

SUPREME COURT OF LOUISIANA

NO. 2019-CC-01638

IRMA HANNEGAN

VERSUS

PPG INDUSTRIES, INC., ET AL.

**ON SUPERVISORY WRITS TO THE CIVIL DISTRICT COURT
PARISH OF ORLEANS**

GENOVESE, J., would grant this writ for the following reasons:

In this mesothelioma case, plaintiff alleges that her father contracted mesothelioma as a result of being exposed to asbestos while working for defendant, Conoco. Conoco filed a motion for summary judgment, contending that plaintiff in her opposition presented no admissible evidence that her father was exposed to asbestos at any Conoco facility. In opposition to Conoco’s motion for summary judgment, plaintiff relied on the hearsay deposition testimony of her two brothers. Plaintiff’s two brothers deposed that when they were boys, their father told them he worked at the Conoco plant in Lake Charles, Louisiana. Plaintiff had no personal knowledge of this.

The trial court denied Conoco’s motion for summary judgment, and the Court of Appeal denied Conoco’s writ in a split decision, with Judge Dysart dissenting. In my view, Judge Dysart got it right.

Louisiana Code of Civil Procedure Article 967 mandates that an affidavit in a summary judgment proceeding be made on personal knowledge, that it set forth facts as would be admissible in evidence, and that the affiant is competent to testify as to the matters stated therein. Like the adage, “What’s good for the goose is good for the gander.” It is both illogical and implausible to contend in a summary

judgment proceeding involving an essential element critical to plaintiff's cause of action that deposition testimony need not be based on personal knowledge, whereas an affidavit must be based on personal knowledge. Plaintiff cannot defeat a motion for summary judgment with hearsay and inadmissible deposition testimony not based on personal knowledge.

I would grant this writ; however, in accordance and compliance with La.Code Civ.Proc. art. 966(H), I would assign this case for briefing and permit the parties an opportunity to request oral argument.