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Florida's Fourth District Court of Appeal Finds Unsupported Expert Testimony Inadmissible under Daubert

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On September 14, 2016, Florida's Fourth District Court of Appeal reversed an \$8 million verdict for the plaintiff in *Crane Co. v. Delisle*, finding that the trial court abused its discretion in admitting unreliable expert testimony upon which the plaintiff relied to prove causation. The plaintiff alleged that the defendants' asbestos-containing products were substantial contributing causes of his mesothelioma, and the plaintiff presented multiple experts to support this allegation. The defendants moved to exclude these experts' opinions under Section 90.702, Florida Statutes, which adopted the *Daubert* standard for reliability and admissibility of expert testimony in Florida. Following *Daubert* hearings, the trial court denied the defendants' motions. The plaintiff's experts presented their challenged opinions at trial, and the jury awarded the plaintiff \$8 million in damages.

On appeal, the appellate court found that the trial court "failed to properly exercise its gatekeeping function" under the *Daubert* standard by allowing the plaintiff to present unreliable and unsupported expert testimony to the jury. By simply taking the experts' word that their opinions were the product of sound scientific principles and reliable methodologies, and by not requiring the experts to identify reliable scientific data or studies to support their opinions, the trial court abused its discretion. The appellate court also reiterated that under the *Daubert* standard an expert providing an opinion on causation must specifically identify relevant scientific studies or data and explain how they support the expert's opinion, and the expert further must explain his or her methodology and how he or she applied it to the data relevant to the case. The trial court failed to require the experts to do so in *Delisle*, resulting in reversal of the \$8 million judgment.

It is interesting to note that the appellate court began its opinion by rejecting the plaintiff's argument that the court lacked authority to apply the *Daubert* standard, which the Florida Legislature adopted by statute in 2013. The plaintiff argued that because the Florida Supreme Court has not yet approved the legislative change to the evidence code, any application of the *Daubert* standard was unconstitutional. The appellate court held that "this argument lacks merit," explaining that statutes are presumed to be constitutional and are to be given effect until declared otherwise. Notably, on September 1, 2016, the Florida Supreme Court heard oral arguments on whether it should incorporate into the Florida Rules of Evidence the Florida Legislature's 2013 adoption of the *Daubert* standard, or whether it should return to the less onerous *Frye* standard used in Florida until 2013. The Florida Supreme Court has not indicated when it might rule on this issue.