

[New Search >>](#)[Current Purchases >>>](#)[Purchase History >>>](#)[Account Profile >>>](#)[Frequently Asked Questions \(FAQ\) >>>](#)

You must have Adobe Acrobat Reader to view online documents.

[Download for free >>>](#)

## FREE Legal News Headlines

Get the latest unbiased news on suit filings, verdicts, and settlement. >>>

To subscribe to Mealey's Print Publications Please call: **1-800-MEALEYS**

## Mealey's Daubert Report July 2002

Copyright 2002 LexisNexis, Division of Reed Elsevier Inc.  
Mealey's Daubert Report

July 2002

6-7 Mealey's Daubert Rep. 12 (2002)

**SECTION:** Vol. 6, Iss. #7

**HEADLINE:** Texas District Court Judge Rules On Havner Motion, Excludes Expert Evidence

**DATELINE:** EL PASO, Texas -

### BODY:

A Texas state judge on May 31 partially granted a motion by Garlock Inc. to have epidemiological evidence excluded from a personal injury asbestos trial (Douglas Kwasnik, et al. v. ACandS Inc., et al., No. 2001-297, Texas Dist., El Paso Co.).

El Paso County District Court Judge Javier Alvarez partially granted Garlock's motion to exclude scientific evidence from the personal injury case of Douglas Kwasnik. Filing a motion in limine, Garlock sought to exclude evidence under *Merrell Dow Pharmaceuticals Inc. v. Havner* (No. 97-706, Texas Sup.).

### Complaint

Douglas Kwasnik sued several asbestos-related companies, including Garlock, alleging that his asbestos-related lung disease was caused by the negligence of the defendants. Kwasnik contended that his pulmonary condition was directly caused by exposure to asbestos from the defendant's products.

After several settlements were made prior to trial, Kwasnik requested that the court dismiss the jury and continue the trial so that the court could consider Garlock's motion.

Judge Alvarez partially granted Garlock's motion and ordered that no epidemiologist will testify at the trial regarding epidemiological studies and peritoneal mesothelioma because based on the evidence heard in the case thus far, Kwasnik has failed, under the statistical significance study requirements of *Havner*, to present sufficient evidence of any epidemiological studies with a "relative risk of 2.0 or greater, and confidence level of 95 percent that chrysotile asbestos or chrysotile contaminated asbestos does cause peritoneal mesothelioma."

### Texas Rules Of Evidence

Under *Havner*, a plaintiff must produce epidemiological studies that specifically prove that asbestos exposure causes a distinct disease.

Judge Alvarez ordered that an epidemiologist may testify at trial in the Kwasnik case but "cannot base his or her opinion on any epidemiological study showing the association between chrysotile asbestos or chrysotile contaminated asbestos and peritoneal mesothelioma." That expert can testify on other matters of which experts are permitted to testify under Texas Rule of Evidence 702, the judge said.

Garlock is represented by Raymond P. Harris Jr. of Whittenburg, Whittenburg, Schachter & Harris in Dallas. Kwasnik is represented by Rhonda K. Cleaves and Peter A. Kraus of Waters & Kraus in Dallas and Roberto Oaxaca of Oaxaca Bernal & Associates in El Paso, Texas.

(♦ [Order available. #01-020708-006R](#)) >>>

Contact Mealey's at 1-800-MEALEYS and see today's headlines at [www.lexis.com/legalnews](http://www.lexis.com/legalnews). To see if there is a Mealey's Conference on this topic or an online CLE session, please visit: <http://www.mealeys.com/conferences.html>.

[Compose a New Search >>>](#)

[Back to Top >>>](#)

