

**JUN 15 2005**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**RICHARD MEYER; STELLA MEYER,**

**Plaintiffs - Appellants,**

**v.**

**GENERAL NUTRITION CENTER;  
GENERAL NUTRITION  
CORPORATION; GENERAL  
NUTRITION PRODUCTS, INC.,**

**Defendants,**

**and**

**SHOWA DENKO K.K., a Japanese  
corporation; SHOWA DENKO  
AMERICA, INC., a New York  
corporation,**

**Defendants - Appellees.**

No. 03-56883

D.C. No. CV-96-01301-WJR

MEMORANDUM\*

**RICHARD MEYER; STELLA MEYER,**

**Plaintiffs - Appellants,**

**v.**

No. 03-57224

D.C. No. CV-96-01301-WJR

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

SHOWA DENKO K K; SHOWA DENKO  
AMERICA, INC.; GEN NUTRITION  
CORPORATION; GENERAL  
NUTRITION PRODUCTS, INC.,

Defendants - Appellees.

Appeal from the United States District Court  
for the Central District of California  
William J. Rea, District Judge, Presiding

Argued and Submitted June 8, 2005  
Pasadena, California

Before: TROTT and W. FLETCHER, Circuit Judges, and RESTANI,\*\* Judge

Plaintiffs Richard and Stella Meyer allege that Mr. Meyer consumed nutritional supplements containing L-tryptophan, an amino acid, manufactured by defendant Showa Denko. They further allege that the Showa Denko L-tryptophan caused Mr. Meyer to develop eosinophilia-myalgia syndrome (EMS), a painful and debilitating auto-immune disease. The Meyers seek to prove that Mr. Meyer had taken L-tryptophan manufactured by Showa Denko through expert testimony from Dr. Gerald Gleich. The district court excluded Dr. Gleich's testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), because it

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\*\* The Honorable Jane A. Restani, Chief Judge, United States Court of International Trade, sitting by designation.

concluded that Dr. Gleich's opinion that Showa Denko manufactured L-tryptophan is the sole cause of EMS is not supported by the scientific literature. The district court then granted summary judgment for Showa Denko. We now reverse the district court's exclusion of Dr. Gleich's testimony and therefore also reverse the district court's grant of summary judgment to Showa Denko.

## I

We review the district court's decision to exclude expert testimony for an abuse of discretion. *See Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999). Here, the district court abused its discretion when it excluded Dr. Gleich's expert testimony. In *Daubert*, the Supreme Court set out the relevant standard by which courts should determine whether to admit expert testimony into evidence. The Court held that the guiding factors in this determination are whether the expert testimony reflects "(1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue." 509 U.S. at 592. We have since described the *Daubert* rule as requiring that we focus our inquiry on the "principles and methodology underlying the expert's testimony, not on the conclusion." *Kennedy v. Collagen Corp.*, 161 F.3d 1226, 1228 (9th Cir. 1998).

Dr. Gleich in his affidavit stated that "[t]he fact that [Mr. Meyer] has EMS and that Showa Denko contaminated L-tryptophan has been shown to be the only

cause of this condition establishes to a reasonable medical certainty that Mr. Meyers EMS was caused by consumption of Showa Denko L-tryptophan.” He based this statement on his understanding of the scientific literature as well as on his own substantial research of EMS. The district court nonetheless excluded Dr. Gleich’s affidavit because it found fault with Dr. Gleich’s conclusions. But, as we stated in *Kennedy*, it is the “principles and methodology” underlying the testimony – not the conclusions – that properly inform a *Daubert* analysis. *Kennedy*, 161 F.3d at 1228. Here, the principles and methodology underlying Dr. Gleich’s affidavit have sufficient scientific basis that the district court abused its discretion when it excluded his statements in support of the Meyers.

## II

We review the district court’s grant of summary judgment de novo. *See Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004). Viewing the evidence in the light most favorable to the nonmoving party, we must determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law. *See Suzuki Motor Corp. v. Consumers Union of U.S., Inc.*, 330 F.3d 1110, 1131-32 (9th Cir. 2003). Here, Dr. Gleich’s affidavit creates a material issue of fact as to how Mr. Meyer contracted EMS.

Because we hold that Dr. Gleich's affidavit was improperly excluded, we also hold that the district court improvidently granted Showa Denko's motion for summary judgment.

**REVERSED and REMANDED.**