

Products Liability Law Daily Wrap Up, EXPERT EVIDENCE—CHEMICAL PRODUCTS: Exclusion of causation experts doomed widow's case in benzene exposure action, (Jun. 30, 2015)

By Susan Lasser, J.D.

The widow of a former gas station attendant, who died after he was diagnosed with acute myeloid leukemia (AML), failed to prove general or specific causation to support her benzene exposure action against three oil and gas companies and, therefore, a federal district court in Louisiana granted judgment as a matter of law for the companies. The court, which had excluded the widow's expert testimony after finding it lacking reliability, ruled that without expert testimony, she could not prove the causation element of her claims (*Burst v. Shell Oil Co.*, June 29, 2015, Vance, S.).

Background. Bernard Burst, Jr. worked as a gasoline station attendant at various Shell Oil, Texaco, and Gulf Oil gas stations between 1958 and 1971 in the New Orleans area. He came into regular contact with gasoline while he refueled automobiles and performed mechanic work. Forty years later, in 2013, he was diagnosed with AML at age 71 and died that same year. His wife, Yolande Burst, filed suit against Shell Oil Company, Chevron U.S.A. Inc. (as successor to Gulf Oil Corporation), and Texaco, Inc., alleging that the companies manufactured, supplied, and distributed the gasoline her husband used and that benzene from the gasoline caused his AML. To show general causation (that gasoline can cause/is capable of causing AML), the wife offered the expert opinions of an epidemiologist and a physician. The court, however, excluded both experts' general causation opinions as unreliable. As a result, the three companies moved for summary judgment, arguing that the wife's claims must fail because she could not prove general or specific causation without the experts' testimony.

Causation. A plaintiff in a toxic tort case must present admissible expert testimony to establish general and specific causation, the court explained, adding that evidence of specific causation is admissible only if there is evidence of general causation. In the current case, the court had excluded the spouse's experts' general causation opinions because it found them unreliable. Because she failed to proffer admissible evidence on general causation, the court held that she could not present evidence on specific causation. The court, therefore, concluded that she could not make the requisite on causation and, as such, granted summary judgment to the companies.

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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