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## PRODUCTS LIABILITY PRACTICE GROUP FLORIDA CASE OF THE MONTH

*Castillo v. E.I. Du Pont de Nemours, Co. Inc. et al.*,  
2003 WL 21543502 (Fla. July 10, 2003)

### **FLORIDA SUPREME COURT REINSTATES \$4 MILLION VERDICT AGAINST BENLATE MANUFACTURER**

The Florida Supreme Court reinstated a \$4 million verdict awarded to a boy exposed to Benlate while in his mother's womb and born with severely underdeveloped eyes. The high court held that the scientific testimony of plaintiffs' expert establishing a link between Benlate and the boy's birth defect was reliable under the test set out in *Frye v. United States*, which Florida courts use to determine the admissibility of expert testimony.

While seven weeks pregnant, Donna Castillo claimed she was exposed to Benlate, an agricultural fungicide, as she walked past a "u-pick" farm in Miami-Dade County. Mrs. Castillo recalled observing a tractor on the farm "bucking and jerking" and spraying "tons" of mist into the air; mist that ultimately drifted over and drenched her. Mrs. Castillo returned home but did not shower. John Castillo, Jr. was eventually born with severely underdeveloped eyes, suffering from a rare birth defect called microphthalmia.

The Castillos brought suit in Miami-Dade County against DuPont, the manufacturer of Benlate, alleging negligent manufacturing and distribution of Benlate, and the owner of the "u-pick" farm, Pine Island, for negligently spraying Benlate on its fields during periods of strong wind currents. Plaintiffs' expert, a British professor, testified that fetal exposure to benomyl (the active ingredient in Benlate) at certain levels in the mother's bloodstream would cause microphthalmia in humans. The expert based his testimony on in-vitro laboratory studies using human and rat cells. The trial court conducted a *Frye* hearing to determine the reliability of the expert's testimony and concluded the methodology employed by the expert was commonly and generally accepted in the relevant scientific fields and therefore admitted the evidence. The jury eventually awarded plaintiffs \$4 million, holding DuPont 99.5% responsible and Pine Island 0.5% responsible. On appeal, the Third District Court of Appeal (Miami) reversed, in part, because the scientific evidence was improperly admitted under *Frye*.

The Florida Supreme Court disagreed with the Third DCA. The *Frye* test, the Court opined, "requires that the scientific principles undergirding this evidence found by the trial court to be generally accepted by the relevant members of this particular field." The Court examined the plaintiffs' expert's methodology for reaching his opinion that benomyl is a human teratogen or agent causing a birth defect. In rejecting defendants' objections, the Court found that plaintiffs' expert either relied on generally accepted methodologies or that the objections by defendants went to the conclusions reached

by the expert and not the methodology employed by him as required by *Frye*. “*Frye* does not require the court to assess the application of the expert’s raw data in reaching” his conclusion. Finding the methodology used by plaintiffs’ expert to arrive at his conclusion to be generally accepted by the relevant scientific community and thus reliable under *Frye*, the Court quashed the Third DCA’s decision.

**Comments:** Though a fact-dependent opinion, *Castillo* provides a detailed *Frye* analysis and framework for dealing with the admissibility of expert testimony. The Florida Supreme Court reinforced and clarified the *Frye* standard as dealing solely with the validity or reliability of the underlying science. In focusing on the expert’s conclusions rather than his methodology, the Third DCA went beyond the requirements of *Frye*. The fact that the plaintiffs’ expert used scientific data generated from commonly accepted scientific methodologies in a new or novel way did not make it unreliable, especially since the *Frye* test applies only when a methodology is new or novel in the first place. *Castillo* provides yet another example of the Florida Supreme Court’s long-held view that “a courtroom is not a laboratory, and as such it is not a place to conduct scientific experiments.” Based on this notion, if the scientific community considers a procedure reliable for its own purposes, then so will the courtroom.

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