



News Release

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DRI Amicus Brief Seeks High Court Review in *SQM North America Corporation v. City of Pomona*

CHICAGO – (October 15, 2014)— DRI’s Center for Law and Public Policy has filed an amicus brief supporting review by the United States Supreme Court in *SQM North America Corporation v. City of Pomona*. The petition seeks review of an important issue relating to the admissibility of expert testimony.

The case involves a lawsuit to recover the cost of investigating and remediating perchlorate contamination in groundwater in and around Pomona, California. The City alleged that the primary source of its perchlorate contamination was natural sodium nitrate from the Atacama Desert in Chile that defendant imported for use as a fertilizer several decades ago. The City’s identification of defendant’s Chilean-sourced fertilizer as the dominant alleged contaminant depended on a methodology known as “stable isotope analysis.”

Defendant moved under Federal Rule of Evidence 702 to exclude the testimony of the City’s expert witness on “stable isotope analysis.” Rule 702 incorporates the standard of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, which requires trial judges to “ensure that any and all scientific testimony” admitted into evidence “is not only relevant but reliable.” Following a *Daubert* hearing, the United States District Court for the Central District of California concluded that the expert’s testimony was unreliable and excluded it.

The United States Court of Appeals for the Ninth Circuit reversed. In the view of the appellate court, “only a faulty methodology or theory, as opposed to imperfect execution of laboratory techniques, is a valid basis to exclude expert testimony.” Rather than provide a valid basis for exclusion, the Ninth Circuit explained, defendant’s challenges to the expert’s reliability were to be decided by a jury.

Defendant SQM North America filed a petition for a writ of certiorari, asking the Supreme Court to review the Ninth Circuit’s decision. The petition presents the following question:

Whether, as the Ninth Circuit held, in open and admitted conflict with other courts of appeals, a district court may exclude expert testimony as unreliable only when it is based on a “faulty methodology or theory,” or whether, as the Third Circuit and other circuits have held, “any step that renders the analysis unreliable ... render’s the expert’s testimony inadmissible.”

In its amicus brief urging the Supreme Court to grant certiorari, DRI discusses the importance of the issue and the confusion that pervades courts across the country as they seek to fulfill their *Daubert* gatekeeping responsibilities. As the brief explains:

The scientific method and the judicial craft employ different standards and serve different purposes. No matter how learned and knowledgeable they are in their own profession, judges and lawyers are not scientists. Nor is the judiciary well suited to function as a credentialing body for science and technology. There is, accordingly, an inherent tension in fashioning rules for the admissibility of expert testimony. ... Disparate, conflicting decisions on the admissibility of expert testimony highlight the pressing need to fine-tune and direct the trial courts in discharging their gatekeeping responsibilities.

DRI's brief also explains the practical need for Supreme Court review on an issue that is often central to the resolution of litigation across a wide range of complex subjects:

The courts of appeals are in conflict...The frequency with which courts face *Daubert* challenges, the increasing complexity of technology issues being litigated, and the practical ramifications for the disposition of cases involving expert testimony all weigh strongly in favor of this Court's review.

DRI brief author Jerrold J. Ganzfried of Holland & Knight in Washington, D.C., is available for interview or expert comment through DRI's Communications Office. To view DRI's brief in its entirety, [click here](#).

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