

ORIGINAL

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2004 CA 0988

MSOF CORPORATION AND  
JAY PAUL LEBLANC

VERSUS

EXXON CORPORATION, ET AL.

MAR 29 2006

R.H.P. by [signature]

**BEFORE: CARTER, C.J., PARRO, KUHN, DOWNING, AND WELCH, JJ.**

**PARRO, J., dissenting.**

In this case, the plaintiffs will have to prove that toxic waste from PPI's Brooklawn site contaminated their property, which is located approximately three miles south/southeast of the contaminated portions of Section 45 and the Brooklawn site. The documentation offered by the defendants in support of their motion for summary judgment shows that the contamination at the PPI waste disposal site did not extend beyond the boundaries of Section 45 and that the mix of contaminants in the south swamp where the plaintiffs' property is located was not consistent with the complete chemical signature associated with the PPI waste, nor was it in concentrations exceeding background levels. Thus, the defendants demonstrated a lack of factual support for the plaintiffs' claim that the PPI waste disposal site was the source of certain chemicals found on their property.

By finding that there is a genuine issue of material fact, the majority has essentially concluded that the plaintiffs have produced factual support sufficient to establish that they will be able to satisfy their evidentiary burden of proof of the causal link at trial. See LSA-C.C.P. art. 966(C)(2). I disagree with this implied holding. To prove causation at trial, the plaintiffs will have to show the origin of the chemicals found on their property. The opinions of Dr. Link and Dr. Templet merely suggest a

possibility that certain chemicals found on the plaintiffs' property can be traced to the defendants, yet they did no testing to verify a migration route from the PPI waste site. Dr. Link's and Dr. Templet's failure to perform their own testing to determine the origin of the chemicals is very material to the resolution of the motion for summary judgment before the court. Therefore, the trial court did not abuse its discretion in excluding their opinions on the basis that their methodology was insufficient to support their conclusions concerning the origin of any of the chemicals found on the plaintiffs' property.

Since the opinions of these experts were the only evidence offered by the plaintiffs on this element of their claim, the exclusion of that evidence left them with no contradictory evidence to establish that they would be able to satisfy their evidentiary burden of proof at trial. See LSA-C.C.P. art. 966(C)(2). Accordingly, I believe that the trial court properly granted summary judgment in favor of the defendants.

Since I would affirm the trial court's granting of summary judgment, I respectfully dissent from the majority opinion.