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SECTION: Vol. 5, No. 7

HEADLINE: Expert Testimony Stricken From Pending, Future Asbestos Cases In Lamar County, Texas

DATELINE: PARIS, Texas -

BODY:

Finding the testimony of two asbestos experts "junk science," a Texas state judge on July 5 suppressed their testimony from pending and future cases filed by the Texas law firm Waters & Kraus in Lamar County (In re: Lamar County asbestos litigation cases filed or to be filed by Waters & Kraus in Lamar County, Texas, No. n/a, Texas Dist., Lamar Co.).

Lamar County District Court Judge Jim D. Lovett ruled that testing conducted at Materials Analytical Services Inc. (MAS) in Norcross, Ga., by asbestos experts William Longo and Richard Hatfield constitutes junk science and their testimony will not be admitted in any pending or any future cases filed by Waters & Kraus. Under the judicial reliability standards set forth in *Daubert v. Merrell Dow Pharmaceuticals Inc.* (No. 93-509, U.S. Sup.) and *E.I. Du Pont de Nemours v. Robinson* (No. 95-923, Texas Sup.), Judge Lovett ruled that the experts' testimony from the tests performed at MAS is inadmissible under Texas Rules of Evidence 401, 402, 403, 702 and 703.

Judge Lovett's ruling to suppress the testimony of the experts, based on evidence presented at a June 20 hearing, is believed to be the first time testimony from Longo and Hatfield has not been admitted into trial. The judge's decision is in response to a motion by Garlock Inc., a defendant in cases brought by Waters & Kraus.

A source told Mealey Publications that the decision will affect nearly 50 asbestos cases filed by the firm in Lamar County.

Hatfield And Longo

Hatfield and Longo, longtime asbestos experts, perform testing at MAS using Tyndall lighting to measure how much dust is emitted when performing a variety of occupational duties using products that sometimes contain asbestos. In calling the experts' methodology of testing dust in controlled settings "junk science," Judge Lovett found that the MAS tests start with the assumption that people have been exposed to airborne asbestos fibers from workplace activities involving certain products and then select methods to achieve the desired results in each instance.

The products Hatfield and Longo tested at MAS include Garlock and other brands of gaskets, insulating cement, Kaylo products and Kelly-Moore joint compound.

Using the Robinson criteria as a guide, Judge Lovett ruled that the tests are not sufficiently tied to the facts of any individual case in a manner to "aid the finder of fact in resolving a factual dispute." The Robinson factors are whether the underlying theory or technique has been generally accepted as valid by the relevant scientific community, whether the theory has been subjected to peer review and publications, the nonjudicial uses that have been made of the theory or technique, the technique's potential rate of error, the extent to which the theory has been or can be tested and the extent to which the technique relies upon subjective interpretation by the expert.

Through previous testimony, other experts studies, exhibits and similar cases in which the experts were involved, Judge Lovett found that the use of Tyndall lighting in the MAS tests is not an acceptable industrial hygiene practice and is not relevant or reliable for the quantification of airborne asbestos fibers.

"The methods used in the MAS tests are not generally recognized within the relevant scientific community and are not recognized by peer reviewed articles that have been published in recognized and generally accepted scientific journals," the judge said.

Controlled Conditions

The judge also ruled that the MAS testing was performed in controlled conditions and that the experts were "deficient in their failure to account for variable but reasonably foreseeable conditions in the possible pathways of exposure."

Judge Lovett also rejected the testimony of asbestos expert James Millette, Ph.D., a microscopist from Atlanta, who attempted to corroborate with his own studies and qualify the MAS testing and Tyndall lighting methods as valid. Millette spoke to the court in a deposition on June 7.

"The court likewise rejects the testimony of Dr. Millette as being insufficiently corroborated by peer reviewed publications and lacking in corroboration with any respectable community of scientists who accept the methodologies of the MAS tests. When combined with his faulty memory and evasive answers, his opinions are not credible," the judge said.

Order Binding

The order by Judge Lovett is binding to Garlock and all other defendants in the Lamar County asbestos litigation cases filed by Waters & Kraus using the testimony of Longo and Hatfield based on their MAS tests.

Garlock is represented by Ray Harris of Whittenburg Whittenburg & Schachter in Dallas. Representing Waters & Kraus is Peter Kraus of Waters & Kraus in Dallas.

Order and exhibits available doc# 01-010720-102R

Transcript from hearing doc# 01-010720-008T

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