

APPELLATE ALERT:

LOIS WIN IMPACTS ALL MEDICAL EXPERT CASES IN NEW JERSEY

The Gavel Member: New Jersey / Connecticut - Lois Law Firm, Workers' Compensation

Lois Law Firm prevailed before the New Jersey Appellate Division on a case which clarifies the EXACT standard a judge of compensation must use when admitting in "expert" medical testimony. LOIS won the case and the appellate ruling (to be published) will be favorable to all respondents and employers in the State of New Jersey in defending cases moving forward.

The Court said "Expert opinions must 'be grounded in 'facts or data' derived from (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts.'" Op. Page 13.

If you read on, the issues in this case were (a) an unsubstantiated exposure to a chemical; (b) a lack of integrity in how testing was conducted, including a lack of testimony concerning the "who, what, where, and when" of how the alleged testing was collected, conducted, and conclusions drawn; and, (c) the medical expert was unable to credibly connect the alleged exposure to the resulting alleged conditions, except by "logical leap" where the medical opinion was essentially "he was exposed to this chemical, he has these diagnoses, and so the

two MUST be connected," without a sound scientific basis in fact.

This decision essentially takes the standard for expert witness testimony admissibility from general civil litigation matters and applies it to Workers' Compensation cases. This will be useful for us in any future case where the petitioner's "expert" is basing their opinion on (a) medical records or reports with an unsubstantiated chain of custody; (2) information obtained solely from the petitioner; (3) "leaps" in regards to causal connection between the alleged insult or exposure and the resulting alleged disability.

Therefore, LOIS sees this decision as helpful to them in defending COVID-19, occupational exposure, and cumulative trauma cases where "opinion" in regards to causation and unsubstantiated chain of custody will make the expert opinion subject to attack under this decision.

This is the second decision that LOIS has developed in the past thirteen months (the other being Judge Leitner's opinion in Wottrich) that positively impacts the defense of all claims in New Jersey!

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