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COURT OF APPEALS
STATE OF NEW YORK

AUNGST,

Respondent,

-against-

FAMILY DOLLAR,

Appellants.

NO. 92

20 Eagle Street
Albany, New York
October 15, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

CORY A. DECRESENZA, ESQ.
VAUGHAN BAIIO AND PARTNERS
Attorney for Appellants
126 North Salina Street Suite 210
Syracuse, NY 13202

LAURA ETLINGER, ESQ.
OFFICE OF THE ATTORNEY GENERAL
Attorney for Board
The Capitol
Albany, NY 12224

MARK C. SOMERS, ESQ.
BRONK & SOMERS, PC
Attorney for Respondent
110 Allens Creek Road
Rochester, NY 14618

Chrishanda Sassman-Reynolds
Official Court Transcriber



1 MR. DECRESENZA: May it please the court.

2 Cory DeCresenza, Cohen Vaughan appearing on
3 behalf of the appellants. I'd like to reserve three
4 minutes for rebuttal time if it's allowed.

5 CHIEF JUDGE WILSON: You are allowed.

6 MR. DECRESENZA: Thank you.

7 Before we get going, I'd just like to, at first,
8 I'll defer a point to our brief on the issue of
9 consequential stroke. I think that's solidly within the
10 court's discretion to review. I don't think it needs a
11 significant treatment here.

12 The primary issue for me is the - - - whether or
13 not the prevalence standard of review was both properly
14 created and/or applied.

15 JUDGE SINGAS: You know, I'd like to get your
16 primary argument on that prevalence. Is it that - - - is
17 it a causation issue or is it a time-definiteness issue?

18 MR. DECRESENZA: Primarily a causation issue. My
19 position is that essentially the Lerner standard for
20 reviewing disease cases should be the one that applies, and
21 that the prevalence standard, which to be honest, I'm not
22 even a hundred percent sure why it was created when we had
23 the Lerner framework, that kind of abrogates the first
24 prong of Lerner.

25 JUDGE SINGAS: So if it is causation, why isn't

1 it enough to show that the person had minimal contacts with
2 people outside of work? And then, at work had significant
3 contacts?

4 MR. DECRESENZA: Well, I guess the - - - what
5 kind of contacts are being discussed are important. I
6 think there's definitely been some cases where you've shown
7 - - - you know, individual contact where a person is the
8 second person to get COVID in the workplace. There - - -
9 people were coughing on them or something of that nature.

10 I think just significant contacts with the
11 public, I don't believe that is enough to meet causation.
12 I believe that's too speculative under Mayette.

13 JUDGE SINGAS: But we've said that you're - - -
14 we're not requiring people to pinpoint exact exposures. So
15 how does - - - how do you square that?

16 MR. DECRESENZA: Well, I guess, I would square
17 that with focusing on Lerner, which requires inception of
18 the disease must be assignable to a determinate or single
19 act. So in - - -

20 JUDGE TROUTMAN: So your argument is despite the
21 fact that COVID was everywhere, this particular person had
22 a job where they had contact with the public, unlike others
23 couldn't isolate because they did go to work, and there
24 were people who did or did not honor covering, distancing,
25 et cetera, they still have to pinpoint exactly who they got

1 it from?

2 MR. DECRESENZA: Not - - - I don't think
3 pinpointing an individual person is required. I think
4 that's - - -

5 JUDGE TROUTMAN: What exactly would work for you?

6 MR. DECRESENZA: I guess evidence that - - - I
7 think Williams was a case that came afterwards where it was
8 a transit city worker who people were unfortunately
9 coughing all over this gentleman.

10 JUDGE TROUTMAN: So they have to establish that
11 people were coughing?

12 MR. DECRESENZA: I guess evidence that someone is
13 at least sick around them, or is - - -

14 JUDGE TROUTMAN: But some people are
15 asymptomatic.

16 MR. DECRESENZA: That's true.

17 JUDGE TROUTMAN: So how do you prove you - - -
18 you got it from them, even though they could transmit it in
19 that state?

20 MR. DECRESENZA: I guess, unfortunately, you're
21 not able to. I would submit that there's no - - - I think
22 at one point - - -

23 JUDGE TROUTMAN: And so prevalence isn't a
24 logical way to deal with it, then?

25 MR. DECRESENZA: No. I think it's too specula -

1 - - it - - - it allows - - - or it's too speculative and
2 not - - - it doesn't comport with Lerner.

3 CHIEF JUDGE WILSON: So how is it different from
4 Johannesen?

5 MR. DECRESENZA: Johannesen, I believe, was the
6 smoke claim.

7 CHIEF JUDGE WILSON: Yeah.

8 MR. DECRESENZA: That was the claim that there
9 was in a sealed office with a broken ventilator, and there
10 was fifty people, I think, approximately half of whom were
11 smoking. So we - - -

12 CHIEF JUDGE WILSON: We don't know which person's
13 smoke caused the problem?

14 MR. DECRESENZA: We don't.

15 CHIEF JUDGE WILSON: We don't know what day of
16 work the smoke was inhaled that caused the problem?

17 MR. DECRESENZA: Correct. But we do have a - - -
18 the medical opinions in that - - - in that case cited that
19 smoke exposure generally resulted in the - - - I think, it
20 was asthma or bronchitis.

21 JUDGE HALLIGAN: But wouldn't exposure to COVID
22 likewise result in the transmission? I'm not clear how the
23 two are different. The two cases, Johannesen and this one?

24 MR. DECRESENZA: Sure. In my opinion, Johannesen
25 shows a definite. There - - - the person there was

1 definitely exposed to smoke.

2 JUDGE HALLIGAN: But where there is a showing of
3 prevalence, isn't the same essential fact established?

4 MR. DECRESENZA: I don't believe so. I - - - the
5 evidentiary issue in this case all along has been proving
6 where the - - - where the injured worker picked up the
7 COVID. There was no showing of any coworkers that had it,
8 which is - - -

9 JUDGE HALLIGAN: But by demonstrating - - - I
10 think, there's an argument that by demonstrating that there
11 is not some likely source of transmission outside of the
12 workplace, what's left? The workplace.

13 MR. DECRESENZA: Well, I guess in this particular
14 claim, the claimant was also attending medical
15 appointments, which I know there was testimony that
16 claimant was masking or social distancing, but Dr. Sawyer
17 even testified in his file that Dr. - - -

18 JUDGE HALLIGAN: That seems perhaps like a
19 question of whether a prevalent standard is satisfied, as
20 opposed to whether it's an appropriate proxy for something
21 more specific that would require you to identify, including
22 in a window when testing wasn't really available, who it
23 was that was contagious and who it was that infected you?

24 MR. DECRESENZA: I guess that's true. I guess, I
25 keep going back to the problems that - - - you know, we

1 keep discussing prevalence. And I guess assuming that, you
2 know, COVID entered the workplace, and you know, it could
3 have been what resulted in Mr. Aungst's infection. But
4 there is just simply no evidence in this case that it was,
5 you know, a patron or coworker or anyone else in the - - -

6 CHIEF JUDGE WILSON: Why isn't prevalence sort of
7 implicitly baked into Johannesen? And let me ask you why
8 or explain why I asked that. What would your answer be if
9 it had just been one person smoking in the sealed room of
10 fifty employees? Or two people, or five people, or - - -
11 you know, at some point we get to a point where I think you
12 would say, well, if it was one person who smoked one
13 cigarette one day, you would probably say, that's not
14 sufficient. We, I think, know that if it's a whole bunch
15 of people in the sealed room smoking every day, that's
16 sufficient.

17 And so why isn't Johannesen really implicitly
18 saying there needs to be enough prevalence of exposure to
19 something for us to conclude that the evidentiary
20 standard's been met?

21 MR. DECRESENZA: I think this was alluded to in
22 the Attorney General's brief, where they tried to harmonize
23 prevalence with Lerner, that Johannesen and McDonough,
24 Middleton all stand for a reasonable probability of
25 exposure to that - - - to the incipient event.

1 I think Johannesen is different, again, in that
2 there was identified exposure to smoke. Even if - - - in
3 my opinion, even if there was only one person that was
4 smoking next to the injured worker in Johannesen, you still
5 have a doctor's opinion saying, you know, you're exposed
6 for eight hours a day over however many hours a week, and
7 that resulted in your infection.

8 Here we have a case where, you know, doctors have
9 essentially speculated that claimant may have picked up the
10 COVID at work, but again, I see no evidence that that's the
11 case. And I think prevalence, you know, it just improperly
12 overrules Lerner, which does require some determinate or -
13 - - not necessarily single act. I think determinate is the
14 better - - -

15 JUDGE SINGAS: But I think in your scenario, the
16 facts really then don't matter. Right? Because you're
17 saying - - - like, if the facts were different here, that
18 this person was using public transit and was on public
19 transit for an hour every day back and forth to work, and
20 was out at the supermarket and lived on a - - - in a
21 building with many people that he encountered in the
22 elevator and on his floor and so on, that would be a harder
23 case, I would think. But you would say, it doesn't matter
24 because we still can't - - - you know, in that situation,
25 he probably picked it up somewhere else. But in this

1 situation that we have, where all of those things are not
2 evident, that he wasn't seeing other people, he was using
3 prophylactic measures when he went to the doctor, the only
4 exposure to other people - - - and the only way you can get
5 COVID is through people, was at work when they were
6 touching him and asking him questions and being face-to-
7 face with him, and they weren't picking - - - they weren't
8 wearing masks. Like, in your scenario, it seems to be like
9 if you can't figure out exactly that somebody had COVID at
10 his place of employment, then the facts really don't even
11 matter.

12 MR. DECRESENZA: I suppose I would tend to agree
13 with that under Lerner. I think that's what - - -

14 JUDGE SINGAS: Didn't we, in essence, overturn
15 Lerner with Masse and Middleton?

16 MR. DECRESENZA: I don't believe so. I think
17 those files all squarely fall within Lerner. I think all
18 those files - - - even if, you know, there's not a single -
19 - - again, I focus on the determinate act. There's no
20 single act in - - - you know, McDonough, where the teacher
21 was exposed to mumps. You can't point to - - - you know,
22 this individual student saying, you know, that's where I
23 contracted the mumps. But we know for sure that claimant
24 was exposed to - - - or excuse me. That injured worker was
25 exposed to mumps.

1 So I guess I keep going back to - - - you know, I
2 - - - I don't - - - if the facts are that you cannot
3 identify exposure, yes, you do not have a claim under
4 Lerner and that the prevalence standard improperly
5 sidesteps that.

6 And I do think all the claimants in McDonough,
7 Middleton, and Johannesen were able to prove that.

8 JUDGE RIVERA: Okay.

9 MR. DECRESENZA: And I guess the - - - some of
10 the, I guess, confusion in this area can kind of be
11 highlighted by the cases that followed the briefs in this
12 case, specifically Holder and Pierre. Pierre was
13 established with - - - there was no discussion of
14 prevalence in that claim. I think that properly - - - you
15 know, essentially applied the proper framework. And the
16 evidence there was that the claimant was exposed to a
17 breakout in the workplace. I think that's a reasonable
18 fact pattern for establishment of COVID.

19 And then in Holder, the house manager claim, I
20 think they did apply prevalence but came to the conclusion
21 that there was no claim because there was no evidence of
22 specific exposure. So that's my argument.

23 And the alternative is that even if prevalence
24 stands as a properly created standard of review, it still
25 wasn't met here. So that - - -

1 JUDGE RIVERA: Because they couldn't point to
2 anyone who had either the symptoms or had officially been
3 identified as contracting COVID?

4 MR. DECRESENZA: Yes. And I think the testimony
5 was clear that the - - - there were - - -

6 JUDGE RIVERA: Well, they could be exposed to
7 customers that they'll never see again who are sick?

8 MR. DECRESENZA: In - - - sorry. Do you mean in
9 Holder or in - - -

10 JUDGE RIVERA: Which is a slight difference
11 between the worker who's in a room with people who are
12 always in that room with them. Right? And they're
13 exposed, as opposed to someone who's perhaps exposed to
14 people who come and go?

15 MR. DECRESENZA: Yes. I would agree there's a
16 difference in that. Yes.

17 So yeah, at this point, my red light. Thank you.

18 CHIEF JUDGE WILSON: Thank you.

19 MS. ETLINGER: May it please the court. Laura
20 Etlinger for the Workers' Compensation Board.

21 The court should affirm, because there is
22 substantial evidence in this case that Aungst's contraction
23 of COVID-19 occurred in the course of and arose out of his
24 employment. And the - - - what the board did in this case
25 is look at all the facts and make a very reasonable

1 inference that given these facts, that he was in contact
2 with members of the public on a regular basis, there was a
3 mask policy that wasn't enforced. That - - -

4 JUDGE HALLIGAN: Counsel, what are the limits on
5 the prevalence rule in your view? Is it limited to COVID?
6 Is it limited to some early stages? Is it a proxy for any,
7 you know, any exposure to any contagious disease?

8 MS. ETLINGER: It's not. What it really is, is
9 just an inference that the board could make on these types
10 of facts. I don't - - -

11 JUDGE HALLIGAN: What - - - when you say these
12 types, what are you suggesting that's confined to?

13 MS. ETLINGER: Well, there were really kind of
14 three sets of facts in this case. The fact that, at this
15 time, COVID was very prevalent in the community. It was
16 spreading rapidly. So that allowed for a reasonable
17 inference that if there are a lot of members of the public
18 present.

19 JUDGE HALLIGAN: But is that true for any
20 contagious disease or just for COVID, in your view? I'm
21 just trying to understand what you think the limits of the
22 proxy are.

23 MS. ETLINGER: I think if there were like facts
24 for a different contagious disease, it could give rise to
25 the same kind of inference.

1 JUDGE HALLIGAN: So another global pandemic, or
2 for example, an isolated outbreak of measles? Both?

3 MS. ETLINGER: I think it - - - depending on the
4 particular facts. If there were a - - - a very prevalent
5 outbreak of measles and there were contact with people who
6 were - - - it could be inferred, would be infected with
7 measles, there wouldn't necessarily be a reason to come to
8 a different result.

9 JUDGE HALLIGAN: Even if it's easy to ascertain
10 whether someone in the workplace actually has the disease?
11 Suppose it's a disease that manifests itself physically in
12 some obvious way? COVID didn't necessarily do that. Would
13 the proxy still apply, or would you have to show something
14 with respect to specific workers to whom you were exposed?

15 MS. ETLINGER: Well, if you were - - - I just
16 want to make sure I understand. But if you worked with
17 members of the public and there wasn't anybody - - - I
18 mean, I - - -

19 JUDGE HALLIGAN: I guess what I'm asking is does
20 this - - - does the rule turn on the proposition that it's
21 difficult to ascertain the actual incidence in terms of
22 individuals in the workplace? And if you had a disease
23 where you could tell that readily, would - - - would the
24 rule still apply in your view?

25 MS. ETLINGER: Well, I - - - it's - - - we don't

1 view it as a rule. But I think the same analysis wouldn't
2 necessarily apply because the question here is where did
3 the exposure occur? And if there is other evidence that
4 points to where the exposure might have occurred or where -
5 - - why it wouldn't have occurred, that would simply be the
6 type of evidence that would either support or wouldn't
7 support the inference.

8 CHIEF JUDGE WILSON: Would it be - - -

9 JUDGE RIVERA: Does it matter for purposes of
10 this discussion regarding the measles hypothetical, that
11 there have always been vaccines available for measles, but
12 at the - - - at least the early stages, I forgot how long
13 into the pandemic, but certainly at the early stages, there
14 wasn't - - - there were no vaccines. Does that matter at
15 all for the analysis when you're thinking about that
16 hypothetical?

17 MS. ETLINGER: Well, I think the - - - the
18 question would be how prevalent was COVID then among the
19 general population if you're talking about someone who was
20 working with members of the public.

21 JUDGE RIVERA: Well, yes. Yes. Understood.
22 That's the point of the word "prevalent". I guess my
23 question is also about a vaccine that would prevent
24 contraction of the disease.

25 MS. ETLINGER: Oh, whether the - - - whe - - -

1 well, I'm not sure I understand. Because whether - - -
2 whether Mr. Aungst was vaccinated or not wouldn't be very
3 relevant, because he - - -

4 JUDGE RIVERA: But the majority of people would
5 be for measles?

6 MS. ETLINGER: Well, if the majority of people
7 were vaccinated with measles, I think he would have a hard
8 time showing that measles was very present among the
9 general population.

10 JUDGE RIVERA: So that was my point.

11 MS. ETLINGER: Yes, yes. That would be - - -
12 that would be the distinction.

13 CHIEF JUDGE WILSON: Would I be wrong to think of
14 what you're calling a prevalence rule as really ultimately
15 just the question on a - - - on a set of facts that you
16 have, is it more likely than not that the person contracted
17 disease X or condition X? I mean, is that the right way to
18 - - -

19 MS. ETLINGER: That's exactly what it is.

20 CHIEF JUDGE WILSON: Yeah.

21 MS. ETLINGER: It's simply a set of facts that
22 allowed for a reasonable inference that it was more likely
23 that Mr. Aungst contracted COVID-19 through an exposure at
24 work than he contracted it elsewhere.

25 JUDGE SINGAS: So along that same question is - -

1 - is the relevance - - - is it a legal standard or is it
2 just - - - is prevalence a legal standard or just some
3 framework that is helping you assess these cases? I'm
4 trying to figure out is this a - - - like, a de novo
5 question or are we looking for substantial evidence?

6 MS. ETLINGER: It's just a substantial evidence
7 question. And the board made an inference from the facts
8 before it, including the facts that the board knew about
9 the virus itself.

10 JUDGE CANNATARO: It sounds - - -

11 JUDGE SINGAS: So suppose - - - sorry.

12 JUDGE CANNATARO: No. Go ahead. Finish.

13 JUDGE SINGAS: So suppose that hypothetical that
14 I gave earlier, and if I said the person was on mass
15 transit for hours at a time and lived in a very busy
16 apartment building, and so on, how do you think the board
17 would have ruled under those circumstances?

18 MS. ETLINGER: I think - - -

19 JUDGE SINGAS: Would it have affected it?

20 MS. ETLINGER: I think that would be a very hard
21 case to reach a reasonable inference that it - - - that the
22 contraction happened at work.

23 JUDGE CANNATARO: Counsel - - -

24 JUDGE RIVERA: But it might have easily happened
25 somewhere else?

1 MS. ETLINGER: If it could easily happen
2 somewhere else, it's hard to make an inference that it
3 happened in one place or the other.

4 JUDGE RIVERA: Why would you draw the inference
5 against the claimant?

6 MS. ETLINGER: We wouldn't draw - - - I mean,
7 it's very - - -

8 JUDGE RIVERA: Yeah. I mean, let's say the
9 inference could be equal in both of those circumstances,
10 why choose one against the claimant?

11 MS. ETLINGER: Well, you wouldn't - - -

12 JUDGE RIVERA: Versus the other?

13 MS. ETLINGER: Right. If they were - - - I - - -
14 it's - - - the facts would - - - it would be hard to think
15 of facts that are exactly the same, but I think you're
16 right. In that case, if it were exactly the same, it would
17 be - - - there would be less reason to draw an inference,
18 but I'm not sure that it would be reversible error if the
19 board drew it on those facts.

20 Unless the court has any other questions we ask
21 that there be an affirmance.

22 Thank you.

23 CHIEF JUDGE WILSON: Thank you.

24 MR. SOMERS: Good afternoon. May it please the
25 court. My name is Mark Somers, and I have the privilege to

1 represent the claimant respondent, Frank Aungst, in this
2 case.

3 It's our position that the decision of the board
4 should be affirmed. The question in this case is whether
5 or not Mr. Aungst suffered an accident arising out of and
6 in the course of employment. An accident can arise out of
7 an abnormal condition, and the board has given very wide
8 latitude in determining whether or not there is a - - - an
9 accident or an abnormal condition.

10 In this case, we're dealing with a global
11 pandemic involving COVID-19. I would say that this is not
12 the prevalence theory, although, it's been introduced as a
13 new theory. I believe that it has been in existence for
14 many, many years. The McDonough case involving the teacher
15 contracting mumps is a similar situation, which involved an
16 epidemic of mumps in a certain area. There is no guarantee
17 that, although there may be students within the classroom
18 that were showing symptoms, that she contracted the disease
19 based on that exposure. It could have been contracted
20 anywhere. But in that case, the court felt that the
21 claimant met the burden of showing that the accident arose
22 out of and in the course of employment.

23 If the court or the board were requiring that a
24 claimant in COVID-19 prove that they were exposed in the
25 workplace, that they contracted it in the workplace, that

1 would be an impossible standard. COVID-19, somebody could
2 test positive for COVID-19 and not be showing any symptoms.
3 So there would be no way for a claimant to pinpoint the
4 exact point of time that they were exposed and contracted
5 the disease.

6 If that standard were put in place, the first
7 person to contract COVID in a work situation would never be
8 able to establish their claim. But the second person
9 would. That would create an imbalance. It would be unfair
10 to the worker. And the board did, in this case, set an
11 appropriate standard as far as the prevalence within the
12 community.

13 The board looked at this case with the common
14 sense viewpoint of the average person and made a
15 determination that it is reasonable to find that Mr. Aungst
16 was exposed to COVID-19 in the workplace. As Your Honors
17 have pointed out, the facts of this case show that he was
18 in a situation at work where he worked over fifty hours a
19 week during the early period of the pandemic. He was the
20 manager of the store. He was involved in all aspects of
21 meeting with customers, stocking shelves. He indicated
22 that he was on the frontline in the store. He would work
23 the register. He was in constant contact with people
24 throughout the day. He was in contact with other delivery
25 people throughout the day that would come to stock the

1 store. And he testified to several circumstances in which
2 people tapped him on the shoulder or physically touched him
3 in order to get his attention to help them in the store.

4 The carrier - - - the - - - what the board found
5 is that the claimant provided substantial evidence that he
6 contracted the condition in the workplace. By doing so,
7 the presumption under Section 2.7 was instituted, and the
8 carrier was not able to produce any evidence to show
9 substantial evidence to the contrary. They were not able
10 to show that he went to places where he was exposed or did
11 not take care of himself. He testified that when he went
12 to the doctor, the doctor's office gave him a mask. They
13 social distanced. He was - - - when he went to the store,
14 he was careful to social distance as well. And there was
15 no circumstance - - - actually, in the beginning of the
16 pandemic, in March of 2020, the employer did not require
17 people be masked, did not provide PPE for him to protect
18 himself. And yet he was working, helping people throughout
19 the store come in and get the things that they needed
20 during this global pandemic.

21 So it would be our position that this case should
22 be affirmed. Thank you.

23 CHIEF JUDGE WILSON: Thank you.

24 MR. DECRESENZA: Very briefly, in rebuttal. I
25 would just, again, respectfully submit that this is not a



1 substantial evidence case. I maintain that the issue of
2 whether or not the prevalent standard of review was
3 properly created and applied is an issue of first - - - a
4 legal issue of first impressions - - -

5 JUDGE TROUTMAN: Without prevalence, could an
6 employee ever establish, when they have transient contact
7 with large numbers of the public, that they got it from the
8 public, if it's not - - - if one of their coworkers isn't
9 identified as having the disease? Could they ever
10 establish their claim?

11 MR. DECRESENZA: I think in Williams - - - that
12 case, there was. That was the transit officer who people
13 were coughing on during the height of the pandemic. That,
14 I think, could give rise to a reasonable inference that
15 someone had - - - and you - - -

16 JUDGE TROUTMAN: You could have - - - you could
17 cough and not have COVID?

18 MR. DECRESENZA: That's true. And I guess at
19 that point, it does become a factual question for the board
20 as to - - -

21 JUDGE TROUTMAN: So why is prevalence therefore
22 unreasonable to use?

23 MR. DECRESENZA: Because I still believe
24 prevalence negates the burden under Lerner to show a
25 determinate - - - or that there was a single or determinate

1 act that led to the disease. In Williams, the determinate
2 act was people coughing on you. In Johannesen it was
3 people smoking. Here, you know, I don't dispute that there
4 was COVID prevalent in society at large, but just because
5 you're standing outside during a - - - you know, a
6 rainstorm doesn't mean you're going to get thunderstruck.
7 I think that's my analogy. Here is there's simply no
8 evidence that the claimant was ever actually exposed to the
9 COVID virus, which is what Lerner requires.

10 JUDGE RIVERA: But if - - - but if there's
11 nothing to suggest there's exposure anywhere else, and you
12 have a situation, as Judge Troutman said, where you have
13 people coming and going that you're not going to be able to
14 track and that COVID is indeed prevalent. Why doesn't that
15 make sense?

16 MR. DECRESENZA: I think because - - -

17 JUDGE RIVERA: Once you've eliminated all the
18 other possibilities, you're left with one.

19 MR. DECRESENZA: Well, I guess, the keyword there
20 is "possibilities". I would submit that, you know, there's
21 - - -

22 JUDGE RIVERA: But were there others in the
23 record? I mean, did the record show there were?

24 MR. DECRESENZA: Sure. The claimant testified he
25 did shopping occasionally when necessary. The claimant

1 testified he went to medical appointments, which again, I
2 think is a significant issue when, you know, COVID is
3 prevalent, presumably they're treating it medical offices.
4 There's a - - - I think there is no way to tell whether or
5 not it's more probable or not that claimant got the virus
6 there as opposed to work or anywhere else. And I think
7 that's why the word - - - the substantial evidence standard
8 has been thrown around. But I submit that this is a case
9 of no evidence. There's no evidence of a - - - of exposure
10 to the COVID virus at any point in this record. And I
11 think that's what the Lerner standard requires. And my
12 opinion is that the prevalent standard improperly negates
13 that and essentially allows proof of a establishment of a
14 claim without evidence of, you know, exposure to a disease.

15 Thank you.

16 CHIEF JUDGE WILSON: Thank you.

17 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Family Dollar v. Frank Aungst, No. 92 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

Agency Name: eScribers

Address of Agency: 7227 North 16th Street
Suite 207
Phoenix, AZ 85020

Date: October 23, 2025

