



From The Bench

legal news of interest

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Louisiana's Supreme Court Sets Standards for Allowing Experts to Testify

by Matthew D. McConnell

In *Cheairs v. State of Louisiana, through the Department of Transportation and Development*,¹ the Louisiana Supreme Court explained the standards for allowing experts to testify. In *Cheairs*, the plaintiff's case largely depended upon the testimony of an expert whose qualifications were questioned by the defense.

On April 2, 1997, a vehicle dropped metal rods on the Mississippi River Bridge in Baton Rouge, Louisiana. Adam Broussard, a Louisiana Department of Transportation & Development (DOTD) employee, picked up the rods in a maintenance vehicle. Broussard stopped his truck on the bridge in the far left travel lane. Because he stopped his truck midway between where the dropped rods began and where they ended, Broussard walked past the back of his truck to hand signal the traffic to move over.

Mark Cheairs, the plaintiff, approached the bridge following a car that obscured his vision, making it impossible for him to see the DOTD truck until the car abruptly changed lanes. Cheairs tried to avoid the DOTD truck; however, he did not have sufficient time to move over, and the left front side of his vehicle struck the truck's right rear.

Cheairs claimed to be badly injured in the accident and sued various parties, including the DOTD. At trial, the Court allowed plaintiff's "traffic reconstruction" expert (Michael Gillen) to testify over DOTD's objection. DOTD objected to his testimony for the following reasons. First, the Manual of Uniform Traffic Control Devices (MUTCD) is no substitute for engineering judgment, and the decision to use a particular device at a particular location should be made on the basis of an engineering study of the location. Second, DOTD took the position that qualified engineers are needed to exercise the engineering judgment inherent in the selection of traffic control devices. Finally, since Gillen was not a traffic engineer, DOTD argued he could not testify concerning the application of the MUTCD standards.

In response, Cheairs argued the MUTCD indicated non-engineers were qualified to apply the manual's provisions. Further, the Federal Highway Administration's website states law enforcement personnel, insurance and legal communities are non-engineer constituents who rely upon the MUTCD.

While DOTD challenged plaintiff's expert under *Daubert*,² the *Cheairs* Court noted *Daubert* does not address whether an expert is properly qualified. The Louisiana Supreme Court held *Daubert* addresses the reliability of an expert's methodology. To provide more comprehensive guidance to district courts in determining the admissibility of expert testimony, the *Cheairs* Court adopted broad, universal standards, set forth by the United States Eleventh Circuit Court of Appeals in *City of Tuscaloosa*,³ for evaluating expert testimony:

(1) the expert [must be] qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions [must be] sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony [must assist] the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue.

Finding DOTD's challenge related only to the issue of Gillen's qualifications, the Court reviewed his personal qualifications and experience. Gillen was a former police officer working for a private consulting firm as a "traffic reconstructionist." He had no education or work experience as an engineer.

The Court also reviewed Gillen's testimony that DOTD should have taken certain actions to comply with both the MUTCD and DOTD's "Maintenance Traffic Control Handbook." The Supreme Court concluded Gillen was adequately qualified to testify about the application of the MUTCD standard. The Court reasoned engineering judgment was not regularly employed by DOTD in the type of situation presented by this case. DOTD generally allowed whatever employee was assigned to the maintenance vehicle to make decisions about lane closures and other traffic control devices. DOTD did not undertake an engineering study of the location before allowing Broussard to close the lane. The Court reasoned neither the MUTCD nor the DOTD handbook could be interpreted to mean engineers must make all decisions about management of incidents affecting traffic control.

In *Cheairs*, the Louisiana Supreme Court has set up an analysis for examining expert testimony before allowing it into evidence. The court draws a distinction between qualifications and the *Daubert* inquiry. However, whether qualifications and reliability are considered separately or together, the result should be the same.

¹*Cheairs v. State ex rel. Department of Transportation and Development*, 2003-0680 (La. 12/3/03), 861 So.2d 536.

²*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

³*City of Tuscaloosa v. Harcros Chemicals, Inc.*, 158 F.3d 548, 562 (11 Cir. 1998).



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