

## Products Liability Law Daily Wrap Up, EXPERT EVIDENCE—CHEMICAL PRODUCTS—E.D. La.: Expert’s general causation opinion on benzene/cancer link did not address product at issue, (Jun. 10, 2015)

By John W. Scanlan, J.D.

General causation testimony by a doctor opining that there was a causal relationship between benzene exposure and the development of acute myeloid leukemia (AML) was excluded by the U.S. District Court for the Eastern District of Louisiana. The doctor’s report and opinion were unreliable because, among other reasons, he failed to cite any studies specific to gasoline, which was the product at issue in the case ([Burst v. Shell Oil Co.](#), June 9, 2015, Vance, S.).

**Background.** Bernard Burst, Jr., worked at various gas stations from 1958 through 1971, during which he allegedly came into regular contact with gasoline. He was diagnosed with AML in June 2013 and died six months later. His wife, Yolande Burst, brought negligence and strict liability claims against defendants that allegedly manufactured, supplied, distributed, and sold the gasoline that Bernard Burst had used. She proffered the testimony of Dr. Robert Harrison, a physician certified in occupational medicine and internal medicine, who opined that benzene can cause AML (general causation) and that Bernard Burst’s exposure to benzene caused him to develop AML (specific causation). The defendants moved to exclude his general causation testimony as unreliable and irrelevant. They stated that Dr. Harrison had ignored the question at issue of whether gasoline can cause AML and instead answered the undisputed question of whether benzene exposure can cause AML.

**Reliability.** The court determined that his report and his opinion on general causation were unreliable and, thus, inadmissible. Dr. Harrison’s opinion was that benzene, including benzene-containing solvents such as gasoline, can cause AML. This opinion was based upon his review of the scientific and medical literature and the report of the wife’s other causation expert. However, the court found that Dr. Harrison had cited only benzene-specific literature in his report, and had not evaluated studies relating to gasoline exposure, which is the product involved in the case. The court noted that “multiple agencies” have concluded that benzene is carcinogenic but have not reached this conclusion about gasoline, even though all gasoline contains benzene. Dr. Harrison did not show how benzene-specific studies could reliably support his conclusion that gasoline can cause AML, leaving too great a gap between the data and his opinion.

Even if he had cited gasoline-specific studies, the court determined that his report and testimony would still be excluded because there was no indication that he had applied the methodology he said he used, such as the Bradford Hill criteria. Without citation to gasoline-specific studies and without application of his methodology to his studies, his opinion was wholly conclusory.

Finally, to the extent Dr. Harrison relied upon the testimony of the other causation expert, his opinion was inadmissible. Observing that Dr. Harrison had adopted the other expert’s opinion “wholesale,” it found that Dr. Harrison’s opinion reflected no original analysis or evaluation of the other expert’s methodology or studies upon which the other expert had relied.

The case is No. 14-109.

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Companies: Shell Oil Co.; Chevron U.S.A. Inc.; Texaco, Inc.

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