NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 12 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DENISE HAYNES, decedent by her successor in interest Senyah Haynes and A.L.H., a minor by his guardian ad litem Donald Haynes; et al., Plaintiffs - Appellants, v. NATIONAL RAILROAD PASSENGER CORPORATION, doing business as Amtrak; et al., Defendants - Appellees.	No. 07-56609 D.C. No. CV-05-07696-DDP MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Dean D. Pregerson, District Judge, Presiding

Submitted March 9, 2009[**]
Pasadena, California

Before: HAWKINS, BERZON and CLIFTON, Circuit Judges.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiffs Senyah and Adam Haynes (collectively, the "Haynes"), appeal the adverse grant of summary judgment in this wrongful death action arising from Amtrak's failure to warn of the risk that long-distance train travel can cause deep vein thrombosis ("DVT"). The Haynes argue the district court prejudicially abused its discretion by excluding the expert declaration of Dr. Mark Sanders ("Dr. Sanders"). Reciting the facts only as necessary, we affirm.

Dr. Sanders has extensive qualifications and education in "Human Factors," but that expertise simply does not qualify him to render expert opinions on either (1) the risk that prolonged train travel would cause DVT or (2) the foreseeability of the alleged risk. Dr. Sanders has no expertise in medicine, public health, epidemiology, DVT, or train travel. Nothing in the record demonstrates that he has any independent expertise qualifying him to give an opinion regarding medical causation or foreseeability.

Dr. Sanders's opinion was also properly excluded because his opinion was not "based upon sufficient facts or data" or otherwise "the product of reliable principles and methods." Fed. R. Evid. 702; *see also Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579, 590 (1993). The Google search and the CNN.com report, which would both ordinarily be a basis for little more than lay speculation, do not provide an appropriate basis for expert opinion on the reasonable foreseeability of DVT.

The remaining reports Dr. Sanders relied on are also insufficient to support a reliable expert opinion on the foreseeability of DVT risk on trains. First, there is nothing in the record indicating that experts in the field typically rely on these types of reports to formulate expert opinions. Second, experts are properly disqualified if the studies on which they rely merely suggest, without definitely concluding, the truth of a particular assertion. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 144-47 (1997). None of the reports relied on by Dr. Sanders provide clear and direct support for his opinion regarding the foreseeability, in 2003, of DVT risk from train travel, and he has no independent expertise to make that judgment himself. The district court therefore properly excluded Dr. Sanders's expert opinion.

AFFIRMED.