing products used on the *Kearsarge*. He identified "Crane" and "Anchor" as two manufacturers of the rope packing product, "Flexitallic" as a manufacturer of gaskets, and "Crane" and "Garlock" as two manufacturers of sheet gasket material. Mr. Lenckus acknowledged that there were other manufacturers of the rope packing product and sheet gasket material but that he could not recall the identity of those manufacturers. Mr. Lenckus did not identify any specific instance during which Mr. Ament worked with products supplied or manufactured by Crane.

Thomas Worthy served on the *Ticonderoga* with Mr. Ament, although they never worked in the same part of the ship together. Mr. Worthy testified that he never saw Mr. Ament perform any work on the ship. Mr. Worthy formerly worked in Fireroom No. 4 on the *Ticonderoga*, but by the time Mr. Ament arrived on the *Ticonderoga*, Mr. Worthy worked in the supply shop. Mt. Worthy further testified about the use of asbestos-containing materials used by boiler tenders in the firerooms and explained that every boiler tender did the same job with the same materials. Mr. Worthy testified that there were "John Crane" packing products on the *Ticonderoga* and described the rope material used in the firerooms, but could not specifically state that Crane made the rope. Mr. Worthy identified other manufacturers of sealing products including Johns Manville, Chesterton, Flexitallic,

and Garlock, in addition to other manufacturers that he could not recall. Mr. Worthy did not specially remember Mr. Ament picking up supplies from the supply shop, nor did Mr. Worthy have any recollection of providing products to Mr. Ament for use in Fireroom No. 4. Mr. Worthy did not have any specific knowledge regarding any products with which Mr. Ament worked on the *Ticonderoga*.

The Aments designated Arthur Frank, M.D., as an expert witness prior to trial. During discovery, the Aments provided an affidavit from Dr. Frank that stated his theory was that mesothelioma is caused by an individual's lifetime cumulative exposure to asbestos. Dr. Frank's written report detailed Mr. Ament's work with asbestos-containing products while in the U.S. Navy, but did not specifically identify or discuss any products made or supplied by Crane (or any other manufacturer/supplier). Dr. Frank concluded generally that the "cumulative exposures [Mr. Ament] had to asbestos, from any and all products, containing any and all fiber types would have contributed to" and would have been a "substantial contributing cause to his developing" mesothelioma. Dr. Frank did not discuss any specific products, nor did Dr. Frank discuss the frequency, regularity, or proximity of Mr. Ament's exposure.

Dr. Frank continued to provide only general information at his deposition in 2015. Dr. Frank explained that he "didn't speak to Mr. Ament, family members, co-workers, treating physicians, [or] any other experts in this case." Dr. Frank "did not read Interrogatories, or any depositions." He had "seen no product characterizations of any of the products to which [Mr. Ament] was potentially exposed." He acknowledged that he

had "no knowledge about any of the defendants or the specific products that [were] at issue in this case."

Prior to trial, Crane filed two motions to exclude the causation opinions of Dr. Frank on the basis that his "each and every exposure/cumulative dose" causation opinions were inadmissible.[3] Crane argued that Dr. Frank's opinions were inadmissible pursuant to Maryland Rule 5-702[4] and maritime law because the opinions were not supported by a sufficient factual foundation or based upon a reliable methodology. At a hearing on Crane's motion, the circuit court inquired about the factual basis for Dr. Frank's testimony. The court expressed concern about the factual foundation for Dr. Frank's expert opinions, explaining that the court needed "to learn up front whether specifically the evidence that I am going to hear, that the jury will be expected to hear, will be enough to satisfy at least the 5-702 standard." The Aments responded that, at trial, they would "probably wind up with a half hour long hypothetical to give the doctor all the facts that we can glean from the testimony."

[3] Crane also moved to exclude a second expert witness designated by the Aments. The Aments ultimately declined to call the second expert witness at trial.

[4] Md. Rule 5-702 provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

The court asked counsel to "[t]ell [the court] what those fact[s] are that will be gleaned from the testimony." The Aments responded that they were not "prepared to make that proffer" at that time, but continued by summarizing the testimony of the four fact witnesses about Mr. Ament's exposure to asbestos while serving in the Navy.

The circuit court ultimately denied Crane's motion to exclude Dr. Frank's testimony, but required the Aments to provide the hypothetical question they intended to ask Dr. Frank in advance of trial.[5] The court explained:

> I don't believe in the circumstances that it would be apt or appropriate to allow the hypothetical to be unveiled in front of the jury. I believe that the best that I can do in the circumstances, given what I just talked to you about my view of *Savage*[6] -- the best that I can do is require announcement of the hypothetical and, thus, the facts that expected to be elicited at trial before calling Frank and [the Aments' other expert witness].
>
> * * *
>
> My job is to make sure that the claims and defenses of the parties are fairly tried and the facts are developed and measured and the jury is instructed properly about measuring those facts against applicable law . . . I am quite concerned about my obligation to make sure that the law is fairly applied,

[5] On appeal, the Aments assert that they are "aware of no rules of evidence or case law that would require [the] disclosure" of a hypothetical question prior to trial. The record reflects that the Aments did not object to the circuit court's requirement that they present a proposed hypothetical question in advance of Dr. Frank's trial testimony. Rather, as we shall discuss *infra*, the Aments voluntarily abandoned their strategy to use hypothetical questions at trial. Any issues relating to the propriety of the circuit court's ruling requiring a hypothetical be provided in advance of Dr. Frank's testimony is, therefore, not before us on appeal.

[6] The circuit court was referring to the Court of Appeals' extensive discussion of the *Frye-Reed* standard in *Savage v. State*, 455 Md. 138 (2017).

> including the rules of evidence as I am instructed by current appellate authorities.

The issue of the hypothetical arose again during trial, two days in advance of Dr. Frank's expected testimony. At this point, the Aments had not yet provided the hypothetical question(s) they intended to ask Dr. Frank. The Aments informed the court that they no longer intended to present Dr. Frank with a hypothetical question, explaining that "hypotheticals [were no] longer necessary." Instead, the Aments explained, Dr. Frank's expert testimony would be based upon the testimony of the four fact witnesses who had already testified. The Aments still agreed to provide Crane with "something" regarding a hypothetical question later that evening. The following exchange occurred:

> [COUNSEL FOR THE AMENTS]: And, Your Honor, as to the discussion up at the bench about the hypothetical, I have spoken to counsel. I am going to try to get them something this evening. I am not promising the time, considering we are still here, and I have to go back, but it will be sometime this evening.
>
> THE COURT: And we will arrange time or opportunity to address any issues with the hypothetical or statement of facts into evidence.

Later that evening, Crane received a summary of the four fact witnesses' deposition testimony from the Aments.

The following day (the day before Dr. Frank was scheduled to testify), the Aments informed the court that Dr. Frank -- who had been traveling out of the country -- had not, at that point, reviewed the testimony of the four fact witnesses. The Aments agreed to provide Dr. Frank with transcripts of the four fact witnesses to read "on the train whenever

he is coming in." Crane renewed its request to exclude Dr. Frank's testimony. The circuit court denied Crane's motion.

Dr. Frank was called to testify the following day. Because the Aments had never provided any hypothetical questions to the court beforehand, the circuit court did not permit them to ask hypothetical questions to Dr. Frank at trial. Dr. Frank described his fifty-year career as a physician and Professor of Medicine, detailing various research he had conducted and articles he had published on asbestos-related diseases, as well as his prior testimony in other cases as an expert witness. The circuit court received Dr. Frank as an expert witness in the fields of internal medicine, occupational medicine, asbestos-related disease, and malignant mesothelioma.

Dr. Frank testified that he had received an email with trial transcripts of the testimony of the four fact witnesses the night before and had read the transcripts after receiving them. The Aments attempted to elicit testimony from Dr. Frank about his expert opinions as to the causation of Mr. Ament's mesothelioma. The circuit court granted several objections by Crane on the basis that the opinions lacked a sufficient foundation. We set forth portions of the testimony below in order to illustrate counsel for the Aments' attempts to introduce causation testimony and the general tenor of the proceedings:

> [THE AMENTS]: Okay. Doctor, based on your knowledge, your training, and experience and your review of the evidence in this case, those documents, do you have an opinion as to whether or not the exposures expressed in those particular testimonies were at or above background level.
>
> [CRANE]: Objection. And which ones, Judge? What testimony? I mean, that's what we're -- I believe we were -- I object.

THE COURT: I am going to allow this as a prefatory question, and then you'll get back into the foundation. You may proceed.

[DR. FRANK]: From reading the testimony of the four gentlemen involved, it does appear that the exposures in question were above background.

* * *

[THE AMENTS]: Do you have an opinion as to the exposures testified to by those four gentlemen to the John Crane products and they discussed in their testimony that you reviewed were substantial contributing factors to the cause of Mr. Ament's mesothelioma?

[CRANE]: Objection.

THE COURT: All right. I'm going to sustain the objection . . . .

* * *

[THE AMENTS]: Based on reading the testimony as to John Crane's asbestos sheet gasket, was the use of this product by and around Mr. Ament a substantial contributing factor to Mr. Ament's mesothelioma.

[CRANE]: Objection.

THE COURT: Sustained. Lack of foundation.

* * *

(Beginning of bench conference.)

THE COURT: You're going to have to build this up. I allowed the -- the basic --

[THE AMENTS]: Your Honor --

THE COURT: What is it in the testimony of Worthy or Lenckus or McKinney or Lemire on which he relies for that opinion? I'm not going to let you put it to him.

[THE AMENTS]: He said he relied on the entire testimony.

> THE COURT: Well, let's get specific. I am not going -- I am not going to allow you to translate that into exposure to John Crane products.
>
> [THE AMENTS]: Your Honor, the Court compelled me to send him the trial transcript, which we did. He has read the trial transcript. He has said that he is relying on that trial transcript to make his opinions. That's the foundation. You asked for him to read it; he has read it.
>
> And as an occupational medicine expert, a person that studied this for 40 or 50 years, that's the type of material he reviews. He said that is sufficient for me to render an opinion that that's substantial contributing factor. I don't know what else we have to do.
>
> THE COURT: Yeah, I -- I know what else has to be done. And since you're not doing it in the form of a specific hypothetical question, I want to know specifically, not hypothetically, what it is in the testimony that he's relying on for any opinions to come.

The Aments continued to elicit specific causation opinions from Dr. Frank. Nevertheless, Crane's objections were repeatedly sustained because the circuit court determined that there was not a proper factual foundation for Dr. Frank's causation opinions.

After the Aments were unable to elicit causation testimony from Dr. Frank after multiple attempts, the circuit court expressed concern about whether there was a foundation for any of Dr. Frank's expert opinions. The court explained at a bench conference:

> I am giving plaintiff every extra benefit of the doubt to tread into leading questions, allowing him to describe the environment, quote, unquote.
>
> You will not be permitted to ask leading questions to get him to talk about a level -- hypothetical or otherwise -- of exposure that you need to in order to address regularity, proximity and frequency.

> But it is now becoming apparent to me that this witness is making up, without adequate appreciation for the witness' testimony, that there must have been some level of hypothetical exposure by Ament because of proximity to this, that or the other witness, never mind a particular product.
>
> On a going-forward basis, you can ask him for the foundation of these opinions, but you're not going to lead him to the witness' testimony again in any way, shape, or form.

The Aments subsequently attempted to pose a hypothetical question to Dr. Frank, but the circuit court sustained Crane's objection, explaining that the hypothetical was not based on facts in evidence and commenting that "it's too late for the hypothetical."

The Aments asked one additional question of Dr. Frank, inquiring whether Dr. Frank, "based on all the testimony [he] had read from the four gentlemen," had "an opinion to a reasonable degree of medical certainty as to whether the exposures to John Crane sheet gaskets were a substantial factor in the cause of Mr. Ament's mesothelioma." Crane objected to the question, and the circuit court sustained the objection. The Aments did not ask any additional questions. Prior to cross-examination, Crane informed the court it "ha[d] a motion" and "ha[d] no questions" for Dr. Frank.

Before hearing argument on Crane's motion, the court addressed Dr. Frank's schedule. The court suggested that Dr. Frank be released for lunch and told "to come back just in case." The Aments asked the court, "Why would [the court] prolong this even more?" The Aments commented that they had "tried every avenue" to elicit testimony from Dr. Frank and "s[aw] no reason to keep him here any longer." The Aments asserted that "the [c]ourt and [Crane] block[ed]" him from eliciting testimony from Dr. Frank. The circuit court responded:

> I have heard nothing from this witness except partially in response to the Worthy-related questions as to whether and how he translates anything that he saw and observed in the trial testimony of this case to address the potential or actual exposure as a bystander or otherwise by Mr. Ament in these workplaces.
>
> I allowed a fair number of leading questions. I'm appreciative that we are dealing with entirely circumstantial evidence. I appreciate [Dr. Frank's] capabilities and qualifications. But I have heard nothing from this witness that would get us to address that there was any level of exposure -- minimal or -- or any level of exposure.

Crane subsequently moved to strike Dr. Frank's testimony on the basis "that there [was] no testimony regarding general or specific causation to any product for which John Crane would be responsible." Crane argued that Dr. Frank's "testimony in total would be irrelevant, and we'd ask that you strike it." After hearing argument from both parties, the circuit court granted Crane's motion to strike. The court explained:

> It is the [c]ourt's understanding and finding that notwithstanding Dr. Frank's qualifications and capabilities and focus of attention, he was put into the extraordinarily difficult position of trying desperately to address a level of exposure as to which he was unable to articulate and certainly unable to find, according to his testimony, any level of exposure to asbestos by Mr. Ament that would come anywhere near addressing the requirements of [*Eagle-Picher Industries, Inc. v.*] *Balbos*[, 326 Md. 179 (1992),] and the legacy of *Lohrmann* [*v. Pittsburgh Corning Corp.*, 782 F.2d 1156 (4th Cir. 1986)], and certainly unable to address that any level of exposure to John Crane's product -- a singular product, the gasket sheeting . . . . He was unable to connect or articulate by reference to any of the witnesses -- Worthy and Lenckus to begin with, that there was exposure particularly to John Crane's gasket material, Product 2150, that -- and that exposure to that product at any point in time in his work on the *Ticonderoga* and/or the *Kearsarge* directly or circumstantially in the vicinity of such exposure was a substantial factor in causing the injury that Mr.

> Ament regrettably did suffer in mesothelioma leading to his death in -- on September 22, 2011.
>
> I was looking for, I was getting as far as I could to allow leading questions in order to address any exposure, let alone substantial or a high enough level of exposure that any inference that the asbestos was a substantial factor in the injury would be more than conjectural. I didn't even hear of minimal exposure.
>
> * * *
>
> I was expecting that, you know, somehow or other there would be some link based on scientific or medical evidence, but Dr. Frank's problematic testimony didn't get us anywhere -- anywhere we needed to be to address a high enough level of exposure. Any degree of regularity or proximity or frequency.
>
> * * *
>
> I recognize Dr. Frank's expertise. I recognize the cost associated with his appearance here today. In a perfect world, if we knew what Dr. Frank was prepared to or could have testified to back when we addressed the -- the motions in limine as to the causation opinions where we did -- I did raise a concern. I was expecting the hypothetical question as I indicated on -- on the record until I learned otherwise yesterday.
>
> I am compelled to strike the entirety of Dr. Frank's testimony as nonresponsive and totally not helpful on causation.

The Aments responded that they "believe[d] the court was obstructive in the testimony that was allowed." They argued that the facts supporting Dr. Frank's testimony were the types

reasonably relied upon by experts in the field of occupational medicine as permitted by Maryland Rule 5-703.[7] The court replied:

> The balance of [Maryland Rule] 5[-]702, subpart three, is the source of my disappointment.
>
> I could not find in this witness' testimony a sufficient factual basis upon which he relied, any sufficient foundational basis -- factual foundational basis to support what I was otherwise expecting to hear as to a level of exposure that would support by inference that Mr. Ament's mesothelioma upon exposure to asbestos was -- that his exposure onboard the vessels was a substantial factor in his injury. I couldn't get past the conjecture that was apparent on the face of Dr. Frank's testimony.

[7] Rule 5-703 provides:

> (a) The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.
>
> (b) If determined to be trustworthy, necessary to illuminate testimony, and unprivileged, facts or data reasonably relied upon by an expert pursuant to section (a) may, in the discretion of the court, be disclosed to the jury even if those facts and data are not admissible in evidence. Upon request, the court shall instruct the jury to use those facts and data only for the purpose of evaluating the validity and probative value of the expert's opinion or inference.
>
> (c) This Rule does not limit the right of an opposing party to cross-examine an expert witness or to test the basis of the expert's opinion or inference.

The circuit court subsequently granted Crane's motion for judgment on the basis that the Aments had failed to prove causation.[8]

This appeal followed.

## DISCUSSION

In this appeal, we address whether the circuit court abused its discretion by determining that Dr. Frank's expert testimony lacked a sufficient factual foundation pursuant to Maryland Rule 5-702. *See Rochkind v. Stevenson*, 454 Md. 277, 285 (2017) ("We review a circuit court's decisions to admit or exclude expert testimony pursuant to Maryland Rule 5-702 applying the abuse of discretion standard.). A trial "court's ruling on whether to admit or exclude expert testimony will seldom require a reversal. A lower court's ruling, however, may be reversed if the lower court clearly abused its discretion or founded its ruling on some error of law." *Samsun Corp. v. Bennett*, 154 Md. App. 59, 67 (2003).

Maryland Rule 5-702 provides that "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." The rule requires the court to determine "(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert

[8] The Aments presented no other expert witnesses on the issue of causation.

testimony." *Id.* "The burden rests with the proponent of the expert testimony to demonstrate that these requirements have been met." *Rochkind, supra*, 454 Md. at 286.

In this appeal, we focus upon the third prong of the Rule 5-702 analysis and consider whether the circuit court abused its discretion by concluding that Dr. Frank's testimony lacked sufficient factual basis. The Court of Appeals discussed the third prong of Maryland Rule 5-702 at length in *Rochkind, supra*, 454 Md. at 286, explaining as follows:

> We have interpreted the third prong of this analysis -- sufficient factual basis -- to include two subfactors: an adequate supply of data and a reliable methodology. *Roy v. Dackman*, 445 Md. 23, 42-43, 124 A.3d 169 (2015) (citation omitted); *see also Exxon Mobil Corp. v. Ford*, 433 Md. 426, 478, 71 A.3d 105 (2013). To constitute "more than mere speculation or conjecture," the expert's opinion must be based on facts sufficient to "indicate the use of reliable principles and methodology in support of the expert's conclusions." *Ford*, 433 Md. at 478, 71 A.3d 105 (citation and internal quotation marks omitted). To demonstrate a sufficient factual basis, an expert must establish that her testimony is supported by both subfactors.

In their brief, the Aments emphasize that Maryland appellate courts have repeatedly approved the admission of expert testimony stating that exposure to asbestos products is a substantial contributing factor in the development of mesothelioma. The Aments assert that the circuit court engaged in "a judicial evisceration of" Dr. Frank and the Aments' case and would not allow Dr. Frank to offer any substantial factor causation testimony. The Aments argue generally that the testimony of the four fact witnesses provided a sufficient factual basis as to Mr. Ament's exposure to asbestos-containing products manufactured or sold by Crane and that Dr. Frank should have been permitted to state his expert opinion on substantial factor causation.

In their brief, the Aments emphasize Dr. Frank's extensive qualifications and the fact that he was received as an expert witness without objection from Crane. Before the circuit court and in this appeal, Crane has never disputed that Dr. Frank was a qualified expert in his field. Critically, however, the fact that a witness has been tendered and accepted as an expert in his or her field is not the end of the analysis required by Rule 5-702. *Giant Food v. Booker*, 152 Md. App. 166, 182 (2003) ("[S]imply because a witness has been tendered and qualified as an expert in a particular occupation or profession, it does not follow that the expert may render an unbridled opinion, which does not otherwise comport with Md. Rule 5-702."). "'[N]o matter how highly qualified the expert may be in his field, his opinion has no probative force unless a sufficient factual basis to support a rational conclusion is shown.'" *Id.* (quoting *State Dep't of Health v. Walker*, 238 Md. 512, 520 (1965)).

The Court of Appeals has explained that "[t]he data supporting an expert's testimony 'may arise from a number of sources, such as facts obtained from the expert's first-hand knowledge, facts obtained from the testimony of others, and facts related to an expert through the use of hypothetical questions.'" *Rochkind*, *supra*, 454 Md. at 286-87 (quoting *Sippio v. State*, 350 Md. 633, 653 (1998)). Furthermore, "[t]he facts or data that form the basis of the expert's opinion may be 'perceived by or made known to the expert at or before the hearing.'" *Id.* (quoting Md. Rule 5-703(a)). "If the materials the expert relies upon are 'of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject,' they do not need to be admissible in evidence." *Id.*

In this case, the circuit court ruled that the Aments would be required to produce a hypothetical prior to trial.[9] This decision of the circuit court was not challenged below or in this appeal. Prior to trial, the Aments voluntarily abandoned their plan to elicit Dr. Frank's testimony through hypothetical questions. Instead, the Aments proffered to the circuit court that the factual foundation for Dr. Frank's testimony was the testimony of the four fact witnesses. Our task on appeal is, therefore, limited to considering whether the circuit court erred by concluding that there was an insufficient factual basis for Dr. Frank's testimony.

The Aments have not identified the specific facts that, in their view, form the foundation for Dr. Frank's testimony. Rather, they state in a conclusory manner that "[t]here was a sufficient factual basis as to Mr. Ament's asbestos exposure to John Crane products." Moreover, the Aments do not argue in this appeal that the circuit court erred by sustaining specific objections lodged by Crane during Dr. Frank's testimony.

It is the responsibility of the appellant "to pinpoint the errors raised on appeal and to support their contentions with well-reasoned legal argument." *Fed. Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. 446, 458 (1979) (applying the former Md. Rule

[9] The circuit court repeatedly expressed concern about the factual foundation for Dr. Frank's testimony pre-trial and these concerns formed the basis for her ruling requiring a hypothetical be produced prior to Dr. Frank's testimony. Indeed, although an expert witness need not testify based upon his or her personal knowledge, the expert witness "must base his or her opinion on facts that that parties have adduced into the record." *Shives v. Furst*, 70 Md. App. 328, 341 (1987). The circuit court required that the hypothetical be produced ahead of time in order to ensure that any hypothetical question posed to Dr. Frank be based upon evidence in the record.

1031).[10] "[O]ur function is not to scour the record for error once a party notes an appeal and files a brief." *Id.* at 457. Although the Aments argue generally that the circuit court "consistently prevented Plaintiffs' counsel from presenting to Dr. Frank foundational questions that would have allowed his testimony," they fail to cite to any particular question that they believe was improperly precluded by the trial court. The Aments have further failed to argue why particular objections were, in their view, improperly sustained. It is not our task on appeal to evaluate the propriety of the circuit court's rulings on various objections that have not been specifically identified on appeal, nor it is our task to speculate as to whether specific questions scattered throughout over one hundred pages of transcript could have perhaps established a foundation for Dr. Frank's testimony had the circuit court not sustained objections to those questions below.

The Aments further assert that "Dr. Frank's testimony and opinions were exactly what was permitted and approved in" *Dixon v. Ford Motor Co.*, 433 Md. 137 (2013). The Aments fail, however, to explain how Dr. Frank's testimony is in any way analogous to the

[10] The former Rule 1031 required that an appellant's brief include, among other things:

> A brief statement of the case together with a [s]uccinct statement of the questions presented separately numbered. The statement of the questions presented [s]hall indicate the legal propositions involved and the Questions of fact at issue expressed in the terms and circumstances of the case without necessary detail.
>
> Argument in support of the position of the appellant.

*Fed. Land Bank of Baltimore, Inc. v. Esham*, 43 Md. App. at 458 (quoting then-existing Md. Rule 1031). The same requirements are set forth in the current Md. Rule 8-504.

testimony in *Dixon*.[11] *Dixon* is entirely inapplicable to the issue before us in this appeal. In *Dixon*, the Court of Appeals addressed whether a particular expert witnesses' causation opinions were based upon a reliable methodology.[12] *Id.* at 149-54. The factual foundation for the expert's opinions was not challenged in *Dixon*.[13] The Court of Appeals did not hold in *Dixon* that causation opinions in asbestos-related cases are admissible without a factual foundation.

Despite being asked repeatedly, Dr. Frank was unable to articulate at trial how the testimony of the Aments four fact witnesses supported his opinion that Mr. Ament's mesothelioma was caused by exposure to asbestos-containing products manufactured and/or supplied by Crane. The circuit court's application of Rule 5-702 and analysis of whether Dr. Frank's causation opinions had a sufficient factual foundation did not constitute a "judicial evisceration" of Dr. Frank's testimony. As we have explained, the circuit court enjoyed "wide latitude" in making this determination. *Alford v. State*, 236 Md. App. 57, 252-53 (2018). For the reasons we have explained, we reject the Aments' unsupported assertions that the circuit court's decision to strike Dr. Frank's testimony was "egregious, abusive and clearly wrong." Accordingly, we hold that the circuit court did

[11] Indeed, the Aments do not include a pincite to identify the portion of *Dixon* which they believe is relevant to this case.

[12] Crane raised the issue of the reliability of Dr. Frank's methodology before the circuit court, but this was not the basis upon which Dr. Frank's testimony was excluded and is not at issue on appeal.

[13] In *Dixon*, the expert's causation opinions were elicited through a hypothetical question at trial.

not abuse its discretion by concluding that Dr. Frank's causation testimony lacked a sufficient factual foundation.

**JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**