The Metropolitan
Corporate Counsel®

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Volume 13, No. 4 April 2005

An Expert Who Has Been There – Dr. Ronald E. Gots

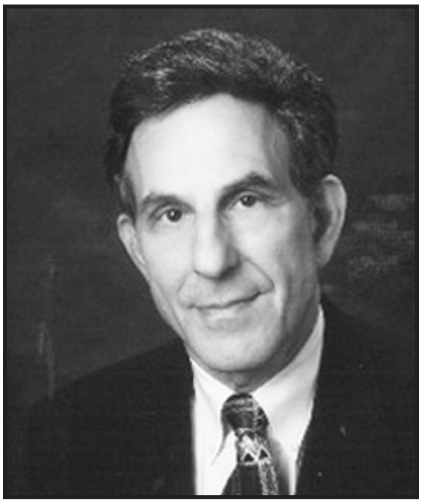
The Editor interviews ***Ronald E. Gots, M.D., Ph.D.****,and CEO of International Center for Toxicology and Medicine.*

Editor: Please give us information about your background and education.

Gots: I have an undergraduate degree in chemistry from the University of Pennsylvania and an M.D. from the University of Pennsylvania School of Medicine. I interned at Johns Hopkins University Hospital and did some residency training at Harbor UCLA Medical Center. I later received a Ph.D. in pharmacology from the University of Southern California School of Medicine. I was a member of the division of gastroenterology doing toxicological research in the 1970s for the Army. Since that time I have been doing consulting work primarily in many areas involving environmental and occupational toxicology and pharmacology. Working with people in workplaces who have potential exposures and risks from agents in the work place, I evaluate them and also do a lot of risk communications with community groups and others who have had some potential exposure. I work on contracts with the FDA, run occupational medicine clinics for various clients, primarily the federal government, and do a good deal of litigation support in both individual and mass tort multi-litigant claims.

Editor: Describe the backgrounds of other principals at ICTM.

Gots: We have two physicians, one who is board certified in internal medicine and occupational medicine and another trained in opthalmology who has been working in our claims evaluation area for the last 20 years. She is the former medical director for the City of Philadelphia. We have a Ph.D. toxicologist, masters level scientists and masters level library researchers who are experts in medical and scientific library review and evaluation. And we have a large support staff including our president, Don Franklin, an IT department and so forth. Finally, we have a large national network of physicians and scientists.



Ronald E. Gots, M.D., Ph.D.

Editor: Please present our readers with an overview of some of the mass tort claims cases with which you have been involved.

Gots: One of the earliest was in the agent orange litigation for Dow Chemical in the 1980s. Since then we have been involved in thousands of other cases and hundreds of mass tort claims including matters involving the City of Tuscon in which there were thousands of claimants. Those cases dealt with drinking water contamination, stemming from the 1940s when the airport would wash down airplanes with trichloroethylene. Both the city and airport were defendants in those cases. We have worked on numerous Superfund site matters, including the McColl site in California. We have worked on underground storage tank leaks, explosions at chemical facilities, tank car derailments, flare outs from chemical plants, numerous indoor environmental matters and numerous pharmaceutical liability matters.

Editor: How have *Daubert and Frye* underscored the need for experts who have outstanding credentials?

Gots: I am old enough to remember when attorneys used Rule 702 and other federal rules of evidence to exclude opposing experts for lack of relevancy or lack of ability to enlighten a jury. That was well before *Daubert* came about in the early 1990s. When *Daubert* was decided, I thought it would work to the benefit of defendants because so many claims heretofore did not involve good evidence of a causal relationship. I testified at one of the first *Daubert* hearings in 1993 in which the defense won a favorable decision and the plaintiff experts were excluded. Since that time we have done a tremendous amount of work on *Daubert* matters, both working on individual cases where we provided affidavits and brought together scientific information, accumulated various experts to help our clients, and also have been successful in getting experts excluded on the other side when they did not have good scientific support for their positions. I have written chapters in books on *Daubert,* including all of the elements and the scientific applications. I have also signed on to successful amicus briefs that have been submitted to both state

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supreme courts and the U.S. Supreme Court.

Editor: How do you interface with attorneys in claims management situations? Explain how the expert serves as an integration manager in a given case.

Gots: In complex cases we have had much success as co-manager of the medical and scientific information where we assemble all of the expertise or work with the experts who are brought in by counsel to make sure that the information gathered is appropriate, relevant and serves our needs. There may be a regulatory or other needs in which we may not be involved. However, when it comes to personal injury claims, all of the experts provide information that is relevant to decision making so that integration is important to avoid duplication and to ensure that it is useable. We have a senior nurse with a masters degree. She has a team of 15 nurses who put medical records into a database, an activity we have been performing for some time. We have a highly functional database which takes complex medical records and makes them useable and understandable. We also developed an automated program called the T2S2 system which, when combined with a document management program for specific cases, can do an initial cut at causation assessment in thousands of claims. It hones down on those claimants who are most likely to have potential relationships and reasonable claims. It is an automated approach to managing multiple litigants and complex data, refining this data to focus on those cases of most concern. We own that system and combine it with a document management system which is set up on a secure extranet for the client along with scientific literature relevant to the matter at hand.

Editor: In personal injury cases where you have spent much time and effort, what are the criteria you use before agreeing to serve as a consultant or expert witness?

Gots: Although the bulk of our work is with defendants**,** as a consultant our firm will evaluate almost any matter regardless of size whether we are called by a plaintiff or defendant. My willingness to be an expert witness, however, requires that I believe strongly that the scientific and medical evidence is supportive of my client. Because we apply a systematic approach to causation assessment that is consistent and well recognized, it is a straightforward decision to make. I have never been excluded from testifying on the basis of a methodological issue. That is because the methodology is consistently applied to all of our matters.

Editor: In terms of general causation, what is required to set up a claimant position?

Gots: I call it the "can, does, did" approach. "Can" is can the agent at issue cause the effect? "Does" is what does the claimant have wrong with him? "Did" is did the agent cause it? The "Can" issue is the general causation issue. That means is there good scientific support for the proposition that the agent or agents in question are able to cause the disease at issue. That depends on the quality of all of the scientific data – the epidemiology, the toxicology, etc. Does the weight of evidence lead one to decide that there is sufficient evidence to say that the potential for causation has been established? The general causation is the potential for something to cause an outcome.

Editor: In terms of specific causation, explain the roles of various scientists and medical personnel in establishing a claimant's position.

Gots: That is the "Did" in question. The fact that something can cause something does not mean that it did cause it. For example if you put purified botox on the head of a pin and disperse it in an auditorium, 1,000 people will die. But if you dilute it one part per million and inject it under the skin, it is used to treat wrinkles. So the fact that something can cause a disease does not mean that it *did* cause it in the individual case. Specific causation questions we ask are: was the patient exposed to a sufficient dose to cause the disorder, was the temporal relationship correct, was the latency period correct, for example, if we are dealing with cancer. Are there alternate explanations for the problem that are more compelling than the one being claimed? For instance, does the morphology relate to the symptoms? Let's say that someone has a specific type of liver disease that a certain chemical can cause, but the liver biopsy shows a different type of liver disease. We then do not have a relationship between the two. Those are some of the elements of specific causation.

Editor: Explain the role of the expert in debunking the testimony and methodology of opposing experts.

Gots: The breast implant cases are interesting because they reached the court house based upon specific allegations and lots of anecdotal case reports before there was a general causation established. After about 17 well done epidemiological studies, the general causation issue went away because the implants did not cause a mixed connective tissue disease. As far as future claims, that is more of a legal than a medical question. Unless there is some foundation upon which one can allege future risks, no claim should be made.

One way in which we distinguish ourselves in litigation as opposed to someone hired just to testify is that we work with our clients in teaching them the science or medicine they need to know regarding the claims of the opposing side and why they are making those claims. Our clients do not get that from someone who is simply in a busy practice and is brought in to testify briefly on a given matter. We work closely as a team with our attorney clients, including identifying the strengths and weaknesses of our position and of the other side's position, looking at the literature that is supportive of us and that which supports the other side. We balance those and help the attorneys understand them. If the client's position is substantially stronger, we will help with affidavits, help secure other experts, assist in deposing opposing experts to highlight their weaknesses or by helping attorneys write motions.

Editor: Why is it important to have a lead expert in a complex case to coordinate all parties involved in scientific discovery and testimony?

Gots: In complex cases it is a complicated business to integrate scientific and medical information. Those are areas that are not within the customary expertise of the attorney. The attorney is well served by having a coordinating expert, an integration manager, who will pull together the various data, scientific research and medical information as well as all of the information brought in by the other side in order to put that into a framework which is useful for the attorney client. Absent this role, the attorney has lots of data but does not have an integrated compilation of that data, which is so important in dealing with opposing experts, putting on your own case, dealing with motions and affidavits, trying to get *Daubert* or *Frye* exclusions or other procedural issues along the way. Part of our role is to make sure that the fact finders are able to understand complex information in ways that they can absorb the information and make good decisions. We consider ourselves good translators of complex science and medicine for legal applications. We have been involved in about 75 *Daubert* exclusions in which our clients have prevailed.

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