UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FLOYD RUFFIN	**CIVIL ACTION**
VERSUS	**NO. 20-334**
BP EXPLORATION & PRODUCTION INC. AND BP AMERICA PRODUCTION COMPANY	**SECTION: "B"(2)**

ORDER AND REASONS

Before the Court are defendants BP Exploration & Production Inc. and BP America Production Company ("BP")'s motion for summary judgment due to plaintiff's inability to prove medical causation (Rec. Doc. 105), plaintiff Ruffin's opposition (Rec. Doc. 123), defendants BP's reply in support (Rec. Doc. 137), and plaintiff Ruffin's surreply in opposition (Rec. Doc. 148).

For reasons that follow,

IT IS ORDERED that defendants' motion for summary judgment (Rec. Doc. 105) is **GRANTED**, dismissing this action; and

IT IS FURTHER ORDERED that all other pending motions (Rec. Doc. 92; Rec. Doc. 102; Rec. Doc. 103; Rec. Doc. 106; Rec. Doc. 107; Rec. Doc. 108; Rec. Doc. 145) are **DISMISSED as moot**.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Pursuant to the *Deepwater Horizon* Medical Benefits Class Action Settlement Agreement ("MSA"), Floyd Ruffin brought this Back-end Litigation Option ("BELO") lawsuit against BP. Rec. Doc. 80 at 1 (Second Amended BELO Complaint). Ruffin was "a shoreline clean-up worker, boom deployer, boom recoveree and boom decontaminator/Clean-Up Worker" for five months following the 2010 BP Deepwater Horizon Oil Spill ("DWH"). *Id.* The cleanup work, Ruffin alleges, exposed him to harmful toxins that led to his 2015 diagnosis of Prostatic Adenocarcinoma.

Id. at 13. Among the various in limine motions filed by the parties, BP sought to exclude the causation testimony of plaintiff expert Dr. Benjamin Rybicki. Rec. Doc. 104. After consideration of parties' filings in opposition and support of the motion and parties' contentions during oral argument in open court, the Court granted BP's motion, excluding Dr. Rybicki's testimony. Rec. Doc. 165. Particularly, we found that the epidemiologist failed to comply with Fifth Circuit expert requirements by not providing an exposure dose at the general causation level nor a specific-causation opinion. *See* Rec. Doc. 167 at 112–20 (oral reasons at hearing).

Remaining for consideration is BP's motion for summary judgment, specifically raising the issue of whether the element of medical causation can be shown without the testimony of Dr. Rybicki.

II. LAW AND ANALYSIS

a. Motion for Summary Judgment Standard

Pursuant to Federal Rule of Civil Procedure 56, summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). A genuine issue of material fact exists if the evidence would allow a reasonable jury to return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). As such, the court should view all facts and evidence in the light most favorable to the non-moving party, without "making credibility determinations or weighing the evidence." *United Fire & Cas. Co. v. Hixon Bros. Inc.*, 453 F.3d 283, 285 (5th Cir. 2006); *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)).

When the movant bears the burden of proof at trial, it must "demonstrate the absence of a genuine issue of material fact" using competent summary judgment evidence. *Celotex*, 477 U.S. at 323. However, "where the non-movant bears the burden of proof at trial, the movant may merely point to an absence of evidence." *Lindsey v. Sears Roebuck & Co.*, 16 F.3d 616, 618 (5th Cir. 1994). Should the movant meet its burden, the burden shifts to the non-movant, who must show by "competent summary judgment evidence" that there is a genuine issue of material fact. *See Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Lindsey*, 16 F.3d at 618. However, "a party cannot defeat summary judgment with conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence." *Turner*, 476 F.3d at 343 (internal quotations omitted) (quoting *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)).

b. Toxic Tort Exposure

In toxic tort cases, plaintiffs have the burden of "prov[ing] that the legal cause of [their] claimed injury or illness is exposure to oil or other chemicals used during the response." *Grant v. BP Expl. & Prod., Inc.*, No. 17-4334, 2022 WL 2467682, at *3 (E.D. La. July 6, 2022) (citing *In re Oil Spill by Oil Rig "Deepwater Horizon" in Gulf of Mex., on Apr. 20, 2010*, No. MDL 2179, 2021 WL 6053613, at *11 (E.D. La. Apr. 1, 2021)).

The Fifth Circuit requires "a two-step process in examining the admissibility of causation evidence in toxic tort cases." *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 351 (5th Cir. 2007). "First, the district court must determine whether there is general causation." *Id.* "Second, if it concludes that there is admissible general-causation evidence, the district court must determine whether there is admissible specific-causation evidence." *Id.* If the district court concludes there is no admissible general-causation evidence, there is no need to consider specific causation. *Id.* at 352; *see also Grant*, 2022 WL 2467682, at *3. Relatedly, the Fifth Circuit also requires plaintiffs

to provide medical-causation proof from experts, or risk dismissal at the summary judgment stage. *See McGill v. BP Expl. & Prod.*, 830 F. App'x 430, 433–34 (5th Cir. 2020); *see also Williams v. BP Expl. & Prod.*, No. 18-9753, 2019 WL 6615504, at *8–11 (E.D. La. Dec. 5, 2019).

The one exception to expert testimony at the specific-causation stage is when the medical conclusion is within common knowledge. *Assignee v. Taco Bell Corp.*, 202 F. Supp. 2d 512, 524 (E.D. La. 2002); *In re Deepwater Horizon BELO Cases*, No. 20-14544, 2022 WL 104243, at *2 (11th Cir. Jan. 11, 2022) (applying the rule to DWH cases). Common knowledge extends to typical ailments and transient symptoms. *Stephens v. BP Expl. & Prod. Inc.*, No. 17-4294, 2022 WL 1642136, at *2–3 (E.D. La. May 24, 2022). On the other hand, courts have found that more serious diagnoses with more complex causal chains require expert testimony for admissibility. *See Ciblic v. BP Exploration & Production*, No. 15-995, 2017 WL 1064954, at *2 (E.D. La. Mar. 21, 2017) (lung cancer); *Stephens*, 2022 WL 1642136 at *4 (describing "nasal congestion, nasal discharge, sinusitis, sore throat, upper respiratory infection, nausea, abdominal cramps and pain, eye burning, irritation, shortness of breath, cough, wheezing, headaches, dizziness, depression, mood disorder, anxiety, and insomnia" as "more akin to lung cancer"); *Troxler v. BP Expl. & Prod., Inc.*, No. 17-4207, 2022 WL 1081193, at *1 (E.D. La. Apr. 11, 2022) ("chemical pneumonitis, gastrointestinal problems, breathing difficulties, memory loss, and other injuries").

For general causation in toxic tort cases, experts assess the association between chemical exposure and complained-of disease. *See Coleman v. BP Expl. & Prod., Inc.*, 609 F. Supp. 3d 485, 494 (E.D. La. 2022) (quoting Fed. Judicial Ctr., Reference Manual on Scientific Evidence 552 n.7 (3d ed. 2011) ("Causation is used to describe the association between two events when one event is a necessary link in a chain of events that results in the effect."")). In order to make such an evaluation, experts evaluate causation through the Bradford Hill factors. *See Wagoner v. Exxon*

Mobil Corp., 813 F. Supp. 2d 771, 803 (E.D. La. 2011) ("[T]he Bradford Hill criteria [have] been widely acknowledged as providing an appropriate framework for assessing whether a causal relationship underlies a statistically significant association between an agent and a disease."). Rather than providing per se requirements, the Bradford Hill factors offer a framework for general causation, considering: (1) temporal relationship; (2) strength of the association; (3) dose-response relationship; (4) replication of findings; (5) biological plausibility; (6) consideration of alternative explanations; (7) cessation of exposure; (8) specificity of the association; and (9) consistency with other knowledge. *Coleman*, 609 F. Supp. 3d at 494.

In line with the Bradford Hill framework, the United States Fifth Circuit Court of Appeals has specified necessary findings by experts in toxic tort cases. For one, evidence should be of the precise disease complained of, not of a general type. *See Allen v. Pennsylvania Eng'g Corp.*, 102 F.3d 194, 197 (5th Cir. 1996) ("Evidence has been found that suggests a connection between EtO exposure and human lymphatic and hematopoietic cancers, but this is not probative on the causation of brain cancer."). Further, the toxin at question must be isolated for causation analysis. *Knight*, 482 F.3d at 353 (affirming unreliability of a study where "[o]f all the organic solvents the study controlled for, it could not determine which led to an increased risk of cancer"). Most significantly to this case, both harmful dose at the general-causation level and exposure dose at the specific-causation level are necessary expert findings. *See McGill v. BP Expl. & Prod.*, 830 F. App'x 430 (5th Cir. 2020); *Byrd v. BP Expl. & Prod.*, No. 22-30654, 2023 WL 4046280 (5th Cir. June 16, 2023).

In *McGill*, the Fifth Circuit considered the district court's grant of summary judgment to BP in a BELO suit. *McGill*, 830 F. App'x at 431. The *McGill* plaintiff complained of respiratory ailments from DWH clean-up work, relying on a pulmonologist who the lower court determined

to be unreliable on both general and specific causation. *Id.* at 432 ("[Plaintiff] contests the district court's determination that Dr. Stogner lacked critical knowledge regarding the level of oil or Corexit harmful to humans and the extent of McGill's exposure."). Regarding general causation, absent from the pulmonologist's opinions was a threshold level of toxin harm. *Id.* at 433. The pulmonologist did rely on scientific literature that indicated potential harm from the substance in question, but of significance to the appellate court, "those studies did not address what level of exposure would be unsafe for humans or what specific illnesses that exposure may cause." *Id.* at 433 n.1. Regarding specific causation, the plaintiff expert failed to discount alternate causes of the complained-of ailments and to supply any indication of an exposure dose. *Id.* at 433 ("Dr. Stogner was unable to answer questions regarding how much time McGill spent scooping up oil, how, where, or in what quantity Corexit was used, how exposure levels would change once substances were diluted in seawater, or how McGill's protective equipment would affect exposure."). In sum, the Fifth Circuit rejected the plaintiff's contention "that a more detailed analysis of his exposure is unnecessary," affirming the summary judgment on causation grounds. *Id*.

In another DWH BELO case arriving through a motion for summary judgment in favor of BP, the Fifth Circuit confirmed its dose-related reasoning. In *Byrd v. BP Exploration & Production, Inc.*, the plaintiffs failed at the general causation stage of the toxic tort inquiry, where their expert "did not identify 'the harmful level of exposure to a chemical' at issue, a baseline requirement of general causation in these sorts of cases." *Byrd*, 2023 WL 4046280, at *1. The appellate court restated the measure for general causation proof: "[W]e demand *scientific—i.e., expert*—'knowledge of the harmful level of exposure to a chemical' as a 'minimal fact[ ] necessary to sustain the plaintiffs' burden[.]'" *Id.* at *2 (emphasis in original) (first quoting *Allen*, 102 F.3d at 199; and then citing *Seaman v. Seacor Marine, LLC*, 326 F. App'x 721, 724 (5th Cir. 2009)).

Without reliable general-causation evidence, the plaintiffs failed to pass onto the specific-causation stage, and the appellate court affirmed the grant of summary judgment. *Id.* at *2–3.

c. Plaintiff's Causation Expert

Here, Ruffin's only remaining causation expert is Dr. James Clark, a toxicologist who plaintiff puts forward as an alternative to Dr. Benjamin Rybicki. *See* Rec. Doc. 123 at 21 ("Dr. Clark's testimony alone unquestionably presents a factual dispute with regards to Plaintiff's true 'dose' of exposure and whether PAH chemicals are capable of causing prostate cancer in humans."). In open court, after consideration of parties' arguments, we previously excluded Dr. Rybicki's expert testimony. *See* Rec. Doc. 165. Particularly, we found that the epidemiologist failed to comply with Fifth Circuit requirements by not providing an exposure dose at the general causation level nor a specific-causation opinion. See Rec. Doc. 167 at 112–20 (oral reasons at hearing). Of significance to our general causation determination, Dr. Rybicki admitted that he did not identify a quantifiable level of exposure to polycyclic aromatic hydrocarbons ("PAH") capable of causing prostate cancer. *Id.* at 112. Also significant to the Court, Dr. Rybicki acknowledged that studies of petroleum workers—rather than the cited studies of non-petroleum workers, such as chimneysweeps and automotive workers—would be more representative of Ruffin's activity, and that at least one petroleum-related study found no association between petroleum-work exposure and prostate cancer. *Id*. at 113. Finally, in response to the argument that a harmful dose is impossible to calculate, the Court expressed "empathy" for the difficulty associated with a harmful-dose finding, but determined that based on binding precedent, the argument "does not relieve the plaintiff's proof requirements of causation." *Id*. at 119–20.

Similarly, we found Dr. Rybicki's opinion did not comply with Fifth Circuit requirements at the specific-causation level. Although Dr. Rybicki was deemed qualified to render a specific-

causation opinion due to his training, skills, and experience, this Court determined that he never provided one in this case. *Id.* at 114–15. Also of note at the specific-causation level, Dr. Rybicki admitted to not reviewing possible alternate causes of plaintiff's cancer, including his work as a truck driver, an activity that at least one study supported a latency period similar to the timeline of his activity. *Id.* at 117–19.

As Dr. Rybicki cannot be relied on for either general or specific causation, Dr. Clark's testimony alone remains. Dr. Clark's expert report does not evaluate general causation based on toxicity–disease association or the Bradford Hill factors. Instead, Dr. Clark provides a toxicity assessment based on EPA thresholds. Rec. Doc. 123-8 at 22–39. Significantly, his report makes no harmful-dose or exposure-dose findings. Rec. Doc. 137-1 at 19–20. The absence of a harmful-dose finding has led courts in this district to determine an expert report inapplicable to the question of general causation. *See, e.g., Osmer v. BP Exploration & Production Inc.*, No. 19-10331, 2021 WL 4206950, at *1 (E.D. La. Sept. 16, 2021); *Coleman v. BP Expl. & Prod., Inc.*, 609 F. Supp. 3d 485, 503 (E.D. La. 2022), *reconsideration denied sub nom. Dawkins v. BP Expl. & Prod., Inc.*, No. 17-3533, 2022 WL 4355818 (E.D. La. Sept. 20, 2022), *appeal dismissed sub nom. Grant v. BP Expl. & Prod., Inc.*, No. 22-30674, 2023 WL 3434056 (5th Cir. Mar. 9, 2023) ("[The exposure assessment expert's] report does not identify the level of those toxins that is harmful and that can be associated with the symptoms at issue here.").

Dr. Clark also makes no specific-causation opinion. In his testimony, Dr. Clark admits he did not intend to provide such an opinion, an admission plaintiff acknowledges. *See* Rec. Doc. 123 at 20 n.96 ("Dr. Clark concedes at deposition that he does not offer a specific causation opinion . . . "). Plaintiff seeks to distinguish the statement by claiming specific causation is merely "a legal

term of art not used in the scientific field." *Id*. Instead, plaintiff resolves that Dr. Clark's testimony that PAH exposure "would contribute to the earlier development of [Ruffin's] prostate cancer." *Id*.

As an initial matter, expert testimony regarding specific causation is necessary in this case. The causation of prostate cancer moves beyond "common knowledge." *See Coleman*, 609 F. Supp. 3d at 494. Such a specific-causation finding would build on an initial general-causation conclusion. As Dr. Clark provides no general-causation conclusion himself nor relies on any admissible general causation conclusions of Dr. Rybicki, *see* Rec. Doc. 123-8 at 71, he does not have the necessary support to opine with sufficient specificity on the cause of Ruffin's cancer. Dr. Clark fails to provide harmful dose and exposure dose opinions; thus, he fails to provide sufficient causation evidence to sustain plaintiff's claim.

In determining the absence of reliable causation proof, the Court echoes the recent assessment of a neighboring district court in a similar DWH toxic-tort matter: "While the result may seem harsh to the plaintiffs, the guiding principle in matters of legal causation is that the courtroom is not the place for scientific guesswork, even of the inspired sort. Law lags science; it does not lead it." *In re Deepwater Horizon BELO Cases*, No. 3:19CV963, 2023 WL 2711573, at *3 (N.D. Fla. Mar. 30, 2023) (quotation omitted). Movant BP does not bear the burden at trial. In toxic tort cases, the Fifth Circuit demands "a two-step process in examining the admissibility of causation evidence," with admissible expert opinions for general and specific causation. *Knight v. Kirby Inland Marine Inc.*, 482 F.3d 347, 351 (5th Cir. 2007). Through its motion, BP has "point[ed] to an absence of evidence" of such evidence. *Lindsey v. Sears Roebuck & Co.*, 16 F.3d 616, 618 (5th Cir. 1994). Therefore, summary judgment in favor of defendants is proper.

New Orleans, Louisiana, this 31st day of October, 2023

SENIOR UNITED STATES DISTRICT JUDGE