

The Supreme Court of the State of Louisiana

EMILY EVERETT

No.2019-CC-01975

VS.

AIR PRODUCTS AND CHEMICALS INC., ET

AL.

IN RE: William Everett, Jr., Individually and on behalf of the Deceased, Emily Everett - Applicant Other; Paula Everett, Individually and on behalf of the Deceased, Emily Everett - Applicant Other; Applying For Supervisory Writ, Parish of Orleans Civil, Civil District Court Number(s) 2018-5845, Court of Appeal, Fourth Circuit, Number(s) 2019-C-0980;

May 26, 2020

Writ application granted. See per curiam.

JHB

BJJ

JDH


SJC

Weimer, J., would deny.

Genovese, J., would deny.

Crain, J., would grant and docket.

Supreme Court of Louisiana
May 26, 2020


Clerk of Court
For the Court

05/26/20

SUPREME COURT OF LOUISIANA

NO. 2019-CC-1975

EMILY EVERETT

v.

AIR PRODUCTS AND CHEMICALS, INC., ET AL.

ON SUPERVISORY WRIT TO THE CIVIL DISTRICT COURT,
PARISH OF ORLEANS

PER CURIAM

Granted. Based on the limited information presented, we are unable to determine whether the district court abused its discretion in granting the motion to exclude Dr. Holstein's expert opinion on causation and to preclude him from testifying regarding specific causation. In particular, it is unclear whether the district court's ruling was based on concerns about Dr. Holstein's methodology or the evidentiary foundation of his testimony pursuant to La. Code Evid. art. 702(A)(2).¹

Accordingly, the judgment of the district court is vacated and set aside. The case is remanded to the district court to make specific findings, after an appropriate hearing, as to whether Dr. Holstein's testimony on causation satisfies the requirements of La. Code Evid. art. 702 as well as the considerations set forth in *Daubert v Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and *State v. Foret*, 628 So. 2d 1116 (La. 1993).²

¹ In reaching this conclusion, we note the district court's reasons for judgment suggest some confusion regarding the distinction between the qualitative and quantitative methods for establishing asbestos exposure. See generally *Robertson v. Doug Ashy Bld. Materials, Inc.*, 14-0141 (La. App. 1 Cir. 12/23/14), 168 So. 3d 556, writ denied, 15-0365 (La. 4/24/15), 169 So. 3d 364.

² To the extent there are disputes over the accuracy of the facts relied upon by Dr. Holstein, the court may find such a challenge goes to the weight of the testimony rather than its admissibility. Additionally, any challenge over the accuracy or sufficiency of the facts underlying the expert opinion may be resolved by an appropriate pre-trial motion, such as a

motion for summary judgment, or at trial by the trier of fact. *See, e.g., Walashek v. Air Liquid Systems Corporation*, 2016 WL 614030 (S.D.Cal. Feb. 16, 2016) (Not Reported in Fed. Supp.).