

“IPSE DIXIT”

By Richard Schulte

“[I]t is the basis of the witness's opinion, and not the witness's qualifications or his bare opinions alone, that can settle an issue as a matter of law; a claim will not stand or fall on the mere *ipse dixit* of a credentialed witness.” (quoting *Burrow v. Arce*, 997 S.W.2d 229, 235 (Tex. 1999)).

Texas Supreme Court, *Merrell vs. Wal-Mart Stores, Inc.*, June 18, 2010

West’s Encyclopedia of American Law defines the term “*ipse dixit*” as follows:

“An unsupported assertion, usually by a person of standing; a dictum.”

Wikipedia defines a “*ipse dixitism*” as follows:

“An *ipse-dixitism* is an unsupported or dogmatic assertion; it is a term sometimes used to point out a missing argument.”

Wikipedia provides a further explanation of the term “*ipse dixitism*” as follows:

“An *ipse-dixitism* offers a self-referential appeal to authority. As in: “Trust me...”

“The *ipse-dixitism* appears as a stubbornly unsupported repetition of a disputed claim, asserting the user’s power or disinterest in objections.”

“The *ipse-dixitism* can result from deliberate sophistry, attempting to smuggle assertions into an argument.”

“[I]t is the basis of the witness's opinion, and not the witness's qualifications or his bare opinions alone, that can settle an issue as a matter of law; . . .”

“An *ipse-dixitism* offers a self-referential appeal to authority. As in: “Trust me...” ”

Ipse dixitisms appear in discourse as though *absolutely no supporting argument* seems necessary. One motivation for not supporting declarations is the hope that it will make the declaration less visible, particularly in an obfuscated chain of mathematical or legal reasoning.”

“To rank as an *ipse-dixitism* a statement must appear without the semblance of an argument. The presence of any defense—even by fallacy or fraud—except self-reference precludes classifying an assertion as an *ipse-dixitism*.”

The Supreme Court of Texas also had this to say about the expert testimony in *Merrell vs. Wal-Mart Stores, Inc.*:

“Dr. Beyler may be qualified in fire research, but his testimony in this case lacks objective, evidence-based support for its conclusions. . . . Because Beyler’s testimony was legally insufficient to support causation, we do not reach Wal-Mart’s remaining issues. See *Whirlpool Corp. v. Camacho*, 298 S.W.3d 631, 643 (Tex. 2009).”

“. . .his testimony in this case lacks objective, evidence-based support for its conclusions.”

“Without hearing oral argument, we reverse the court of appeals’ judgment and render judgment that Merrell take nothing. TEX. R. APP. P. 60.2(c).”

Yes, the same Dr. Beyler who provided sworn testimony in *Ian David McAuslin, et al v. Grinnell Corporation, et al* (1999) that the LES3D fire model could reliably and accurately predict the effects of sprinkler water spray discharge on a fire in a multi-

Now Dr. Beyler is advising the Texas Forensic Science Commission. . .

row rack storage. The same Dr. Beyler who stated the Fire Dynamics Simulator (FDS) could reliably and accurately predict the activation times of multiple sprinklers and the total number of sprinklers which would activate in presentations to the ICC Code Technology Committee in May 2008 and in November 2008. And the same Dr. Beyler whose fire modeling work for the Smoke Vent Task Group (SVTG) was described as “worthless” in minutes of a SVTG teleconference held on March 24, 2009. As they say in baseball, four strikes and you’re out.

Now Dr. Beyler is advising the Texas Forensic Science Commission on the evidence presented at the trial of Cameron Todd Willingham involving a fire which took place on December 23, 1991. Willingham was convicted of the murder of his three daughters by arson and executed by the State of Texas on February 16, 2004.

Perhaps the Texas Forensic Science Commission could find a more reliable expert than Dr. Beyler. When the Texas Supreme Court uses the term “ipse dixit” in reference to your testimony, more than just a few eyebrows should be raised at the Commission.

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