

United States District Court
for the
Southern District of Florida

Gernier Origene, Plaintiff,)
)
v.)
) Civil Action No. 18-25069-Civ-Scola
BP America Production Company,)
BP Exploration & Production Inc.,)
Defendants.

Order Granting Motion for Summary Judgment

The United States District Court for the Eastern District of Louisiana approved a medical benefits class action settlement for those who allege personal injuries from an oil spill in the Gulf of Mexico caused by the defendants, BP Production Company and BP Exploration & Production Inc. (collectively “BP”). *See In re: Oil Spill by the Oil Rig “Deepwater Horizon,”* 910 F. Supp. 2d 891 (E.D. La. 2012) (approving class settlement). Class members must file back-end litigation option (“BELO”) lawsuits in order to recover from the settlement. Plaintiff, Gernier Origene, files this suit to recover from the class action settlement, alleging that he was injured while cleaning up crude oil following the BP oil spill.

Now before the Court is BP’s motion for summary judgment (ECF No. 41), which argues that Origene did not timely disclose his expert witnesses as required by the Court’s scheduling order and thus cannot prove causation. Origene filed a response merely stating that he has sought an extension to disclose expert reports. (ECF No. 42.) But after the Court denied Origene’s motion for extension of time, he withdrew his response.¹ (ECF Nos. 43-44.)

A BELO plaintiff must successfully litigate five issues, including causation, in order to collect compensation from the settlement agreement. *In re Oil Spill by Rig Deepwater Horizon*, 295 F.R.D. 112, 125 (E.D. La. Jan 11, 2013) (“the only issues to be litigated under the back-end litigation option are...(d) causation”). Moreover, in a toxic tort case such as this, a plaintiff must rely on expert testimony to prove his medical diagnosis and causation. *See Seaman v. Seacor Marine LLC*, 326 F. App’x 721, 723 (5th Cir. 2009) (“[s]cientific knowledge of the harmful level of exposure to a chemical, plus knowledge that the plaintiff was exposed to such quantities, are minimal facts necessary to sustain the plaintiffs’ burden in a toxic tort case”).

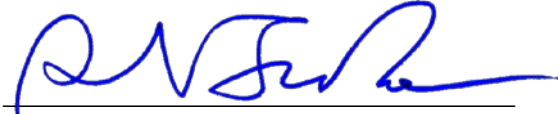
Because Origene has failed to timely disclose his expert witnesses and the Court has declined to extend the deadline, there is no evidence of medical

¹ Since Origene did not respond to the facts in BP’s motion for summary judgment, the Court may “consider the fact[s] undisputed for the purposes of the motion.” Fed. R. Civ. P. 56(e).

causation in the record. Origene has not argued otherwise. Without expert testimony, Origene cannot prove an essential element of his claim, and thus summary judgment is proper. *See Banegas v. BP Exploration & Production, Inc.*, 2019 WL 424683, at *2 (E.D. La. Feb. 4, 2019) (granting defendants' motion for summary judgment because BELO plaintiff did not present sufficient expert evidence on causation); *Cibilic v. BP Exploration & Production*, 2017 WL 1064954, *2 (E.D. La. March 21, 2017) (summary judgment is proper because plaintiff "has not disclosed the name of any expert from which he intends to elicit an opinion on causation"); *Legros v. BP American Production Company*, 2018 WL 4853713, *3 (E.D. La. Oct. 5, 2018) (granting summary judgment because plaintiff failed to put forth any evidence she may have on causation).

In sum, the Court **grants** BP's motion for summary judgment (ECF No. 41). The Court directs the Clerk to **close** this case and to **remove** it from the trial calendar. Any pending motions in this case are **denied as moot**.

Done and ordered, at Miami, Florida, on September 16, 2019.



Robert N. Scola, Jr.
United States District Judge