R.J. Reynolds, Crane Can’t Shake $8M Asbestos Award (2)

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News Story

- Florida rejects federal standard for admissibility of expert testimony
- $8 million jury award reinstated in mesothelioma suit against

By Peter Hayes

(Bloomberg Law) --
R.J. Reynolds, Crane Co., and other manufacturers must pay a Florida jury’s $8 million award to the estate of an industrial worker who died of asbestos, the Florida Supreme Court held.

The trial court correctly applied the state’s own test, and not a more-stringent federal one, in allowing the jury to hear the plaintiff’s expert witnesses, the Florida top court also said.

The case drew substantial attention from business-backed groups that filed friend of the court briefs in support of the companies.

The outcome turned on which of the two standards Florida courts should apply in evaluating the admissibility of expert testimony.

The Supreme Court reaffirmed that the *Frye*, not the *Daubert* test used in federal court, is the applicable standard in Florida.

Daubert would make product liability cases based on complex theories of how an injury was caused harder to prove.

The legislature exceeded its authority when it amended state law to impose the more stringent *Daubert* standard, the high court ruled.

Most States Follow Federal Rule

Florida remains among the minority of states that haven’t expressly adopted the federal guidelines.

Under *Frye*, if the plaintiff shows that the underlying scientific principle and the testing procedures used to apply it to the facts of the case are generally accepted then there is no further inquiry.

"That's the way it should be," one of the attorneys for the plaintiff, James Ferraro of Ferraro Law Firm in Miami, told Bloomberg Law.

Under *Daubert*, Ferraro said that judges are forced to play scientist.

"I think six people on a jury are better equipped to make a scientific judgment," he said.

"It's also usurping the right to a jury trial, and a tremendous waste of time," with motions being filed in every case, Ferraro said.

But an attorney for the Washington Legal Foundation, which filed a brief supporting the companies, said the ruling is a "jurisprudential disaster."

"Florida is now a glaring outlier among the overwhelming majority of state and federal jurisdictions that have rejected the *Frye* test," WLF attorney Cory Andrews said.

"The quality of decision-making in the Florida courts rests on the ability of Florida judges to ensure that unreliable 'scientific' expert evidence is never presented to the finder of fact," Andrews said.

The ruling excuses judges from their gatekeeping obligation **"**by inviting them to decide that the reliability of an expert's opinion bears upon its weight rather than its admissibility," he said.

This, he said, "will have disastrous unintended consequences, undermining the Florida civil justice system's ability to produce a fair and just result."

After developing mesothelioma, Richard DeLisle sued multiple defendants.

DeLisle alleged he was exposed to asbestos products made by Crane and Owens-Corning Fiberglass while working for Brightwater Paper.

He also alleged that he was exposed to asbestos-containing filters in Kent cigarettes, manufactured by a predecessor of Lorillard Tobacco, a company now owned by R.J. Reynolds. The filters were supplied by a former subsidiary of H & V.

The jury apportioned fault between Crane, Lorillard, H&V, Brightwater and Owens-Corning.

An intermediate appeals court, applying *Daubert*, reversed and ordered a new trial for R. J. Reynolds and and ordered the dismissal of the claims against Crane.

The U.S. Supreme Court, in *Daubert v. Merrell Dow Pharmaceuticals,* required federal trial judges to ensure expert testimony is the product of a sound methodology before admitting it at trial.

The century-old test from *Frye v. United States* examines whether novel scientific testimony is based on generally accepted theories in the relevant scientific community.

The case is DeLisle v. Crane Co., 2018 BL 379234, Fla., No. SC16-2182, 10/15/18.

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