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Judicial Bias and Erroneous Admission of Expert Testimony Prompt Case Reassignment

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The US Court of Appeals for the Federal Circuit reversed a district court's decision to admit expert testimony and remanded the case to a different judge, noting that "from the moment this case fell in his lap, the trial judge's statements indicate that he did not intend to manage a fair trial with respect to the issues in this case." *Trudell Medical Intl., Inc. v. D R Burton Healthcare, LLC*, Case Nos. 23-1777; -1779 (Fed. Cir. Feb. 7, 2025) (**Moore**, C.J.; Chen, Stoll, JJ.)

Trudell Medical sued D R Burton Healthcare for infringement of a patent directed to respiratory treatment devices. Leading up to trial, Trudell filed a motion *in limine* seeking to exclude testimony from Dr. John Collins on invalidity and noninfringement. At the pre-trial conference, the court denied the motion *in limine*. A few days later, however, on the first day of trial, the district court reversed itself and granted the motion *in limine* after Trudell filed a motion for reconsideration. Moments later, the district court indicated that it would reserve a ruling on the motion until the end of Trudell's case.

On the third and final day of trial, the district court ruled that Collins was allowed to testify. After trial, the jury returned a verdict that the asserted claims were valid but not infringed. Trudell appealed.

Trudell argued that the district court erred in allowing Collins to testify. The Federal Circuit indicated that it reviews a district court's decision to admit or exclude evidence under the law of the regional circuit – here, the Fourth Circuit, which applies an abuse of discretion standard. Trudell argued that because Collins did not timely serve an expert report on noninfringement and the failure to do so was neither substantially justified nor harmless, the district court abused its discretion in allowing the testimony. Although D R Burton had filed a seven-page declaration from Collins in support of its opposition to summary judgment of infringement, Trudell argued that it was afforded no opportunity to depose Collins regarding the declaration and was therefore prejudiced by the allowance of the testimony. Trudell argued that the admitted testimony also exceeded the scope of the declaration and was "untethered from the district court's claim constructions."

The Federal Circuit agreed, finding that the district court abused its discretion in allowing Collins's noninfringement testimony because D R Burton did not disclose Collins' noninfringement opinion in a timely expert report as required by Rule 26. Regarding the declaration, the Court found that it was submitted a month after the close of discovery and therefore was not timely served. The Court concluded that the proper remedy was exclusion of Collins' noninfringement testimony absent a

showing that the failure to disclose was either substantially justified or harmless.

The Federal Circuit affirmed the denial of Trudell's post-trial motion seeking a finding of infringement. While the Court agreed that without Collins' testimony there was minimal evidence to support noninfringement, the jury would still have been free to discredit the testimony of Trudell's own expert and find that Trudell had not met its affirmative burden.

The Federal Circuit reversed the district court's decision to deny a new trial, finding that the district court abused its discretion in admitting Collins' testimony, and that the admission was harmful and prejudicial. The Court also noted that, on remand, it would be improper to reopen discovery and allow D R Burton to cure its failure to comply with disclosure requirement.

Trudell also sought reassignment of the case on remand. In support, Trudell pointed to statements by the judge, such as "I'm going to settle this case or resolve it or dismiss it by []" and "[h]ow about if I try the first case in early [] and forget about your mediation." Further statements by the district court included, "The jury's just being tolerant of this, and it's painful. My gosh. I should have put time limits . . . I don't think they understand they have to get through this case."

The Federal Circuit agreed that these statements gave "sufficient reason to believe that the trial judge's conviction to quickly terminate the case will be no different on remand" and therefore ordered that the trial be held before a different judge. The Federal Circuit cited a 2019 Fourth Circuit decision, *Beach Mart. v. L&L Wings*, which reassigned a case in front of the same judge after he made comments such as "I will find some way to terminate the case. I don't know how, but I will find a way." The Court noted similarities to the present case and concluded that the statements in both cases were so similar that they undermined the appearance of justice and fairness.

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