

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

HENRY NORRIS WILLIAMS AND
BETTY WILLIAMS

NO. 2019 CW 1104

VERSUS

THE DOW CHEMICAL COMPANY, ET
AL

AUGUST 21, 2019

In Re: ExxonMobil Corporation, applying for supervisory writs, 18th Judicial District Court, Parish of Iberville, No. 74597.


BEFORE: WHIPPLE, C.J., McCLENDON, HIGGINBOTHAM, PENZATO, AND LANIER, JJ.

STAY DENIED; WRIT DENIED. The criteria set forth in **Herlitz Construction Co., Inc. v. Hotel Investors of New Iberia, Inc.**, 396 So.2d 878 (La. 1981) (*per curiam*) are not met.

VGW
PMc
TMH

Penzato and Lanier, JJ., concur in part and dissent in part. We concur in the denial of the stay. However, we dissent and would grant the writ in part and reverse the ruling of the trial court which denied defendant's motion in limine seeking to introduce plaintiffs' pleadings as to Dow Chemical Company. A judicial confession is an express acknowledgment of an adverse fact. **Dean v. State Farm Mutual Automobile Ins. Co.**, 51,243 (La. App. 2d Cir. 4/5/17), 217 So.3d 611. Defendant, ExxonMobil Corporation, should be allowed, subject to any other evidentiary limitations, to introduce plaintiffs' pleadings and/or to utilize same in examination of witnesses, to the extent such pleadings constitute an express acknowledgment of an adverse fact. The jury can be properly instructed as to the appropriate burden of proof to be borne by the respective parties.

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DEPUTY CLERK OF COURT
FOR THE COURT