

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 11, 2026

Lyle W. Cayce
Clerk

No. 26-40015
Summary Calendar

STEVEN MARK ALBERT; DONNA ALBERT; SAMANTHA ALBERT,

Plaintiffs—Appellants,

versus

PACESETTER, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:24-CV-573

Before SMITH, STEWART, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:*

This is a product-liability case. Summary judgment was granted to the manufacturer of a pacemaker because there was no expert evidence to support that the claimed manufacturing defects caused the principal plaintiff's injury. We AFFIRM.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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In June 2023, Steven Albert lost consciousness and was hospitalized. During his treatment, medical providers discovered the battery of his Assurity pacemaker had depleted prematurely. In June 2024, Albert sued the manufacturer of his pacemaker, Pacesetter, Inc., in Texas state court for personal injuries based on both strict liability and negligent manufacturing defect theories. Albert's wife and daughter asserted separate claims.

The Alberts alleged that the epoxy applied to Mr. Albert's pacemaker was incompletely mixed. As a result, moisture entered the pacemaker's pulse generator head and caused the battery to drain prematurely. This premature battery drain caused Mr. Albert to experience fainting, shortness of breath, bradycardia, hypoxia, atrial fibrillation, tiredness, dizziness, discomfort, and chest pain. It also required Mr. Albert to be rushed to the hospital, receive transcutaneous pacing, and undergo a pacemaker replacement procedure sooner than expected.

In July 2024, Pacesetter removed the action to federal court on the basis of diversity jurisdiction. In August 2025, Pacesetter moved for summary judgment on the Alberts' manufacturing defect and bystander claims. Pacesetter argued that the Alberts had failed to provide expert testimony showing that the defect in Mr. Albert's pacemaker had caused his injuries as required by Texas law governing complex product-liability cases. In October 2025, a magistrate judge issued a report and recommendation that Pacesetter's motion for summary judgment be granted. Over the Alberts' objections, the district court adopted the Magistrate Judge's Report and Recommendation as the opinion of the court.

The Alberts argued that no expert evidence was required. In determining whether expert evidence was needed, we apply Texas law. That is because in a personal injury suit removed from a Texas state court based on diversity of citizenship, state law controls. *Austin v. Kroger Tex. L.P.*, 746

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F.3d 191, 196 (5th Cir. 2014). In a personal injury action controlled by Texas law and based on a medical condition, evidence of causation need not be shown by expert testimony only when “general experience and common sense will enable a layman to determine, with reasonable probability, the causal relationship between the event and the condition.” *Guevara v. Ferrer*, 247 S.W.3d 662, 666 (Tex. 2007) (quoting *Morgan v. Compugraphic Corp.*, 675 S.W.2d 729, 733 (Tex. 1984)).

Largely for the reasons stated by the Magistrate Judge in the Report and Recommendation, adopted by the district court, we conclude the causation claimed here would not be within the general experience and common sense of lay jurors. The failure of that claim means that the claims of Mr. Albert’s wife and daughter also fail.

AFFIRMED.