



## Case Summaries March 3, 2023

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### OPINIONS

#### EVIDENCE

##### Expert Testimony

*Helena Chem. Co. v. Cox*, \_\_\_ S.W.3d \_\_\_, 2023 WL \_\_\_ (Tex. March 3, 2023) [[20-0881](#)]

The issue in this case is whether expert testimony on causation was sufficiently reliable to survive the defendant's no-evidence summary-judgment motion. Plaintiffs are farmers who claimed their cotton crops were damaged by an aerial spraying of herbicide. The damage was allegedly caused by Helena Chemical Company's large-scale spraying of an herbicide called Sendero for a customer owning the Spade Ranch. Sendero contains two herbicides, clopyralid and aminopyralid and is used to kill mesquite trees. Sendero can damage other plants including cotton. Plaintiffs' cotton fields were located over hundreds of square miles and up to 25 miles from the Spade Ranch.

Plaintiffs sued Helena for negligence and trespass. They relied on experts to establish damages causation. Helena filed a motion to strike the expert testimony as unreliable and a no-evidence motion for summary judgment. The trial court granted the motions and dismissed the case. The court of appeals reversed in part, concluding the experts had provided a reliable scientific basis for their opinions. The Supreme Court concluded that the district court did not abuse its discretion in striking the expert testimony as unreliable. The Court therefore reinstated the summary judgment dismissing all claims.

The Court reasoned that expert testimony was required to prove that aerial drift from Helena's Spade Ranch application reduced the yield from plaintiffs' crops. If expert testimony is unreliable, it is no evidence. To be admissible, expert testimony must be grounded in the methods and procedures of science. The causation opinions proffered by the experts were not reliable and summary judgment was therefore warranted. Of the 111 fields owned by plaintiffs, only three positive lab tests for herbicide were obtained at identifiable locations. These tests only showed the presence of clopyralid. The experts failed to offer a scientifically reliable method for extrapolating the positive test results to all the other fields. The experts also failed to establish the dose of Sendero that landed on plaintiffs' fields or the dose required to cause a loss of crop yield. Further, the experts failed to exclude other plausible causes for the crop damage, including other applications of herbicides and inclement weather. There was evidence of other applications of herbicides, and many plaintiffs filed insurance claims claiming their crop losses were the result of drought or other weather conditions.