

Products Liability Law Daily Wrap Up, EXPERT TESTIMONY—CHEMICALS—E.D. La.: Expert's general causation opinion failed to reliably link exposure to gasoline with cancer risk, (Jun. 17, 2015)

By Kathleen Bianco, J.D.

General causation testimony by an expert epidemiologist 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 expert's report and opinion were deemed unreliable because, among other reasons, he failed to examine the substance and disease at issue, and did not exhibit statistically significant results (*Burst v. Shell Oil Co.*, June 16, 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. Peter Infante, an epidemiologist, 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. Infante 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 Dr. Infante's report and his opinion on general causation were unreliable because it was not based on a reliable methodology. Dr. Infante's opinion was that low-level benzene exposure from gasoline can cause AML and that Mr. Burst's exposure to gasoline containing benzene caused his AML. This opinion was based upon his expertise as an epidemiologist along with review of the scientific literature examining the risks associated with exposure to benzene. Upon review, the court found that Dr. Infante had cited primarily benzene-specific literature in his report, and had not focused on 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. Moreover, the court concluded that Dr. Infante's report cherry-picked data supporting his opinion without explaining/discounting contrary results and failed to justify his manipulation of the data. Based on the findings of the court, it was determined that Dr. Infante's methodology was flawed because he had relied on multiple studies that do not reliably support or did not otherwise "fit" his conclusion. Ultimately, there was simply too great an analytical gap between the underlying data and the opinion offered. Consequently, the report and opinion were deemed inadmissible.

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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