

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: 3M COMBAT ARMS
EARPLUG PRODUCTS
LIABILITY LITIGATION

Case No. 3:19md2885

This Document Relates to:
Baker, 7:20cv39
McCombs, 7:20cv94

Judge M. Casey Rodgers
Magistrate Judge Gary R. Jones

ORDER

This ruling applies to all scientific study reports sought to be admitted by either party during the *McCombs* and/or *Baker* trials.

No fact witness may be examined regarding the results of a scientific study—even one meeting a hearsay exception as a business record, government report or public record—unless the witness has personal knowledge of how the study was conducted and can verify its results. On the other hand, while a fact witness’s interpretation or opinion about a scientific study’s validity or results is ordinarily irrelevant (absent personal knowledge of the study; i.e., James Lovejoy, Mary Binseel), a witness’s knowledge of a study may be relevant for some other purpose. For example, a witness’s knowledge of a study may be relevant to show the military’s or Defendants’ notice of the study. The party seeking to examine a fact witness about a scientific study—where the witness does not have personal knowledge of the study—must first demonstrate the relevance of the witness’s

testimony about the study at issue.¹ *Cf. City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-1362, 2021 WL 1382379, at *3 (S.D.W. Va. Apr. 12, 2021) (“[B]efore [a] plaintiff can argue non-hearsay notice she must show that the defendant was at least inferentially put on notice by the report.” (quoting *George v. Celotex Corp.*, 914 F.2d 26, 30 (2d Cir. 1990))).

Of course, the parties remain free to examine or cross-examine expert witnesses regarding the bases for their opinions using any relevant scientific study. These study reports may be published to the jury but they will not be admitted into evidence. Also, a cautionary instruction will be given about the hearsay nature of the study report absent a hearsay exception. In the event a hearsay exception applies and absent some other basis for exclusion, the study report will be admitted.

DONE AND ORDERED this 6th day of May 2021.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

¹ This ruling is distinguishable from the rule that corporate and military documents (other than government scientific study reports) meeting a hearsay exception may be used with a witness who has no personal knowledge of the document. By their very nature, scientific study reports require explanation and interpretation by either a fact witness with personal knowledge of the study or an expert witness qualified to discuss the pertinent specialized subject matter. Otherwise, the jurors themselves would be left to interpret and weigh the scientific study without explanation of the study’s purpose, methodology, and/or results.