THIRD CIRCUIT COURT OF APPEAL

STATE OF LOUISIANA

DOCKET NUMBER 17-00296-CA
(Consolidated with 311-CA, 297-CA, 298-CA, 299-CA, 300-CA, 301-CA, 302-CA, 303-CA, 304-CA, 305-CA, 306-CA, 307-CA, 308-CA, 309-CA, 310-CA, 312-CA, 313-CA, 314-CA, 315-CA, 316-CA, 317-CA, 318-CA, 319-CA, 320-CA, 321-CA)

EMMA BRADFORD, ET AL.
Plaintiffs-Appellees

VERSUS

CITGO PETROLEUM CORPORATION, ET AL.
Defendants-Appellants

CIVIL APPEAL FROM JUDGMENT OF THE
FOURTEENTH JUDICIAL DISTRICT COURT,
PARISH OF CALCASIEU, STATE OF LOUISIANA
NUMBER 2007-2492, DIVISION "F"
HONORABLE SHARON DARVILLE WILSON

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STATEMENT OF GROUNDS FOR JURISDICTION

This is an appeal from the trial of 36 plaintiffs who alleged that they were injured by CITGO's June 2006 oil spill or chemical air release while in the Lake Charles area. The plaintiffs who ultimately went to trial represented about half of the total plaintiffs in the consolidated action, the other claimants having chosen not to pursue their claims at trial. Despite not having an expert witness who testified to the chemical exposures of the plaintiffs (with one exception), the district court found all but two of the plaintiffs established that his or her alleged injuries were caused by exposure either to the oil spill or to the chemicals from the air release, awarding damages to 34 plaintiffs.

The district court entered final judgment on October 18, 2016, with the notice of judgment mailed to all parties on October 26, 2016. (R-3944-53). CITGO filed a motion for suspensive appeal, which the district court granted on November 15, 2016. (R-3955-61). CITGO posted an appeal bond that same day. (R-3964-65). This Court has appellate jurisdiction under Louisiana Constitution article 5, Section 10, and timely filed its appeal under Louisiana Code of Civil Procedure article 2123.

STATEMENT OF THE CASE

The district court committed two principal errors. First, the district court awarded damages to a large number of plaintiffs without expert testimony establishing that they actually had been exposed to harmful chemicals released by CITGO. Second, the district court awarded damages to many of the plaintiffs for symptom durations exceeding the durations to which their own medical causation expert testified. Both constitute fundamental legal errors because expert testimony is required to establish causation in a chemical exposure case where, as here, the exposure is not self-evident, and both the fact of exposure and the health effects potentially related to the exposure are outside the knowledge of a layperson.

While three other appeals have come before this Court involving CITGO's June 2006 oil spill, this case differs in two critically important ways from those that preceded it.[1] First, plaintiffs in those cases all worked at the Calcasieu Refining Company ("CRC") and claimed exposure from working near the oil spill in the days and weeks after the event. Not only was oil undisputedly around the CRC island location in the few weeks after the spill, but in those cases plaintiffs presented expert exposure testimony in an effort to meet their burden of proving that their multi-week exposure to the oil surrounding that island was harmful.

In stark contrast, here, the plaintiffs have no unifying exposure story. Rather, they are a disparate group of individuals who claim exposure while in and around various Calcasieu Parish locations in the days and weeks following the spill: from the Ellender Bridge, about eight miles south of the CITGO facility, to the Isle of Capri Casino, about six miles north-east of the facility, and assorted spots in between. Many of these plaintiffs were in locations the slop oil did not reach, and instead claim exposure to two chemicals – hydrogen sulfide (H2S) and sulfur dioxide (SO2) – that were released into the air at higher-than-permitted levels from stacks at the CITGO facility for approximately 12 to 13 hours on June 19, 2006. And, many of the claimed exposures lasted for brief time periods, sometimes minutes to hours, as contrasted to the multi-week exposures at issue in the prior three CITGO cases.

In ruling on these cases, the district court committed legal error by impermissibly accepting plaintiffs' lay testimony as definitive evidence of

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[1] *Arabie v. CITGO Petroleum Corporation*, 2010-334 (La. App. 3 Cir. 10/27/10), 49 So. 3d 985 ("*Arabie I*"), *Arabie v. CITGO Petroleum Corp.*, 2015-324 (La. App. 3 Cir. 10/7/15), 175 So. 3d 1180 ("*Arabie II*"), and *Shawn Cormier, et al. v. CITGO Petroleum Corp.*, 2007-002787 (La. Ct. 14th Dist. 7/6/16). The *Cormier* decision currently is on appeal in this Court.

exposure in the absence of supporting expert testimony. Twenty plaintiffs provided exposure accounts that were woefully inadequate to prove they were in a location at a time when it was even possible (much less probable) to have been exposed to chemicals released by CITGO. Many of the plaintiffs could not identify when they were exposed; they were not near the oil spill; and to the extent that they alleged exposure to the air release, they either were not in locations affected by the air release, or were not in the path of the release at times when they could have been exposed. In many cases, it was not even clear whether plaintiffs claimed exposure to the oil spill or to the air release, but the district court nevertheless found that such plaintiffs met their burden of proof.

Plaintiffs' expert industrial hygienist in these cases, Frank Parker, who has provided exposure opinions specific to every plaintiff in prior cases before this Court, did not give *any* specific exposure opinions here, save for one plaintiff (Michael Lee). The only specific expert testimony offered by plaintiffs was that of Dr. Steve Springer and Dr. Robert Looney, the family practice doctors who examined them at the request of plaintiffs' counsel after they filed suit and served as plaintiffs' specific causation medical experts. Dr. Springer, however, acknowledged in his testimony that his causation opinions were *conditioned on proof of exposure*.[2] That is, *if* plaintiffs were in a position (as to both location *and* time) to be exposed, then their symptoms were consistent with such exposure. He deferred to a toxicologist or industrial hygienist on questions of exposure itself, yet

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[2] Dr. Springer provided opinions on 18 of the 20 plaintiffs discussed for this appeal issue. Two plaintiffs, Rodney Guillory and Cheryl Wilmore, were evaluated by Dr. Looney. He acknowledged that an industrial hygienist could give a better answer than him about Mr. Guillory's exposure issues, *see* R-5332, and also acknowledged that he was "not able to assess with any degree of accuracy at all the amount of [Ms. Wilmore's] exposure." R-5130.

plaintiffs offered no such expert testimony on these plaintiffs' exposures. Thus, there is a critical gap in the causal chain.

The district court impermissibly sought to fill this gap with findings that nearly all of the plaintiffs were "credible" on the stand, despite myriad evidence casting their exposure stories into doubt. In any event, witness credibility is not a trump card that can be played to dodge the legal standard that requires each plaintiff to meet his or her burden of proof that exposure to a substance emitted from CITGO caused their injuries. In this situation, where causation is not a matter of common knowledge, expert testimony *must* establish that these plaintiffs actually were exposed to substances released by CITGO.

At one point, the district court appeared to recognize the importance of objective, expert verification of plaintiffs' subjective exposure claims when it noted, in denying recovery to plaintiff Randy Thomas, that "I have no supporting expert testimony *to substantiate that Mr. Thomas was exposed* or that he had verifiable symptoms." (R-5165) (emphasis added). But this same lack of substantiating expert testimony on exposure also was a fatal flaw in these twenty other claims. Expert testimony establishing exposure is not a requirement only for a plaintiff who might lack credibility, like Mr. Thomas. ***It is an essential element of every plaintiff's burden of proof, regardless of their credibility.***

Plaintiffs' likely answer – that the oil spill was large and in the waterways for several weeks, and the air release emitted a substantial amount of chemicals and had some documented impacts offsite – is no answer at all. Without an expert to explain that the chemicals arrived at the plaintiffs' alleged exposure locations and were capable of causing harm, plaintiffs failed to meet their burden of proof. It is not to enough for plaintiffs to say they smelled an odor or saw what they thought was oil sometime in June 2006; expert evidence must connect that specific

location, time, and alleged exposure agent to chemicals from the June 19, 2006 CITGO event.

The district court committed another legal error for many of the claims by awarding damages based on finding symptom durations that were contradicted by the duration testimony of plaintiffs' own specific causation medical expert Dr. Springer. Dr. Springer admitted in his trial testimony that the symptoms of all of the plaintiffs for whom he rendered opinions were "transient" or short lived. Despite this testimony, the district court found that many plaintiffs' symptoms related to their exposure lasted weeks or, in several cases, many months or even years beyond the duration opined by Dr. Springer, often based on plaintiffs' subjective testimony regarding their health. The question for purposes of establishing causation, however, is not whether plaintiffs experienced health effects, but whether those effects (non-specific symptoms such as headaches, sinus complaints, fatigue, etc.) were reasonably related to any exposure. These lay plaintiffs simply do not have the medical expertise to link their alleged exposure to these common health symptoms for a specific period of time. Expert testimony must provide the basis for that. When plaintiff's own specific causation medical expert undisputedly opines as to symptom duration, it is legal error for the trial court's ruling to go beyond those opinions with longer duration findings.

ASSIGNMENTS OF ERROR

1. The district court erred in finding that 20 of the plaintiffs proved causation because: (1) plaintiffs failed to present expert testimony that they were exposed to chemicals released from CITGO – which is required when, as here, exposure is outside the knowledge of layperson; and (2) plaintiffs' lay testimony about detecting an odor, seeing what they believed to be oil, or experiencing symptoms at disparate locations in Calcasieu Parish around the time of CITGO's

June 2006 chemical releases is wholly insufficient without accompanying expert testimony to establish exposure to chemicals released from CITGO.

2. The district court erred in finding 13 plaintiffs had symptoms caused by their alleged exposure that lasted for longer periods of time than the durations opined by plaintiffs' medical causation expert, often relying instead on plaintiffs' lay testimony regarding how long they thought symptoms caused by their exposure lasted. Because medical causation of symptoms related to a chemical exposure requires expert testimony, plaintiffs' lay testimony cannot trump their own expert's opinions. The district court committed legal error in awarding damages often based on the longer duration periods cited in the plaintiffs' testimonies.

ISSUES PRESENTED FOR REVIEW

1. Twenty plaintiffs asserted claims that they were exposed to chemicals from CITGO's June 2006 oil spill or air release. These 20 plaintiffs testified that they were in different locations in Calcasieu Parish in the general time frame of June 2006 and detected an odor, saw something in the water that looked like oil, or began having non-specific symptoms such as burning eyes, headaches, or nausea. Plaintiffs presented no expert testimony that what they smelled or saw was related to CITGO's June 2006 releases. In the absence of expert testimony that plaintiffs were exposed to chemicals released from CITGO – which is required when the subject matter is outside the knowledge of a layperson – did the district court err in finding that claims of injury by these 20 plaintiffs were caused by exposure from CITGO's June 2006 releases?

2. The district court found that thirteen plaintiffs experienced symptoms related to their exposure to CITGO's June 2006 releases for a longer time period than the symptom duration opined by their own specific causation medical expert. Because medical causation in a chemical exposure case requires expert testimony,

did the district court err in awarding damages based on symptom duration findings that were directly contradicted by plaintiffs' specific causation medical expert?

STATEMENT OF FACTS

I. The Oil Spill

On June 19, 2006, oil overflowed from wastewater storage tanks at CITGO's Lake Charles refinery into a walled containment area due to heavy rains. *Arabie v. CITGO Petroleum Corp. ("Arabie I LASC")*, 2010-2605, pp. 1-2 (La. 3/13/12), 89 So. 3d 307, 310. Because of an ongoing construction project to increase capacity at CITGO's wastewater treatment unit, part of the concrete floor had been removed. *Id.* at p. 2; 89 So. 3d at 311. Oil penetrated the temporary earthen floor and, unknown to CITGO and other responders at the time, entered an underground junction box containing drainage pipes. *Id.* The oil flowed through those pipes underneath the containment area to the Indian Marais, a creek running across CITGO's property, and into the Calcasieu Ship Channel. *Id.* Once CITGO discovered the oil spill, CITGO coordinated with the Coast Guard and other federal and state entities to respond promptly and effectively to the oil spill.

II. The Air Release

Like many facilities in the area, CITGO is permitted by the state to release both H2S and SO2 into the atmosphere in conjunction with its operations. On June 19, 2006, however, an extreme weather event involving rapid and heavy early morning rains flooded the trench system housing CITGO's steam lines, cooling them and thereby causing a loss of steam pressure to CITGO's Central Amine Unit. (R-8146). The net effects of the impacts to CITGO's Central Amine Unit caused SO2 and H2S to be released above their permitted levels. (R-8146). The higher-than-permitted air release lasted approximately 13 hours, from roughly 7:00

AM to 8:00 PM, on Monday, June 19, 2006. (R-25726-27).[3] The wind direction for most of that day was moving from the southeast to the northwest. (R-25761, 25793-94).

Weather records from June 19, 2006 show that heavy rain and thunderstorms lasted through the early morning, until approximately 8:00 AM, and that a light rain continued to fall throughout the day, until around 5:00 PM. (R-26057-065).

III. The District Court's Ruling

The district court issued its ruling from the bench on May 27, 2016. (R-5146-86). On causation, the Court held that, save for two plaintiffs, plaintiffs' alleged injuries were caused either by the air release or the oil spill event. (R-5149). The court's reasoning was, essentially: (1) the plaintiffs were "very credible" in describing symptoms that began after the alleged exposure to CITGO's releases (R-5148), and (2) the symptoms of which they complained were consistent with those listed on the Material Safety Data Sheets ("MSDS") for these substances. (R-5150). The district court did not mention or address the absence of expert testimony about the individual plaintiffs' exposures or any other evidence linking the plaintiffs' descriptions of what occurred to the CITGO chemical releases, or the inconsistencies between the medical causation opinions of Dr. Springer and many of the plaintiffs' claims.

The district court awarded pain and suffering damages ranging from $7000 to $35,000. (R-3944-53). The 34 plaintiffs receiving awards also were given general damages for mental anguish/loss of enjoyment of life, from $1,000 to $5,000. *Id.* Finally, 22 plaintiffs received fear of future injury awards, from $1,500 to $15,000. *Id.* All medical expenses allegedly associated with plaintiffs'

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[3] Over the next four days, thermal oxidizers emitted a small amount of SO2 that was above permitted limits. (R-8149). No plaintiff made a specific claim that he or she was exposed to the air release over that four-day period.

exposure claims were awarded. *Id.* While CITGO believes that each of the 34 damages awards is in error, CITGO is limiting its appeal to the 22 plaintiffs whose judgments have the most obvious defects.[4]

SUMMARY OF THE ARGUMENT

1. The district court erred in finding causation for 20 plaintiffs without supporting expert testimony establishing that exposure to chemicals from CITGO caused their alleged injuries. Expert testimony was required to establish causation, including that plaintiffs were exposed to harmful chemicals.

Plaintiffs' own testimony showed that none of the 20 plaintiffs was obviously exposed to CITGO's release. Unlike plaintiffs in the prior three CITGO cases that have reached this Court who were located on a small island that undisputedly was surrounded by oil (and for whom expert exposure opinions nevertheless were offered), the plaintiffs here were in questionable or unidentified exposure locations on uncertain dates and provided vague descriptions of smelling an odor or seeing a substance in the water. There simply was no way to link these vague locations and subjective descriptions to CITGO's chemicals without scientific evidence explaining that the plaintiffs were in fact exposed to the oil spill or to the air release.

Plaintiffs were required, but failed, to present expert testimony on exposure to show that their descriptions were linked to the CITGO releases. Dr. Springer and Dr. Looney, the specific causation medical experts offered for these plaintiffs, made a cardinal error. They assumed that plaintiffs were exposed – without a

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[4] In addition, there are other appealable issues that CITGO is not raising on this appeal, but may in others, simply because it is too unwieldy in a case with this many plaintiffs to raise every appellate issue. For example, the fear of future injury awards were completely unsupported by the evidence; however, CITGO is not raising that issue on this appeal.

factual basis supporting those assumptions – rendering their medical causation opinions invalid.

Thus, the district court committed legal error in finding that the 20 plaintiffs experienced a harmful exposure to CITGO's chemical releases without expert testimony on exposure. The district court also committed manifest error because, absent the required expert testimony, there was no basis for its causation findings.

2. The district court erred in awarding damages based on symptom durations that directly contradicted their own expert's specific causation medical opinions. Expert testimony is required to establish both general and specific medical causation in a chemical exposure case. Dr. Springer limited his specific causation opinions to a particular duration because he lacked medical or scientific evidence to support a longer duration of symptoms related to plaintiffs' alleged exposure. Plaintiffs' lay testimony that they believed symptoms related to the exposure lasted longer cannot trump their own expert's specific causation testimony, because plaintiffs lack the requisite expertise to give causation opinions. The issue is not whether plaintiffs had the general and common symptoms at issue here, such as headaches, sinus problems and fatigue (they can certainly testify to that), but whether such symptoms can scientifically be linked to an exposure to chemicals released by CITGO.

The district court erred in finding symptom durations often by favoring the plaintiffs' lay testimony on causation over Dr. Springer's specific causation expert testimony; this error resulted in damages awards for 13 plaintiffs based on unsupported symptoms durations. In several cases, the discrepancies were substantial and led to very high awards for minor claims.

ARGUMENT

I. Standard of Review

Legal errors are subject to a *de novo* standard of review in the appellate court. *Thorton v. Wolf*, 2007-135, p.2 (La. App. 3 Cir. 5/30/07); 958 So. 2d 131, 133. A district court commits legal error when it applies incorrect principles of law and such errors are prejudicial. *Evans v. Lungrin*, 97-0541 (La. 2/6/98); 708 So. 2d 731, 736. Prejudice occurs when the legal error materially affects the outcome and deprives a party of substantial rights. *Id.* The appropriate standard for appellate review of a district court's factual findings is the manifest error/clearly wrong standard, which allows the district court's finding of fact to be set aside if it is clearly wrong in the light of the record reviewed in its entirety. *E.g., Hall v. Folger Coffee Co.*, 2003-1734, p. 9 (La. 4/14/04); 874 So. 2d 90, 98. This appeal presents both legal errors and factual ones.

II. The District Court Erred in Finding Causation for Plaintiffs Who Had No Supporting Expert Testimony or Other Evidence Establishing Exposure to Chemicals Released by CITGO.

A. Expert Testimony Is Required to Prove Causation in a Chemical Exposure Claim.

"In a toxic tort suit, the plaintiff must present admissible ***expert testimony*** to establish general causation as well as specific causation." *Pratt v. Landings at Barksdale*, 2013 WL 5376021, at *3 (W.D. La. Sept. 24, 2013) (citations and quotation marks omitted, emphasis in original). This is so because whether "plaintiffs suffered injuries as a result of chemical exposure ... is not a determination based on common knowledge" and, therefore, plaintiffs must "present expert medical testimony in order to meet their burden of proving medical causation." *Johnson v. E.I. DuPont deMemours & Co., Inc.*, 08-628, p. 7 (La. App. 5 Cir. 1/13/09); 7 So. 3d 734, 740.

Causation in a chemical exposure case necessarily includes proof of a harmful chemical exposure. This is why courts routinely hold that "[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." *Allen v. Pennsylvania Eng. Corp.*, 102 F. 3d 194, 199 (5th Cir. 1996); *see also, e.g.*, *Mitchell v. Gencorp Inc.*, 165 F.3d 778, 781 (10th Cir. 1999) (same); *McClain v. Metabolife Intern., Inc.*, 401 F.3d 1233, 1241 (11th Cir. 2005) (same); *Atkins v. Ferro Corp.*, 534 F. Supp 2d 662, 667 (M.D. La. 2008) (granting summary judgment in a chemical exposure case because plaintiffs had not produced "any expert testimony or report to establish that . . . [they] were actually exposed to a harmful level of the chemical").

In *Seaman v. Seacor Marine L.L.C.*, 326 F. App'x 721, 729 (5th Cir. 2009), plaintiff attempted to prove exposure by submitting lay testimony from co-workers about how often plaintiff worked around particular chemicals, the absence of protective gear, and the presence of odor. But "[w]ithout expert testimony to place these declarations in context," *id.*, they did not show a harmful exposure. The testimony in *Seaman* was far more detailed and specific than plaintiffs' descriptions here, but expert testimony nonetheless was required, because whether someone has been exposed to chemicals generally is not a matter of common knowledge.[5]

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[5] In closing argument, plaintiffs presented the district court with a number of case citations that allegedly stood for the proposition that lay testimony was sufficient to establish exposure and duration of symptoms. (R-4956-57: citing *Lasha v. Olin Corp.*, 625 So. 2d 1002 (La. 1993); *Cannet v. Franklynn Pest Control Co., Inc.*, 08-56 (La. App. 5 Cir. 4/29/08); 985 So. 2d 270; and *Kliebert v. Breaud*, 13-655 (La. App. 5 Cir. 1/31/14); 134 So. 3d 23. Those cases, however, do not contradict the established rule, and merely note that ***on matters of common knowledge***, expert testimony is not required. As the above case law demonstrates, however, expert testimony clearly *is* required in cases of chemical exposure, when plaintiffs' exposure claims are based on vague, subjective and often questionable descriptions of exposure.

Indeed, in the three related cases that have been appealed to this court, plaintiffs presented an industrial hygiene expert who offered individual exposure opinions on each plaintiff – even though the plaintiffs in those three cases were working on the CRC island that was surrounded by oil for three weeks. *See, e.g., Arabie I LASC,,* 2010-2605 (La. 3/13/12), 89 So.3d 307; *see also Anthony v. Georgia Gulf Lake Charles, LLC,* 13-236, p. 10 (La. App. 3 Cir. 5/21/14), 146 So. 3d 235, 249 (involving similar claims and using Mr. Parker to establish proof that those specific plaintiffs were exposed to multiple chemicals that exceeded safe levels). In this case, however, plaintiffs presented no such testimony for these specific plaintiffs, and the trial court ignored this crucial lack of required evidence.[6]

1. The Only Specific Causation Experts for Plaintiffs Gave Opinions Conditioned upon Plaintiffs Proving Exposure, and a Conditional Opinion Has No Evidentiary Value.

Plaintiffs may attempt to point to Dr. Springer or Dr. Looney as providing the required specific causation expert medical testimony, which they may contend is sufficient to meet their burden of establishing exposure. But there is a huge flaw both in this end run approach and with Drs. Springer and Looney's opinions – they ***assumed*** that plaintiffs were exposed to chemicals released from CITGO without a

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[6] CITGO acknowledges that the Louisiana Supreme Court's decision in *Arabie I* holds that plaintiffs were not required to prove exposure by means of air monitoring data. 2010-2605 (La. 3/13/12), 89 So. 3d 307, 322. But *Arabie I* plainly did not dispense with the requirement of proof of exposure through scientific means. In *Arabie I,* the evidence of exposure included: (1) plaintiffs working for weeks on an island undisputedly surrounded by oil, (2) industrial hygienist Frank Parker's expert testimony of exposure to harmful levels of chemicals for each specific plaintiff, (3) epidemiologist and occupational medicine expert Dr. Barry Levy's testimony of both general and specific causation for each plaintiff, and (4) treating physician testimony that symptoms were consistent with exposure. *Arabie I,* 2010-2605 (La. 3/13/12), 89 So. 3d 307, 321–22. Here, plaintiffs rely on only the fourth component – testimony from Drs. Springer and Looney, – whose opinions were premised on an *assumption* of exposure, rather than actual evidence of exposure as existed in *Arabie I.*

factual basis for doing so. Assuming facts to be true – without support – renders an expert's opinion valueless. "When the opinion testimony of an expert witness is based on assumed facts which are not proven by other competent evidence, the expert testimony has no probative value and should be disregarded by the trier of fact." *Harris v. Williams*, 28,512 (La. App. 2 Cir. 8/23/96); 679 So.2d 990, 1003-04. Put another way, the "value of an expert witness' opinion depends on the existence of facts on which it is predicated, and for the opinion to be valid and to merit weight, the facts on which it is based must be substantiated by the record." *Johnson v. Masur*, 493 So. 2d 881, 889 (La. App. 3 Cir. 1986).[7]

Drs. Springer and Looney's opinions violate the cardinal rule that an expert's opinions cannot be based on unsupported assumptions. Dr. Springer admitted in his trial testimony that he would have to defer to an industrial hygienist on whether these plaintiffs actually were exposed to slop oil or H2S/SO2.[8] On numerous occasions in his trial deposition, it was apparent that Dr. Springer accepted plaintiffs' lay opinions regarding exposure issues, and based his opinion on the assumption that they had, in fact, been exposed.[9] He also agreed for a number of plaintiffs that, if their exposure stories turned out to be contrary to the

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7 *See also Weber v. McClean Trucking Co.*, 265 So. 2d 628, 633 (La. App. 3 Cir. 1972) ("It is a cardinal rule that for an expert opinion to be of value the reality of the state of facts upon which such an opinion is predicated must be shown to exist. An opinion based on assumed facts, varying materially from the actual facts, is without probative value and is insufficient to sustain a judgment."); *Patterson v. Meyers*, 583 So. 2d 79, 84 (La. App. 4 Cir. 1991) ("An expert's opinion has no value if the facts on which it is predicated are not substantiated by the record.").

8 *See* R-5573 (Springer: "Q: And I'm assuming that, on exposure issues, you would defer to an industrial hygienist?" A: Yes.").

9 *See, e.g.*, R-5588: (Q: Alright, and do you know what day Ms. Johnson was claiming exposure? Are you assuming – in your report you say June 19, 2006? A: That's what I've got here. Q: Okay. And you don't know how close the oil was to L'Auberge casino on that day, do you? A: I don't know right off the top of my head, the date.").

evidence, he would have no basis for his causation opinions.[10] None of the 20 plaintiffs at issue here, however, could testify that he or she was exposed to something released by CITGO. And, while Dr. Springer was prepared to defer to an industrial hygiene or other exposure expert, plaintiffs offered no such testimony establishing their individual exposures. Dr. Looney, for his part, was not even sure of the chemicals to which Mr. Guillory alleged exposure, *see* R-5331-33, and acknowledged he could not assess "with any degree of accuracy at all" the amount of Ms. Wilmore's exposure. R-5130. That Drs. Springer and Looney's diagnoses were premised on *assumed* exposure is a defect that should have rendered their opinions useless to the trier of fact. Without specific causation expert medical opinions, based on *proof of* exposure, none of these 20 plaintiffs should have recovered at all. *E.g. Johnson*, 08-628, p. 7; 7 So. 3d at 740.

2. No Other Expert Witness Established Exposure to the CITGO Releases.

Other than Drs. Springer and Looney, no expert witness offered opinions about the plaintiffs specifically (except for Michael Lee, who was the sole worker at CRC in this case). Frank Parker, plaintiffs' industrial hygienist, provided a trial deposition discussing *general* opinions about exposure to and monitoring of slop oil and H2S/SO2. (R-25623-763). He did not, however, connect any of that

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[10] *See, e.g.*, R-5532 ("Q: I know you were saying, well, Ms. Anderson didn't know exactly what day it was, but, in the case of the H2S and the SO2 release, the day would actually matter, right, because if it wasn't June 19, 2006, then she couldn't have been exposed to it; is that fair? A: I guess you could say that's fair."); *see also* R-5562-63 (agreeing there was no basis to connect the Love family's symptoms to H2S/SO2 exposure if the evidence demonstrated they were at the Ravia Road house the weekend before or after the air release); R-5712-13 (agreeing that he would need corroborating evidence that oil had reached the shores of the I-210 beach on the day that the Richard family said they were there in order to render a causation opinion, and that he had "to defer that to somebody else that maybe understands more about what exact time [the oil] reached the beach").

general information to the plaintiffs in this case to form specific causation opinions, save for Michael Lee. He testified:

> Q: Okay. And just to clarify. . . . [F]or the individual plaintiffs, other than Michael Lee because I'll carve him out, you're not going to discuss where they were or what their exposure circumstances were.
>
> A: Correct.

R-25638-39. Dr. Levy, plaintiffs' epidemiologist and occupational and environmental medicine expert, provided a report with general causation opinions regarding symptoms that *can be* caused by exposure to the chemicals at issue in this case. (R-23039-141). But giving an opinion as to a theoretical *possibility* of injury due to chemical exposure does not provide any specific causation opinions establishing that the plaintiffs in this case were exposed to and injured by chemicals. By contrast, in the *Arabie I* case, this Court specifically noted that the plaintiffs proved causation with the expert testimony of both Mr. Parker and Dr. Levy, who provided *specific* causation opinions for those plaintiffs.[11]

Those essential expert causation opinions required to establish exposure to chemicals from CITGO are missing in this case. These experts clearly are capable of rendering specific causation opinions when asked: that they did not for these

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[11] *See Arabie v. CITGO Petroleum Corp.*, 2010-244, p.10 (La. App. 3 Cir. 10/27/10); 49 So. 3d 529, 537, *reversed in part on other grounds by Arabie I LASC*, 2010-2605 (La. 3/13/12), 89 So. 3d 307 ("Dr. Levy . . . established a causative link between the plaintiffs' exposure to the CITGO slop oil and certain specific symptoms of each of the fourteen plaintiffs."); *see also id.*, 2010-244, p. 14; 49 So. 3d at 540 ("At trial, Dr. Levy testified that he determined both general causation, that slop oil and its ingredients can cause various symptoms and health problems, ***and specific causation, that slop oil exposure caused certain symptoms of each specific plaintiff.***"); *id.*, 2010-244, p. 19, 49 So. 3d at 542 (emphasis added) ("[I]n [Mr. Parker's] opinion, the plaintiffs' symptomology was the result of their exposure to CITGO's wastewater and slop oil."). The Supreme Court, in upholding plaintiffs' causation arguments, noted that "Dr. Barry Levy . . . testified that the symptoms of each individual plaintiff were related to the oil spill to a reasonable medical probability." *Arabie I LASC*, 2010-2605, p. 20; 89 So. 3d at 321.

plaintiffs should speak volumes about the strength of their questionable exposure claims. Those exposure opinions are missing here because it was a bridge too far even for plaintiffs' own experts, who could not justify such opinions based on the plaintiffs' testimony. Under Louisiana law, which requires expert testimony to prove exposure and causation in these circumstances, the omission of those specific causation opinions means plaintiffs did not meet their burden of proof.

B. Twenty Plaintiffs Did Not Meet Their Burden of Proof in Establishing Exposure to Substances Emitted from CITGO.

The 20 plaintiffs who are the subject of this appeal issue provided exposure accounts that were vague, often non-specific as to time, and directly contradict the evidence regarding the timing and location of the substances emitted from the CITGO facility. A brief discussion of each plaintiff is provided:

***Cheryl Wilmore*:**

- Working night shift at the Isle of Capri Casino on uncertain date when she allegedly was exposed to the CITGO slop oil. R-4158, R-4166-67.

- Took a break outside and smelled a "really rotten smell" and could see dead fish floating in "really oily" water. (R-4158). Her break lasted around five or six minutes. (R-4159). She also smelled the odor at the end of her shift for around 15 minutes when she was waiting at the bus stop. (R-4159).

- The Isle of Capri Casino is approximately six miles northeast of the CITGO facility. There is no evidence that any oil from the June 19, 2006 CITGO event reached or came anywhere near the Isle of Capri Casino at any time.[12] Nor is there any evidence that Ms. Wilmore could have experienced any harmful exposure during her short work break or at the end of her shift.

- Dr. Looney, who examined Ms. Wilmore at the request of plaintiffs' counsel, testified that he had no personal knowledge of whether oil from the CITGO event made it to the Isle of Capri casino, other than what he learned from the history related to him by Ms. Wilmore, and agreed he "not able to assess with any degree of accuracy at all the amount of exposure." R-5130.

- There is no evidence that the odor Ms. Wilmore claimed to have smelled came from CITGO's oil – particularly because there is no evidence that oil

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[12] A map of the migration of the oil produced by CITGO on July 3, 2006 shows that a moderate amount of oil migrated to the I-210 bridge, well south of the Isle of Capri Casino, but no farther. (R-6325).

was ever close enough to the Isle of Capri Casino that she could have been exposed at that location.

Hilda Johnson:

- Was outside of the L'Auberge Casino on an uncertain date waiting for the valet to retrieve her car the day of her alleged exposure. (R-4655). Smelled an "ammonia"-like smell and her throat started burning, eyes started watering, and she started coughing and choking. (R-4655-56).[13]

- She does not remember the day this happened. (R-4656).

- The district court found that Ms. Johnson had been exposed to slop oil and she mistakenly described the odor as ammonia, *see* R-5174, even though there was no evidence, at any time, that oil came anywhere close to the L'Auberge casino.[14]

- There is no evidence that Ms. Johnson was exposed to chemicals released by CITGO while in the L'Auberge parking lot for the short period of time required for valet parking service, much less evidence that it was even possible for someone to be exposed at that location.

Wanda Anderson:

- Had a side job detailing cars in June 2006, and on the day of her alleged exposure she met a client at a barbeque stand somewhere on Highway 27, west of CITGO, and then followed him to his home to complete her work at a location she cannot recall. (R-4560-63).

- Admitted that the date she met her client must have been a weekend, because she never detailed cars during the week, and thus she could not have been doing so on June 19, 2006. (R-4569).

- Said the weather was "pretty good" on the day she alleged she was exposed, and that she wouldn't have been detailing cars in the rain. (R-4569-70).

- As noted, the air release lasted for approximately 13 hours on Monday, June 19, 2006 (R-25726-27), which was rainy for most the day. (R-26057-065).

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[13] Neither slop oil, nor H2S or S02 smells like ammonia. *See* R-7667 (slop oil MSDS, odor: "petroleum (possibly of rotten eggs)"); R-15238 (H2S MSDS, odor: "rotten eggs"); R-15357 (SO2 MSDS, odor = "hydrogen sulfide odor").

[14] CITGO's July 3, 2006 map of the oil spill shows that a moderate amount of oil reached the I-210 bridge, but no further, by that date. Plaintiffs have not offered any evidence or testimony to challenge that the northern-most reach of the oil was the I-210 bridge, well south of the L'Auberge Casino. *See* R-6325.

- Did not notice any odors out of the ordinary the day she met her client. (R-4564). Over the weekend, she began to feel nauseous and experience diarrhea. (R-4564).

- Based on Anderson's own testimony, she could not have been detailing cars on Monday June 19, 2006, the day of the air release exposure. She does not claim to have been near or exposed to the oil spill. There is a total absence of proof that she was exposed to chemicals released from CITGO.

Emma Bradford:

- Was crabbing at the Ellender Bridge, approximately 8 miles south of CITGO, when she allegedly was exposed. It was "probably a Tuesday," "sometime in June" but was not sure of the day, and she was there from approximately 8:30 AM to noon. (R-4628-30, 4634).

- Noticed a smell "like a car backfiring," and a rainbow sheen on the water. (R-4630). Began to experience nose bleeds, which she had experienced in the past, ***about a week later.*** (R-4630).

- There is no evidence in the record showing when oil first appeared near the Ellender Bridge.[15] Regardless when oil reached that location, Ms. Bradford's testimony is insufficient to show that she was crabbing at the Ellender Bridge after the oil spill occurred. There is no evidence that the "rainbow sheen" or smell she testified to was from the CITGO oil spill.

Mallory Charles:

- Working at Olmstead machine shop, cleaning the yard, approximately three miles northwest of the CITGO facility, on the day he allegedly was exposed. (R-4588)

- Could not remember the day of the week he allegedly was exposed. (R4598). Did not recall whether it was raining, but agreed it was unlikely he would clean the yard in a rainstorm (R-4598), making it unlikely that his alleged exposure occurred on June 19, 2006. *See supra* pp. 8-9 regarding the weather on June 19, 2006.

- Did not recall smelling anything out of the ordinary on the day he alleged exposure, or seeing a cloud of chemicals. (R-4597). He does recall, on the afternoon of his alleged exposure, he started feeling flu-like symptoms and nausea. (R-4590)

- Not only is there no expert testimony establishing Mr. Charles' exposure, and there is uncertainty about when he claims exposure (and what he claims exposure to), but he did not recall an odor or anything else that would indicate a chemical exposure. That he began having flu-like symptoms

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15 The CITGO map shows that a moderate amount of oil was on the shoreline near the Ellender Bridge by July 3, 2006. *See* R-6325. Plaintiffs, however, did not offer any evidence showing when oil first reached the bridge.

apparently in the general time frame of the CITGO releases does not in any way show that his alleged exposure caused those symptoms.

Clara Espree:

- Delivered mail at Bulk Terminal 1 for the Port of Lake Charles on the date of her alleged exposure. Was stopped at a train track on Bayou D'Inde Road thereafter, about a mile and a half north of CITGO, where she smelled a "real foul smell" that made her eyes burn. After train passed, she drove to highway and did not smell the odor again. R-4530-31, 4537.

- Does not know when she smelled the odor, other than it was in June 2006 on a sunny day. (R-4537); *see also supra* pp. 8-9 regarding the weather on June 19, 2006.

- There is simply no evidence – expert or otherwise – showing that the foul smell on a sunny day in June 2006 came from the CITGO releases.

Rodney Guillory:

- Recalls smelling a "rotten egg smell" for about ten minutes sometime in June 2006 driving on I-10 from Lake Charles to a bingo game in Sulphur, LA, and then for another ten minutes driving away from Sulphur to Lake Charles after the bingo game. (R-4226).

- Smelled the same odor a few days later for about seven minutes in the parking lot of the Isle of Capri casino, a location for which there is no evidence of any impact by any products from CITGO. (R-4227; *see also* R-6325 (July 3, 2006 CITGO map)).

- Smelled an "oil smell" at a friend's home in Big Lake about four or five days after that, for approximately an hour and a half. (R-4227). Friend's home is not on the lake itself and he never saw oil on the water. (R-4232).

- There is no evidence to connect any of his three alleged exposure experiences with the CITGO releases; his only testimony is that he smelled a bad odor and experienced symptoms on dates around June 2006.

Charles Jones:

- Employed at Howell Industries in June 2006, approximately three miles northwest of CITGO. R-4546.

- Could not recall the exact day he smelled the bad odor at work, other than it was a weekday. (R-4555). Recalled that the odor lasted a little over three hours, from 8:45 PM until midnight. (R-4555). The exposure claim is unclear; however, it appears based on Jones' location, which was not near the waterways, Jones claims exposure to the air release. On June 19, 2006, however, the air release was over by 8:00 p.m., which was 45 minutes before Jones recalled first smelling the odor. (R-25726-27).

- There is no other evidence that could support a finding that Mr. Jones was exposed to chemicals released by CITGO.

The LeBlanc Family (Sha'da and Wanda LeBlanc):

- Wanda LeBlanc and her daughter, Sha'da, drove from the family home in Cameron, LA to Sulphur, LA to sell shrimp on the day of their alleged exposure. (R-4879).

- They smelled an odor as they were driving on Highway 27, west of CITGO, to Sulphur. The record is unclear on the date or the exact location of the alleged exposure. Sha'da testified that it was an "abnormal" scent. (R-4616). Wanda testified that it smelled "just like a regular odor." (R-4873).

- There is no evidence that the odor detected by the LeBlancs was from the CITGO releases. There is no evidence that they were near the oil spill, or that they were at a location on a date when they could have been exposed to the air release.

The Love Family (Ellvin, Linda, and Darion Love):[16]

- Testified that they were at their son's house for a family gathering on Ravia Road, approximately two miles northwest of the CITGO facility, on the day they allegedly were exposed. R-4678, R-4757.

- Mr. Love confirmed that he testified at deposition he believed his exposure at his son's house happened on a Saturday or Sunday, because he had to go to work the next day. (R-4692-93). An August 25, 2006 medical record of Mr. Love's primary physician, Dr. Nabours, reports "CITGO chemical spill at son's house for weekend." (R-21287). Ms. Love testified that the weather was nice the day they allegedly were exposed. (R-4770).

- The air release primarily occurred on Monday, June 19, 2006, a primarily rainy day. *See supra* pp. 8-9 regarding the weather that day. It did not occur on a weekend. And, the Ravia Road address is two miles northwest of CITGO and, thus, not near the waterways where the oil spill occurred.

- Mr. Love alleges a second exposure when he went to the CITGO plant as part of his job for BFI a few days after smelling the odor at the Ravia Road house, when a lot of oil pads went into his dump truck. (R-4679-80).

- Mr. Love confirmed the August 25, 2006 Nabours record does not say anything about being exposed while in contact with oil pads at the CITGO plant. (R-4697).

- Mr. Love's normal route for BFI did not include the CITGO plant, but allegedly on that one day they asked Mr. Love to handle dumpsters there. (R-4701-02).

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[16] In addition to this lawsuit, Mr. Love has filed six separate lawsuits alleging exposure to various chemicals in and around the Lake Charles area since the 1990s. His wife, Linda Love, has filed five other lawsuits, and his minor son, Darion Love, has filed three additional lawsuits. (R-4685-91, R-4765).

- Mr. Love agreed that, based on the medical records, he sustained a shoulder injury on June 9, 2006 that required him to wear a sling; that he was "off work" through June 13, and that he was on "light duty work" and couldn't use his right arm through June 21, 2006. (R-4703-06).

- There is no evidence of any kind that the Love family was exposed to any chemicals released by CITGO from the oil spill or the air release at the family gathering on Ravia Road. Nor is there the requisite expert testimony that the oil pads in Mr. Love's waste truck for some fraction of a day exposed him to chemicals from CITGO capable of causing harm.

John Nash:

- Went fishing at daybreak on June 19, 2006 for a total of about 45 minutes. Took off from the I-210 boat launch and worked his way down the Ship Channel, when he smelled an unusual smell. R-4450-51, 4453.

- Weather records indicate that in the hours immediately before daybreak through sunrise on June 19, 2006 (the very time that Mr. Nash would have been launching his boat), there were wind gusts up to 43.7 miles per hour and heavy thunderstorms and lightning. (R-26062-63).

- Did not notice anything in the water when he was fishing, just the strong smell. (R-4465, R-4479).

- Even assuming his somewhat unbelievable story that he decided to go fishing during a violent rain storm, there is no evidence showing that oil reached the Ship Channel at the time Nash was on the water. Plaintiffs' industrial hygiene expert, Frank Parker, provided no testimony that that the oil moved past the mouth of the Indian Marais into the Ship Channel, heading north, on June 19, 2006. (R-25786-87).

- Thus, there is no evidence about Mr. Nash's alleged proximity to oil or that he could have been exposed to the oil on the morning of June 19, 2006.

Adrian Watkins:[17]

- Thought he was exposed on June 19 because it was around three days after his sister's June 16 birthday. (R-21983).

- Drove from his home in Lake Charles across the I-210 bridge to a class at the Winner's Choice casino in Sulphur. R-21984-87. He smelled a "bad smell" as he was going over the bridge, but by the time he got to Winner's Choice it was "kind of all right." (R-21986-87). Smelled the same odor going home later that day. (R-21990).

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[17] Mr. Watkins could not be located and his deposition testimony was submitted into the record at trial.

- He drove to the casino around 7:00 or 8:00 AM and kept the windows rolled down. (R-21984, 86). Recalled that the weather was "all right" and that it was "kind of sunny outside." (R-21986). Weather records demonstrate that from 7 to 8:00 AM on Monday, June 19, 2006 there were "heavy rain" conditions. (R-26063).

- His description of the weather is inconsistent with heavy rain in the early morning on June 19, 2006, indicating that he smelled the odor on another day. There is no evidence linking that odor to chemicals released by CITGO.

The Richard Family (Angelina, Bridgett, and Lawrence Richard, Darrell Partner, Leola Tanner[18]):

- The five Richard family members allege they were together at a family gathering at the I-210 beach and observed something in the water that looked like oil or "little rainbows." (R-4722, 4791, 4812, 4829).

- No one testified to smelling anything out of the ordinary at the beach.

    - Angelina Richard confirmed that she testified at deposition that the beach smelled no different than it always does. (R-4743).

    - Bridgett Richard confirmed that she testified at deposition that she didn't recall anything other than the normal odors from the beach. (R-4797).

- The evidence nearly uniformly showed that the plaintiffs were at the I-210 beach on June 19, 2006:

    - Accident date on the medical records of their lawyer-scheduled appointments with Dr. Stephen Ayers in August 2006 is June 19, 2006. (R-21771, Angelina); (R-21822, Bridgett); (R-28823, Lawrence).[19]

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[18] Ms. Tanner, Bridgett Richard's mother, passed away before trial. Angelina Richard's son, Jay'Lyn, originally was a plaintiff in this lawsuit. Dr. Springer, however, could not find that the rash he developed after his alleged exposure was related to the CITGO oil spill. (R-5748-49). Plaintiffs did not request any damages award for him at closing, and he was awarded none.

[19] Bizarrely, the Ayers records for many of the Richard plaintiffs also quote them describing a gas release on June 21, 2006 that came into the house where the family lived by I-10 just east of the I-10 bridge. *See, e.g.,* R-21822 (Bridgett: "On the 21st gas was released and the odor came into our house where we live at the foot of the I-10 bridge."); R-28823 (Lawrence: "Two days later on the 21st, he went outside and the gas 'really got me.'"). There is absolutely no evidence such a gas release, impacting I-10 directly north of downtown Lake Charles, ever happened.

- Leola Tanner's medical records with Dr. Arimura ask in a questionnaire "When were you exposed to the chemical(s)?" Ms. Tanner answers "6/19/06". (R-21851).

- Lawrence Richard confirmed at trial that he testified at deposition that he knew the family gathering at the beach was on June 19, 2006. (R-4834).

- Each causation report that Dr. Springer prepared for the Richard family members specifically referenced that their exposure occurred on June 19, 2006. (R-5699).

The only evidence that places the Richard family at the I-210 beach on June 20, 2006 is Angelina Richard's testimony that she took her son to the doctor the day after the family gathering. (R-4717). The medical record in question is dated June 21, 2006. (R-21776). As she confirmed on the stand, however, this testimony contradicted her earlier deposition testimony that she was unsure of the date. (R-4737-41). ***There was not one other piece of evidence or any testimony from any plaintiff in this group that corroborated the June 20 date***; however, the district court found that the evidence supported a finding that the beach trip and their alleged exposures occurred on June 20. R-5178.

The reason plaintiffs' counsel argued for the June 20 exposure date is that Frank Parker, the plaintiffs' industrial hygiene expert, had effectively taken exposure off the table for June 19 at the I-210 beach. In a past case, Mr. Parker opined that he found "no reports that significant waste oil contamination from the CITGO release" made it to the I-210 beach on June 19, 2006. (R-25781). He did not give a specific causation report for the Richard family, but agreed that if they were at the same location on June 19, 2006 under the same conditions, he would give the same opinion regarding their exposure.[20] (R-25782-83).

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[20] Mr. Parker was not asked about any other exposure dates at his deposition because, at the time, all of the evidence showed that plaintiffs were at the I-210 beach on June 19, 2006. June 20 did not surface as a possible exposure date of the beach trip until it was first raised by complete surprise at the trial deposition of Dr. Springer, despite that fact that his very own causation

Footnote cont'd

Even the unsupported June 20 finding, however, did not establish causation. Plaintiffs presented no expert testimony or other evidence that the CITGO oil spill reached the I-210 beach area by June 20. Visual observations of oil or rainbows in the water – accompanied by no odor – is not proof of exposure without "complementary expert evidence." *Seaman*, 326 F. App'x at 729, n.47. Notably, Mr. Parker agreed that the I-210 beach is approximately 3.6 miles upriver from the Indian Marais, and that the CRC is 2 to 2.5 miles downriver from the Indian Marais. (R-25772, 25784). He confirmed that it took until June 21, 2006 for the oil to reach the CRC, which is downriver and closer to the Indian Marais than the I-210 beach, which is upriver. (R-25772). Nor did Mr. Parker provide testimony that the oil moved past the mouth of the Indian Marais, heading north, on June 19, 2006. (R-25786-87). If Mr. Parker had sufficient information to opine that oil reached the I-210 beach by June 20, he could have done so at his trial deposition, ***but he was not even asked that question by plaintiffs' counsel.***

In short, the Richard plaintiffs failed to present evidence that they had any exposure to the CITGO oil spill. Plaintiffs' counsel seemed to have thought that by contending that they were at the beach on June 20 (contrary to mountain of testimony and objective evidence demonstrating the June 19 beach date), they had

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Footnote continuation

reports for these plaintiffs specified that the exposure occurred on June 19, 2006. *See* R-5697-98 (Plaintiffs' counsel: "Q: And, as far as establishing an exact time frame, are you comfortable with that family having been at the beach June 20? A: Yes."); *see also* R-5699 (Defense counsel: "Q: [E]very report in front of you relating to [the Richard family] says 'June 19, 2006.' True? A: Okay. Q: That's their exposure date. A: That's correct."). Even more troubling, Dr. Springer's adoption of the June 20 exposure date (directly contradicting his own reports) was based upon a conversation that he had on the morning of his deposition with plaintiffs' counsel, who showed him a document that he thereafter relied upon, and that they thereafter refused to produce at the deposition. *See* R-5738-39 (discussion of the piece of evidence showed to Dr. Springer the morning of the deposition and plaintiffs' refusal to produce the document); *see generally* R-5695-5755 (entire Springer testimony regarding the Richard family).

circumvented their own expert's admission that people at that location could not have been exposed on June 19. But this is a fundamental misapprehension of their burden of proof. They still had to prove exposure on June 20, and they simply failed to do so. CITGO has no burden to disprove exposure.

Summary:

The fatal flaw in each of the claims discussed above is that was there was no valid evidence that the plaintiffs were exposed to chemicals released by CITGO. As can be seen by the plaintiffs' own testimony, none of the 20 plaintiffs obviously was exposed to CITGO's release. They were in questionable or unidentified exposure locations on uncertain dates with vague descriptions of smelling an odor or seeing a substance in the water. There simply was no way to link these descriptions to the CITGO release without scientific evidence explaining that the plaintiffs could have been, and were in fact, exposed to the oil spill or to the air release. *Seaman*, 326 F. App'x at 729, n.47.

Even the district court acknowledged this requirement – which is both well established in toxic tort jurisprudence and a matter of common sense – ruling that with respect to Randy Thomas: "I have no supporting expert testimony ***to substantiate that Mr. Thomas was exposed*** or that he had verifiable symptoms." (R-5165) (emphasis added). For all of the 20 plaintiffs discussed above, there is an identical absence of "expert testimony to substantiate" that they were exposed. Thus, the claims fail as a legal matter because expert testimony was required to establish a harmful chemical exposure. *Johnson v. E.I. DuPont deMemours & Co., Inc.*, 08-628, p. 7 (La. App. 5 Cir. 1/13/09), 7 So. 3d 734, 740; *Seaman v. Seacor Marine L.L.C.*, 326 F. App'x 721, 729 (5th Cir. 2009); *Atkins v. Ferro Corp.*, 534 F. Supp 2d 662, 667 (M.D. La. 2008).

Even putting aside the legal requirement to present expert testimony on exposure, the plaintiffs' proof was woefully insufficient to establish exposure and,

thus, causation. In short, it was a legal error for the district court to find causation without requiring expert testimony on exposure, but the district court also committed manifest error in finding causation without any supporting evidence linking the CITGO releases to the plaintiffs' subjective descriptions of exposure. *E.g., Hall v. Folger Coffee Co.*, 2003-1734, p. 9 (La. 4/14/04); 874 So. 2d 90, 98.

III. The District Court Erred in Awarding Damages Based on Symptom Durations That Conflicted with Their Specific Causation Medical Expert's Opinion.

Dr. Springer was one of plaintiffs' specific causation medical experts. He provided medical causation opinions for 13 plaintiffs that included the duration of symptoms he linked to their alleged exposures. But the district court erred in contradicting Dr. Springer, often relying on plaintiffs' lay testimony to find their exposure symptoms lasted for longer periods than what Dr. Springer testified.[21]

As set out above, "[w]hether plaintiffs suffered injuries as a result of chemical exposure ... is not a determination based on common knowledge" and, therefore, plaintiffs must "present expert medical testimony in order to meet their burden of proving medical causation." *Johnson v. E.I. DuPont deMemours & Co., Inc.*, 08-628, p. 7 (La. App. 5 Cir. 1/13/09), 7 So. 3d 734, 740; *accord Pratt v. Landings at Barksdale*, 2013 WL 5376021, at *3 (W. D. La. Sept. 24, 2013) ("In a toxic tort suit, the plaintiff must present admissible ***expert testimony*** to establish general causation as well as specific causation.") (citations and quotation marks omitted, emphasis in original). For a number of plaintiffs, this error resulted in a sometimes gross discrepancy between the duration Dr. Springer concluded that any symptoms could be related to their exposure, and the duration found by the court.

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[21] Dr. Looney also provided specific medical causation opinions for five of the plaintiffs in this case, but he did not provide opinions regarding duration of symptoms he related to the CITGO release, nor did the district court make specific duration findings for those plaintiffs.

The chart below shows the disparity (most significant ones highlighted) between the district court's findings and Dr. Springer's opinions:[22]

Plaintiff	Dr. Springer Duration Opinion	Court's Finding
Wanda Anderson	***Approximately three weeks after exposure*** (R-5541-42)	***Ongoing today*** (R-5168)
Emma Bradford	Two weeks to two months (R-5684)	Three to six months (R-5173)
Clara Espree	Three weeks (R-5578-79)	Two months (R-5166)
Hilda Johnson	2.5 weeks (R-582)	1.5-2 months (R-5174)
Charles Jones	***16-18 days after exposure*** (R-5595)	***Ongoing today*** (R-5167)
Sha'da Leblanc	Five weeks (R-5611)	Two months (R-5170)
Darion Love	Five weeks (R-5631)	Three months (R-5175)
Linda Love	Five weeks (R-5631)	Three months (R-5175)
John Nash	***Two weeks after exposure*** (R-5639-40)	***Seven months*** (R-5164)
Kenneth Pappion	***Two months after exposure*** (R-5648-49)	***Ongoing today*** (R-5181-82)[23]
Darrell Partner	Seven weeks (R-5717)	Three to six months (R-5180)
Angelina Richard	Seven weeks (R-5748)	Four months (R-5179)
Carrie Tezeno	6.5 weeks (R-5654)	Two months (R-5160)

[22] The district court's opinion aligned with Dr. Springer's in some cases, often when a plaintiffs' subjective testimony also aligned with Dr. Springer's.

[23] Mr. Pappion testified that he suffers today from erectile dysfunction and links it to his exposure. (R-4849). Dr. Springer gave no opinion that Mr. Pappion's erectile dysfunction was caused by his exposure; nor did plaintiffs provide any evidence that there is a causal connection between the two. Such a symptom certainly is not present in the MSDS for slop oil. *See* R-7667-68. The district court nonetheless found that his current erectile dysfunction was caused by his exposure to the CITGO slop oil. (R-5182).

In closing argument, plaintiffs' counsel told the district court that Dr. Springer had not been retained to offer "duration" opinions. (R-4955-57). Not only was that assertion legally incorrect, it was utterly inconsistent with their own questioning of Dr. Springer. For virtually every plaintiff, Dr. Springer was specifically asked at his trial deposition to give an opinion on how long symptoms allegedly related to his or her exposure lasted.[24] The reason for eliciting such testimony is plain: duration cannot be carved out of causation. If a medical expert finds a causal connection between an exposure and two weeks of headaches, but has insufficient evidence to offer an opinion beyond those two weeks, a lay person lacks the expertise to link intermittent headaches over the next year to the exposure. *See, e.g., Chavers v. Travis*, 2004-0992, p.10 (La. App. 4 Cir. 4/20/05), 902 So. 2d 389, 395 ("[E]xpert medical testimony is required when the conclusion regarding medical causation is one that is not within common knowledge."); *see also Guardia v. Lakeview*, 2008-1369, p.1 (L. App. 1 Cir. 5/8/09), 13 So. 3d 625, 631 (same). Thus, when Dr. Springer testified for these plaintiffs that any symptoms related to their exposure to the CITGO event would be short-term and "transient,"[25] the district court had no basis for finding that symptoms caused by the alleged exposure went beyond the durations testified to by Dr. Springer.

As an example, Dr. Springer testified that the symptoms of plaintiff Wanda Anderson that he related to her alleged exposure lasted for three weeks. (R-5541-42). That opinion necessarily means that Dr. Springer ***could not*** opine (as plaintiffs' specific causation medical expert) that it was more probable than not

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[24] *E.g.,* R-5631 ("Q: [T]his visit on July – is it 26th or 27th? A: 27th Q: - 27th of 2006, is this the last visit for Mrs. Love or Darion that you relate to their exposure to the Citgo release? A: I think that'd be accurate.").

[25] *See* R-5538. "I think . . . everybody in this group [is] fairly transient. I think the longest amount of symptoms that anything lasts in any of these patients is six or seven months. Most of it is a couple weeks, a month, two months, so I'm not opining about anything past those time frames."

that any symptoms after his three week duration opinion were caused by any exposure event. Ms. Anderson testified, however, that she believed symptoms related to the exposure continued to the present day:

> Q: [O]nce those symptoms resolved sometimes in the weeks or months immediately after exposure, did you ever have any other issues that came up in the last ten years that you attribute to what happened in June of 2006?
>
> A: Like I say, all I can think of right now that just had me concerned of the problem I kept complaining to them about breathing. And chest pains, you know. Nothing was caught, until lately. They finally caught it and now they want me to see a cardiologist behind that....
>
> Q: And has that been continually since 2006?
>
> A: Yeah.
>
> Q: And has any doctor been able to relate that to your exposure?
>
> A: No.

R-4566. On the basis of this testimony, the district court stated that Ms. Anderson "describes her symptoms as ongoing" and awarded her $25,000. (R-5168-69). The question under Louisiana law, however, is not what Ms. Anderson believes with regard to the duration of symptoms she relates to any alleged exposure. (And, as discussed *supra* in Section II(B), there are significant questions regarding Ms. Anderson's exposure claims themselves). What matters is Dr. Springer's expert medical opinion, which is limited to three weeks of symptoms. Indeed, Ms. Anderson acknowledged that no doctor had ever correlated her current breathing problems to her alleged exposure over ten years ago. (R-4566). The district court lacked any legal basis for finding that any exposure related symptom for Ms. Anderson lasted longer than three weeks.

The district court's error is highlighted in the case of Mr. Jones. He testified that the immediate symptoms that he related to his alleged exposure resolved in two or three weeks. (R-4552-53). Prompted by counsel, he then testified he believed an emergency room visit for shortness of breath in 2016 could have been

related to his exposure. (R-4553). In awarding Mr. Jones damages, the district court specifically found that she based her opinion regarding the duration of symptoms on Mr. Jones' testimony, finding that "the duration according to Mr. Jones is still ongoing." (R-5167). There was no medical basis for that opinion and, indeed, Dr. Springer believed the evidence could only support a causal link for ***approximately 16 to 18 days*** of symptoms. (R-5565). Once again, the district court lacked any legal basis for finding that any exposure-related symptom for Mr. Jones exceeded 18 days.

The purpose of a specific causation expert medical opinion is to establish the connection between physical symptoms and exposure, a causal link that is not within the common knowledge of the layperson. The district court violated Louisiana law when it ignored Dr. Springer's expert opinions in favor of plaintiffs' subjective lay opinions regarding the specific causation of otherwise common health symptoms.

Regarding the proper measure of relief for these plaintiffs, eleven of the thirteen plaintiffs raised on this appeal issue are also plaintiffs whom CITGO has identified as providing insufficient proof of exposure. Their awards should be reversed because of their deficient exposure claims; at the very least, however, they should be significantly reduced to align with the brief symptom durations opined by Dr. Springer. For the remaining plaintiffs raised on this appeal issue – Kenneth Pappion and Carrie Tezeno – their damages awards also should be significantly reduced to more closely reflect the brief symptom durations relayed by Dr. Springer.

CONCLUSION

For the reasons set out above, this Court should reverse the district court's ruling in the following ways. First, the Court should reverse the awards of the 20 plaintiffs who failed to meet their burden of proving causation because of the

absence of expert testimony establishing exposure. Second, for 13 of the plaintiffs, the district court erred in awarding damages based on symptom durations that were contradicted by plaintiffs' medical causation expert. While 11 of those plaintiffs are entitled to no recovery because they fall within the 20 who failed to prove exposure (and thus reduction of damages is an alternative argument for those plaintiffs), two additional plaintiffs (Kenneth Pappion and Carrie Tezeno) should have their damages awards reduced to reflect the symptom durations testified to by their medical causation expert.

Respectfully submitted,

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AFFIDAVIT OF SERVICE

BEFORE ME, the undersigned authority, came and appeared:

Robert E. Landry

who, after being duly sworn, did depose and said that he is counsel for Defendant/Appellant, CITGO Petroleum Corporation. He certifies that all of the allegations contained in Appellant's Original Brief are true and correct to the best of his knowledge; that the district court and all parties and their counsel are listed below; that copies of the Original Brief were delivered to the district court by hand delivery and to counsel for Plaintiffs listed below by placing same in the United States mail, properly addressed and first class postage prepaid, this 15th day of May, 2017:

District Court:

The Honorable Sharon D. Wilson
Judge, Division "F"
14th Judicial District Court
Parish of Calcasieu
Div. G., Judicial Center
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SWORN TO AND SUBSCRIBED
before me this 15th day of May, 2017.

Notary Public
My Commission is for life.

Print Name: Jaycilyn M. Fontenot
Louisiana ~~Bar~~ Notary No.: 2152

14TH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF CALCASIEU
STATE OF LOUISIANA

EMMA BRADFORD, ET AL
VS. DOCKET NO. 2007-002492
CITGO PETROLEUM CORPORATION,
ET AL

Evidence adduced and proceedings had in the above numbered and entitled matter at Lake Charles, Louisiana, on May 27, 2016, before the Honorable Sharon Wilson.

APPEARANCES:

Mr. Richard Wilson
Ms. Somer Brown
Cox, Cox, Filo, Camel & Wilson
Mr. Jake Buford
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Mr. Robert Landry
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Counsel for Citgo Petroleum Corporation

PROCEEDINGS:

THE COURT:

I want to apologize to you all. I think I was having a Dr. Springer day, but hopefully I've gotten enough medicine in me where y'all won't have to stop and prop me up like you did Dr. Springer.

We are back on the record in the matter of Emma Bradford, et al versus Citgo Petroleum Corporation, et al, it is docket number 2007-2492. We're on the record today for a ruling from the Court. This matter commenced trial on May 9. It seems like it took longer than it did, but it actually was a more expedited trial than was anticipated; so I want to thank Counsel on both sides for that.

Before I start with my ruling, I want to commend the lawyers on both sides. I remember when I first took the bench, the Ad Hoc Judge who sat before me, who happens to have the same last name but no relation, said to me, you're going to love the view from the bench because there are a lot of good lawyers in this Bar, and just to see it from the bench is an awesome thing. And he was 100 percent correct.

I've just made my two year anniversary, and I'm thoroughly enjoying this job, but it's because of the lawyering that we just happen to have in

his jurisdiction. I think it's just outstanding.

I especially want to commend Mr. Landry and Mr. Eisenberg, because after my last ruling, to have arguments like the ones that you guys propose to me, I thought were just outstanding. You caused me to think and you caused me to look at my point of view and re-examine it and thoroughly look at each case individually, which is what I should do, and give both sides a fair trial; and I just thought that that was some really good stuff.

So with that being said, this matter comes to Court, liability is not a question. Citgo has stipulated to liability, and so the question for the Court is one of causation and damages.

I have to start off by saying that with the exception of two, and I'll point them out when we get to them, these plaintiffs were very credible. Even the defense argued that. I think it was more of an argument of maybe that they were confused or it just didn't quite happen the way that they thought it did, but credibility just wasn't a question for me.

And I've watched lots of witnesses testify over my 24 years of being involved in courts, especially on the

criminal side, you find lots of liars; so it's refreshing to find very truthful people who are just trying to relay to you what happened.

I am going to adopt the facts from my previous ruling, because the facts are the same. The only difference is in this case it involves not only the slop oil release, but it also involves a release from Citgo of hydrogen sulfate as well as -- and that's an air release -- and also sulfur dioxide, which is also an air release.

And what is before this Court is 33 plaintiffs who are alleging that they were, for the bulk of them, exposed to the air release of the hydrogen sulfide or the sulfur dioxide, and some of them were actually exposed to both that and the slop oil or the slop oil only.

For the bulk of these plaintiffs I think that we have a number of eggshell plaintiffs, so you have some people who were susceptible to the things that occurred and happened to them.

From a causation standpoint for this Court, the injuries that are complained of by these plaintiffs, it is the finding of this Court it was caused by the air release or slop oil release that occurred on June 19, 2006. And like I said, in a moment I'll go through them specifically.

But most of them across the board what they have in common is symptoms that are listed on the MSDS that is provided by Citgo for each of these three substances. It pretty much is just illustrative of what you find on the MSDS. And it is the finding of this Court that the injuries that they are complaining of were caused by the release that occurred on June 19, 2006.

There was something that I found in reviewing the opinions that have been issued by my colleagues on this bench. Judge Ritchie said something that I wholeheartedly agree with. It's on page six of the transcript in Carl Cormier, et al versus Citgo Petroleum, docket number 2007-2880. It's when he's talking about Citgo's failure to warn the public, and I'm quoting him at this point.

He says, "so failure to warn is one thing, but to mislead someone into thinking that they're completely safe is shameful. They were not concerned about the safety of these individuals clearly. In fact, it appeared to be an afterthought that someone was sent out there to do that one air monitoring to take that one air monitoring result and there's no evidence that was introduced by Citgo as to whether that was the breeding zone or not, or whether that was

just, as one of the witnesses testified, that that was one result is only as good as where it was taken at that moment in time."

The reason I mention that is because I think that part of the lawyering that was happening in this trial is that the plaintiffs are not specific or they did not seek immediate medical treatment; they're not specific about their locations; in some instances they're not specific about when their symptoms started or why weren't they alerted.

Most of the symptoms, especially the symptoms that you'll find on the MSDS, are symptoms that most people would just think that they're having seasonal allergies or they're just maybe developing a common cold or flu and they might do exactly what these plaintiffs did, which is to self medicate unto you can't handle it anymore.

And the failure to warn the public and to hide information did not put the public on alert that they were in danger, so they were unsuspecting; and so I'm holding them to the standard of being unsuspecting plaintiffs of the danger that is lurking in their environment.

The first person that this Court heard from was Mr. Michael Lee. At the time Mr. Lee was employed with Ron

Williams Construction, and he was transferred from the Port site to the Calcasieu Refinery site, and he did not arrive at that site until July 17th of 2006.

There was much made of some emails that indicated the clean up should have been finished at the time. I don't find those to be as reliable as Mr. Lee's recollection, which was pretty clear, pretty strong, and unwavering. And Mr. Lee remembers that the cleanup was still going on when he got there.

He remembers the strong smell of raw fuel. He remembers the film still being on the water and he remembers the garbage being there with the booms that had been used to clean up the spill being there and walking by them and inhaling the fumes that would come from the discarded cleanup waist.

He complained of suffering from diarrhea, and nausea which lasted for a few days. When he visited the doctor on April 30, 2007, the doctor believed, Dr. Looney believed that he had returned to his pre-exposure state of health. Mr. Lee reports that he was sluggish for a couple of years.

And Mr. Lee also complained of -- I saw this in Dr. Springer's deposition -- he complained of erectile dysfunction.

Although he did not testify before me about it, apparently it is something that he believes, he attributes, Mr. Lee attributes, to his exposure. And I only bring that up because I think it's relevant and as it leads to Mr. Pappion, who strongly believes that's why he's suffering from erectile dysfunction.

Also Mr. Lee is a cancer survivor, and he expressed some fears about having been exposed and how that may impact his future health.

At this time this Court awards to Mr. Lee his medical expenses which come to the amount of $1,080.61. I award to Mr. Lee general damages for pain and suffering in the amount of $35,000; general damages for fear of developing a future disease given Mr. Lee's positioning of 15,000; general damages for loss of enjoyment of life, 5,000, which makes a total recovery of 56,000; and I am limited to 50,000, so Mr. Lee will be awarded 50,000.

The next plaintiff that this Court heard from was Ms. Cheryl Wilmore. At the time Ms. Wilmore was an employee of the Isle of Capri Casino.

She complained of being on break. She was working the late shift, which she described as midnight to 6:00 AM. She was on breaking and she said that she

smelled the strong odor which smelled like rotten eggs to her and she recalled seeing some dead fish in the water surrounding her work site.

She also complains of skin irritation, headaches, trouble sleeping. The duration of her symptoms is approximately six months. She also complained of being very tired, and at the time being a single mother with five sons and not always having the ability to do and care for her sons as she need to, because she remembers being very tired.

She also complained of having fears of having been exposed to a carcinogenic because of her mother's death from cancer.

This Court awards to Ms. Wilmore $577 for her medical expenses; for general damages for pain and suffering this Court awards $15,000 to Ms. Wilmore because this Court feels that her exposure is limited; it's not the same. And she also left the Isle of Capri shortly thereafter, but it is not the same as some of the workers who worked for an extended period of time in the environment; 15,000 for pain and suffering; general damages for a fear of developing a future illness such as cancer, because I do believe that she was exposed to the slop oil, would be 2,500;

also loss of enjoyment of life for the extreme fatigue and the inability to be able care for her children in the same manner while she was suffering with the symptoms, $2,500, for a total recovery of $20,577 to Cheryl Wilmore.

The next plaintiff that this Court heard from was which Richard Wayne Granger. Mr. Granger at the time resided on Patton Street, which is approximately three miles from the Citgo Refinery. He is a disabled person who had an on-the-job injury in 1985.

His memory is that he was walking near his home and began to smell something that smelled rotten, as he described it. He started to have difficulty breathing. His eyes were watering. He saw Dr. Looney six times.

He also complained of sinus problems, throat problems, and headache problems, which once again is consistent with what the MSDS would say as it relates to the chemicals that were released into the environment during the air release.

The last time that he saw Dr. Looney was October of 2007. He also expressed when he testified before me that he was very concerned about his future health.

This Court awards to Mr. Granger medical expenses of $2,090.16; general damages for pain and suffering in the

amount of 25,000; general damages for fear of contracting a future disease, 2,500; and loss of enjoyment $1500 -- of a loss of enjoyment of his life for the time that he was suffering, 1500, total award to Mr. Richard Wayne Granger is $31,090.16.

The next plaintiff that this Court heard from was Mr. Rodney James Guillory, Sr. Mr. Guillory says that he was driving his vehicle in June of 2006 headed to Sulphur for bingo. He recalls smelling an odor that smelled like rotten eggs. He also says that a day or so later, he's not specific on the time, he remembers that it was after the drive incident, he remembers being at the Isle of Capri Casino; and he remembers that there was a distinctive smell.

He also relayed a third time of being, at sometime during that summer period, being at a home of a friend in Big Lake on the water, and he remembers a smell.

He also reported that he has a history of colon cancer and he had a herniated disc problem. He says his longest symptoms were headaches and he had trouble sleeping. He also had eye irritation, a cough, trouble breathing, sinus, nausea, and diarrhea.

He too expressed what I believe to be

a very genuine concern, given that he is a cancer survivor and has endured chemotherapy in the past, for his future health.

This Court awards to Mr. Guillory medical expenses of $1,795; general damages for pain and suffering of $25,000; general damages for a fear of contracting a future disease, $2,500; and general damage for the loss of his enjoyment of life during the time of his suffering with these symptoms of $2,500, for a total award of $31,795.

The next plaintiff that this Court heard from was Ms. Nita Teresa Touchet. This Court found Ms. Touchet extremely credible. She's an elderly lady who lives in Sulphur on Roxanne Street.

At the time of the air release this Court finds that she was walking in her yard, and she remembers a terrible smell; and she remembers the odor smelling like rotten eggs.

She remembers suffering from headaches, diarrhea, fatigue, sweating, and vomiting. She later had to call 911, and she was taken to West Cal Cam.

Ms. Touchet also expressed what this Court finds to be a very credible and genuine fear for her future health for two reasons. It is pressing for her because her husband passed away from some

kind of complication involving chemical exposure; and she is a breast cancer survivor.

This Court awards to Ms. Touchet, her medical expenses are $2,662.20; general damages for pain and suffering in the amount of $30,000; general damages for a fear of contracting future disease, $10,000; and general damages for loss of enjoyment of her life, $2,500, for a total award of $45,162.20.

The next plaintiff that this Court heard from was Mr. Edward Wannage, W-a-n-n-a-g-e. He lives on Big Lake Road. His home as he put it is on the Bayou. He could smell fumes coming from the slop oil that was in the water near his home.

He has a pre-existing condition. He was diagnosed with COPD in 1993. He is also a heavy smoker, and he complained of having a cough, congestion, sinus problems; and he also expressed concern for his future health. The duration of his symptoms is approximately two months.

This Court awards him his medical expenses. The total amount was not clear to the Court. He had visits with Dr. Springer twice and also a St. Pat's visit, but I will award upon proof of the total amount whatever the amount he's entitled to, the medical expenses; and I'm just not certain of what that total

amount this. I will award to him general damages for his pain and suffering in the amount of $15,000; his concern for the future fear of his health, I will award $2,500 for that; and loss of enjoyment of life, 2,500, for a total recovery of $20,000 plus any specials as it relates to medical expenses.

The next plaintiff that this Court heard from was Mr. Albert Andrepont; and Mr. Andrepont also lives on the water. He reported that he could see a film on the water, and there was a smell during the cleanup time. At some point in time he did leave his house to attend a basketball camp and get away. He reported that when he still returned, he could still smell the smell coming from the water.

He complained of headaches; and he suffers from headaches already, but he said this was a different kind of headache. He also has a very legitimate fear in the opinion of this Court, because he at the time suffered from hepatitis C. He now has sclerosis.

The duration of his symptoms was approximately six months. This Court awards him his medicals, which I do not have the specific amount, but he is entitled to all of his medical expenses which would be a special damage award;

general damages awarded for pain and suffering in an amount of $15,000; general damages for fear of contracting any future diseases, $5,000; general damages for loss of enjoyment of life, $2,500, for a total recovery of $22,500 plus medical expenses.

The next plaintiff that this Court heard from was Ms. Carrie Ann Rougeau Tezeno. Ms. Tezeno at the time was employed at the Lake Charles Country Club as a custodian. She reported that she worked between 8:00 AM and 2:00 PM.

She indicated that her job was to do outside cleaning; and she recalls one of the days being at work and smelling a foul -- sometime in June of 2006 -- smelling a foul odor, and she described it too as a rotten egg kind of smell.

Later on she did have an ER visit. She complained of suffering from headaches, nausea, for the duration, this Court finds, was approximately two months; and she continues to worry about her future health.

This Court awards general damages for pain and suffering in the amount of $10,000; general damages for fear of contracting a future disease, $5,000; loss of enjoyment of life, $2,500, for a total general recovery of $17,500 plus her medical expenses.

The next plaintiff that this Court heard from was Mr. William Breaux. Mr. Breaux says that his house is 130 feet, the frontal facing the waterfront. He bought the lot in 1996.

He said that he had heard on the news that the oil was contained in the ship channel, but he knew that to be incorrect. He also photographed the oil at the fronting of his property.

And he also indicated during his testimony that he contacted a friend that he has that works for the Department of Environmental Quality. He said the smell was terrible. He described it as some chemicals that I'm not familiar with, but he did say that it was a very strong oil odor, and whatever chemical that he was pronouncing that I wasn't quite sure what he said, would burn your nose hair, is the way that he described it.

His memory seemed to be pretty vivid and pretty clear. He also testified that he sent his family away and he developed symptoms that are consistent with the MSDS about the effects of the exposure.

The duration of his symptoms is approximately six weeks. He did have some testing from his doctor, Dr. Rougeau. And when I was watching Dr. Springer's deposition, there was much made about the fact that his colonoscopy

was normal and the testing did not show a reason for some of the symptoms that he was having, which in this Court's opinion is consistent with what the experts have said that if you can eliminate all other causes, then the only thing that you are left with is that the person was exposed to a chemical and that's the reason that they're having symptoms that they're having.

This Court awards Mr. Breaux his medical expenses and general damages are awarded as follows: for his pain and suffering he's awarded $12,000; for general damages of the fear of just having this oil outside of your home, $1,500; general damages of loss of enjoyment during the time of suffering with these symptoms, $5,000, for a total award to Mr. Breaux of $18,500 plus his medical expenses.

The next plaintiff that this Court heard from was Mr. John Nash. Mr. Nash was on a medical leave from his employer, and he actually had worked, and at this point based on his testimony, continues to work in the chemical industry.

He was advised, according to Mr. Nash, by his psychiatrist to do things that would relax him to help with his pre-existing condition of anxiety as well as some other psychiatric disorders that

he was suffering from at the time that had him on the stress leave; and so one of the things that he did for relaxation was to fish.

On the day of the spill Mr. Nash was launched near the 210 bridge. According to his testimony he was in the ship channel using his brother's boat and fishing. He was questioned about the bad weather that happened that day and he said that one of his favorite times to fish is in bad weather.

This Court found Mr. Nash exceptionally credible and informative. Mr. Nash said that he did smell something, but did not think anything of it when he initially smelled it. It was after 45 minutes of fishing that the odor became unbearable.

This Court would just note that someone with Mr. Nash's experience, the Court would expect them to be accustomed to the smells that one would inhale in a plant environment, but also to rely on warnings and be sophisticated in the fact that even if it is an uncomfortable smell, if there has not been a warning from the responsible corporation there would be no need to discontinue fishing because he would think that it would not be harmful to him because he would trust the company to do the right thing.

Since that did not happen it is the finding of this Court that Mr. Nash was definitely exposed, and I find that the duration of his symptoms was seven months, and he suffered from diarrhea and headaches; and also this would have caused an aggravation of his irritable bowel syndrome as well as the anxiety and psychiatric conditions that he previously suffered from.

This Court awards to Mr. Nash all of his medical expenses that were the visits that he testified that he attended during this trial. I don't have the specific amount, but he is entitled to recover that amount. I also award to Mr. Nash general damages for his pain and suffering in the amount of $21,000; general damages for his fear that would just be aggravated by being exposed when you already suffer from anxiety, and that is $2,500; and general damages for his loss of enjoyment of life while he suffered with these symptoms of $5,000, for a total general damage recovery to Mr. John Nash of $28,500 plus his medical expenses.

The next plaintiff that this Court heard from was Mr. Randy Thomas. Every trial should have some comic relief, and Mr. Thomas served to provide that, but unfortunately this Court did not receive

information from Mr. Thomas that the Court could find reliable, because I'm not exactly even sure where Mr. Thomas was on the day that he claims to have been exposed.

Also, I have no supporting expert testimony to substantiate that Mr. Thomas was exposed or that he had verifiable symptoms. So as it relates to Mr. Randy Thomas, there will be no recovery.

The next plaintiff that this Court heard from was Ms. Clara Espree. Ms. Espree has retired from the Port of Lake Charles. On the day that Ms. Espree was exposed, Ms. Espree was delivering mail to the BT number one, which stands for boat terminal number one.

She said that as she sat in the truck she could smell a distinct odor coming through the vents of the truck. A train had her stopped, and she said she couldn't move. The air was on and she smelled a real foul odor. She said that her eyes began to water and she suffered a headache.

She also had an aggravation of symptoms. It is in her medical records that she suffers from nosebleeds and she also, according to her testimony and her medical records, had an aggravation of that. She also had some problems with sinuses and some G.I. problems as well.

The duration of her symptoms is approximately two months.

This Court will award to Ms. Espree her medical expenses associated with treatment for her exposure; also general damages for pain and suffering in the amount of $10,000; the fear of future diseases in which she expressed because she suffers from nosebleeds and having been exposed to chemicals it causes her to worry, this Court awards her $2,500; and for her loss of enjoyment of life while she suffered with the symptoms, $2,500, for a total recovery in general damages to Ms. Espree of 15,000 plus her medical expenses.

The next plaintiff that this Court heard from was Mr. Charles Jones. Mr. Jones was working at the time of his exposure. He described himself as working the night shift, and he said that apparently he would go on at 4:00 because he said he would arrival at work between 3:30 and 3:45, and that dinner would be around 7:00 PM, we would eat.

"I remember smelling a gross odor, and he also says that he remembers joking with his fellow employees that we may need our HOS gear; and he said that he only meant it as a joke. He did not realize that he was actually being exposed to hydrogen sulfide at the time

that he made the joke.

He complains of having developed headaches. He also described himself, and he emphasized this more than one time in his testimony, as a very healthy person.

According to his medical records he was diagnosed with bronchitis on June 30, 2006. He also says that he has never been a smoker.

This Court does find that he was exposed to the air release, and would award him medicals. I don't have the specific amount, but he is entitled to his medicals for any medicals associated with this exposure.

I will award him general damages -- and I'm sorry -- the duration according to Mr. Jones is still ongoing of his symptoms. This Court will award him general damages for his pain and suffering in the amount of 35,000; and will award him general damages for his fear of contracting future disease of 2,500; general damages for his loss of enjoyment of life while suffering with these symptoms, 5,000, for a total recovery of $42,500 plus his medical expenses.

The next plaintiff that this Court heard from was Ms. Wanda Anderson. Ms. Anderson was a postal employee who did

car detailing on her days off. She too describes her symptoms as ongoing. This Court found Ms. Anderson to be a credible person.

She says that she was meeting clients at Pink Pig on Highway 27 in Sulphur. She is not sure exactly where she followed them to to actually wash and detail their cars.

Much was made about the weather on the day of the release and that it was a rainy day. This Court takes notice of the fact that having lived in Louisiana all of my life, I know that one place can have a lot of rain and another area of this parish can have an overcast. I believe the testimony of Ms. Anderson. I watched her testify. I watched her manner as she testified; and I found her to be a very credible person.

I think that she was out there detailing cars and that she did smell an odor. There was no warning to the public so that she would know to seek shelter, so she was especially vulnerable to an air release. And because she's not a sophisticated person in smells of chemicals, she thought that this was just a, as she put it, normal plant smell; but she does remember a distinct odor.

So I find that the symptoms that she has are directly related to the air

release from Citgo and I would award her her medicals, which I don't have the specific amount, but all of the medicals that she testified to that this Court finds relates to the exposure and she is entitled to be compensated for the expense of those medicals.

For general damages for pain and suffering, this Court would award to her $20,000; for general damages for fear of contracting future disease, this Court awards $2,500; and for loss of enjoyment of life because of the fatigue that she did suffer, this Court awards $2,500, for a total recovery of $25,000 in general damages plus medical expenses.

The next plaintiff that this Court heard from was Mr. Mallory Charles; and Mr. Charles was employed with Olmsted Company in June of 2006. He worked as a helper in the machine shop.

Mr. Charles complains of after having smelled an odor of having headaches, G.I. problems, congestion, and also concerns for his future health.

This Court finds that Mr. Charles' exposure, the duration, would have been approximately one month. It is a result of the air release from Citgo, and would award him the medicals that are associated with his exposure as well as general damages for pain and suffering in

the amount of $10,000; general damages for his fear of contracting some kind of future disease, $2,500; and loss of enjoyment of his life during the time of his suffering with these symptoms, $2,500, for a total recovery of $15,000 plus his medical expenses.

The next plaintiff that this Court heard from was Ms. Shada LeBlanc, and she testified that she had gone shrimping with her dad and also her mother who I heard from at a later time. I'm going to cover them both at the same time because I have them listed as the LeBlanc family.

Shada said that they drove in from Cameron, and as her mother pointed out, even though her sense of direction was not the best, they would have had to pass the plant area to get to the furthest point away that they were on the map, to do their shrimping and selling; and they were in a lot of different locations in that area on that particular day.

Shada remembers a strong odor in the air; and she also complained of having some stomach issues, headaches, and sinus problems. The duration for her was two months.

I found her mother to be, even though her sense of direction was not the best, I found her to be a very credible witness and watched her manner while testifying

and just found her to be a very truthful lady.

She confirmed what her daughter said that the family was helping Mrs. LeBlanc's husband with his business of shrimping. And she expressed some concerns, which are real and true to her, of her future health given her current state of kidney failure and the kidney disease that she suffers from.

She did acknowledge that no doctor has ever told her that the condition that she now suffers from is related to the spill, that she has fear of being -- I'm sorry, from the air release -- she has fear of the exposure and what those chemicals interacting on her body could do to her.

As it relates to her daughter, Shada, I'm finding that the symptoms that she complained of are a result of her exposure to the Citgo air release and would award Ms. Shada LeBlanc her medical expenses that she testified to; and also general damages for her pain and suffering in the amount of $10,000; no damages for any fear because she did not express any; also for her loss of enjoyment of life during the period of the two months that she was suffering with the symptoms, $2,500, for a total recovery of $12,500 plus her medical

expenses.

For the mother, Ms. Wanda Leblanc, I also find that the medical expenses that she testified to are associated with her exposure to the air release from Citgo, and would award her that amount plus general damages for her pain and suffering in the amount of $25,000; and general damages for her fear of future disease in the amount of $5,000; general damage for the loss of her enjoyment of life, $2,500, for a total recovery for Ms. Wanda LeBlanc in the amount of $32,500 plus her medical expenses.

The next plaintiff that this Court heard from was Ms. Emma Bradford. She was also a very credible and kind elderly lady who came into Court and explained to me that she was crabbing near the Ellender bridge with her sister and she remembers a smell, and she remembers them continuing to crab. And she also described going home and cleaning the crabs and still the crabs having the odor and cooking them and eating them, which this Court thought was odd for me, but obviously plausible for her; and I actually believe that she did it.

She also complained of having nosebleeds, eye irritation, and headaches. She did not totally consume the crabs, too. I just want to note that

for the record, but she did attempt to eat them.

And she also expressed a fear. For her, she thinks that this may have contributed to the death of her sister. This Court finds that there is no evidence of that. Her sister was pretty elderly, but it's a legitimate fear for her.

This Court also finds that the duration of her symptoms is approximately three to six months. I will award for Ms. Bradford her medicals associated with her exposure, as well as general damages for her pain and suffering in the amount of $15,000; general damages for her fear of contracting a future disease or this harming her in some way in the future, $2,500; and general damages for her loss of enjoyment of life while suffering with the symptoms, $2,500, for a total recovery of $20,000 plus her medical expenses.

The next plaintiff this Court heard from was Ms. Hilda Johnson. Ms. Johnson is an 81-year-old widow, who at that time period of 2006 enjoyed playing the slots and going to the casino.

She says that there was a day when -- she recalls a day of being at L'auberge Casino and when she got ready to leave going to valet parking and while waiting

on her vehicle, she smelled what she described as an odor of ammonia.

When probed about the odor she remembers that it's an odor and the label that she puts on it is ammonia. This Court feels that Ms. Johnson because of her age and lack of sophistication may be describing the odor that way, but I do think that she was exposed; and I think that she was exposed to the slop oil, because her symptoms are consistent with the MSDS.

She describes coughing, difficulty breathing, and that she tried to self medicate by giving herself home breathing treatments, which were not sufficient and caused her to have to seek medical treatment.

I believe the duration of her suffering with the symptoms that are a result of her exposure are about one-and-a-half to two months. I am going to award to Ms. Johnson the medical expenses as it relates to her exposure; general damages for her pain and suffering in the amount of $10,000; general damages for the emotional distress of the fear of being exposed, $1,500; and general damages for loss of enjoyment, $1,500, for a total recovery for Ms. Hilda Johnson in general damages of 13,000 plus her medical expenses.

The next witness that this Court heard from -- plaintiff I'm sorry -- was Mr. Ellvin Love, and even though his family did not testify in order with him I've grouped them together as the Love family.

I found Mr. Love to be credible, but his memory to be faulty. I found his wife to have the best memory of the two of them, and I do find that Mrs. Love and Darion were at her son's house on Ravia Road initially, and that her husband came as she testified to sometime later after getting off from work to join the family.

I do find the Love family to be credible people and I do believe that they were exposed on the day that they were at their older son's house on Ravia Road.

As it relates to Mr. Ellvin Love, the duration of his symptoms is, well everybody's symptoms in this Court's opinion, is approximately three months, because they had a subsequent exposure to Georgia Gulf.

As it relates to Mr. Ellvin Love, he did complain of coughing and wheezing and some hoarseness. This Court awards to him his medicals associated with the exposure as it relates to Citgo; general damages for his pain and suffering in the amount of $10,000. He did not express a

credible fear, so there will be no recovery for that. General damages for loss of enjoyment while he was suffering with these symptoms, 2,000, for a total recovery to Mr. Ellvin Love of $12,000 plus his medical expenses.

For Ms. Linda I find the same duration given the subsequent exposure from Georgia Gulf, so it would be a three-month duration. She will be awarded her medical expenses associated with the Citgo exposure; general damages for her pain and suffering in the amount of $15,000; general damages for her fear of contracting a future disease, $1,500; and general damages for loss of enjoyment of her life during the period of suffering with these symptoms, $1,500, for a total recovery for Mrs. Linda Love of $18,000 plus her medical expenses.

For Dorian Love I also find the same period of exposure and would award him his medicals associated with the Citgo exposure; general damages for pain and suffering in the amount of $12,000; general damages for fear, there will be no recovery for that; and general damages for loss of enjoyment, $1,500, for a total recovery for their minor son at the time, Dorian Love, $13,500 plus his medical expenses.

The next witness that this Court

heard from was Ms. Angelina Richard; and she and her family have been described as the beach people. I will describe them as the Partner-Richard family. I found this family to be a credible family. This Court was impressed with the testimony of Angelina Richard, and I wholeheartedly believe her. I also found Mr. Partner to be a very matter-of-fact and very credible man as well as Ms. Richard.

Lawrence on the other hand, this Court did not find to be very credible. I think that he was just simply trying to please whomever asked him questions, and I didn't find his testimony to be very reliable.

I do believe that the family was at the beach and I do believe that the oil made it to the beach at the time that the family was there. I believe Angelina, her mother, and her father when they say that they saw the rainbows in the water; and I believe Ms. Bridgett Richard when she says that she had all the children, including Lawrence, get out of the water because of her fear of what could possibly be in the water.

I think these are the unsuspecting people that the whole reason a corporation should warn people is so that we don't end up with unsuspecting people

getting into the water just to have a fun day at the beach.

I find the records, the pediatric records for Ms. Richard's son to be supportive of her contention that the day that she was at the beach was June 20th and the day that she took her child was the next day.

Even when probed, when she made concessions those weren't, this Court's assessment of her body language, they were an, if you say so kind of concession, but not a, I don't believe that I took him the next day. I believe that she took him the next day and that they were there exactly the day that they say that they were.

I found her to be someone who would be a loving and caring mother and would have been concerned as to whether or not what she saw in her child was caused by the water at the beach or some other factor and not someone who would have delayed taking him to the doctor.

The symptoms that are complained of by Angelina Richard, Bridgett Richard, Darrell Partner, and even when Bridgett complained on behalf of her minor son, Lawrence, are consistent with what the MSDS says someone would experience if they were exposed to slop oil.

I find that the Richard family along

with Ms. Leola Tanner, who was with them, were exposed and they were present at the beach.

As it relates to Angelina Richard, this Court believes the duration of her symptoms were approximately four months. This Court will award to her the medicals associated with this exposure, as well as general damages for pain and suffering in the amount of $14,000. Ms. Angelina Richard did not express a fear, and I will not award anything to her for fear of contracting any future disease; for loss of enjoyment of life while she suffered with these symptoms I will award $2,000, for a total recovery to Angela Richard, $16,000 plus her medical expenses.

Her mother, Ms. Bridgett Richard, will be awarded her medical expenses. I find the duration of her suffering with these symptoms is approximately two months. General damages will be awarded to her for pain and suffering in the amount of $10,000. She, too, she did not express a fear of contracting a future disease, just a fear of having been in polluted water.

This Court will not award a recovery for that, but will award her $1,000 for loss of enjoyment of life, for a total recovery of $11,000 plus her medical

expenses.

Mr. Darrell Partner, the father in this circumstance, this Court finds his suffering to be duration between three and six months, and will award him his medicals that are associated with his exposure, plus general damages for pain and suffering in the amount of $17,500; no award for fear; and will award $2,000 for loss of enjoyment of life while suffering with the symptoms for a total general recovery for Mr. Partner of $19,500 plus his medical expenses.

Based on the report from Ms. Bridgett Richard of Lawrence's symptoms, I do find that he did have exposure and he was actually in the water based on his mother's testimony. I will award him the medicals as it relates to his exposure; general damages for his pain and suffering in the amount of $7,000; nothing for fear; and $1,000 for loss of enjoyment of life, for a total of recovery for Lawrence Richard of $8,000 plus medical expenses.

This Court did review the deposition of Ms. Leola Tanner, who also with the recent Richard family, and finds that her duration of suffering would have been approximately two months, and I do find that her systems are related to her exposure and will award medicals

associated with her exposure; and general damages for pain and suffering in the amount of $10,000; no damages for fear of future disease; and also will award $1,000 for loss of enjoyment of life, for a total recovery for general damages of $11,000 plus her medical expenses.

The next witness that this Court heard from was Mr. Kenneth Pappion. At the time of June of 2006 Mr. Pappion was an employee with Southern Ionics working as a chemical operator. He described himself as working 12-hour shifts, seven to seven shift where he would arrive at 6:30 and would get off at 7:00 PM.

He recalls a distinct kerosene gas-like smell on a particular day at work. He doesn't know where the smell was coming from, and that he worked approximately one half mile from the waterway.

He also reports that he suffered from diarrhea and headaches, nausea, and sinus problems, and attributes the problems that he is suffering with erectile dysfunction to his exposure.

He did admit that no doctor has ever told him that suffering from erectile dysfunction is caused by the exposure, but says that he has no family history. He's checked with his male relatives. He had no problems before, and also

testified of how this has deeply impacted both him and his wife.

This Court finds that the symptoms relayed by Mr. Pappion are a result of his exposure in his work environment and will award to Mr. Pappion his medical expenses that are associated with his exposure; also general damages for his pain and suffering in the amount of $25,000; general damages for his fear of contracting future disease, $5,000; and general damages for the loss of enjoyment of life, $5,000, for a total recovery to Mr. Kenneth Pappion of $30,000 plus his medical expenses.

The next witness that this Court heard from was Ms. Ann Welch and I have grouped her, her husband, and her sons together as the Welch family.

Ms. Ann Welch lives near the refinery. She remembers the day as being a rainy day, and she remembers being out in the yard with her kids who were not in school; and both parents testified that there were things that were left in the yard that they were gathering and picking up.

Ann Welch works as a registered nurse and she does recall an odd odor. Her husband worked at W.R. Grace and did testify that when he left work he did remember there being an odd smell, but

once again he would have been an unsuspecting plaintiff because there were no warning signs that the odor that they were smelling was a dangerous odor.

Mr. Welch specifically said that he was checking to try and find out if there was a shelter in place because of the odor. All of the Welch's testified that their symptoms dissipated quickly, with all of them saying that their symptoms for the entire family lasted about a week.

I found Mr. Welch's testimony to be not only extremely credible but just that he possesses a lot of insight. And one of the things that Mr. Welch said is, I choose to work in a chemical plant environment so I choose to assume those risks, but when this infringes on my family it is upsetting and it is fearful because they don't make the same choice.

And he's actually correct. None of us make that choice if you don't work in the environment, and that's why we rely on corporations to be responsible to let us know when we should shelter in place.

As it relates to Ms. Welch the symptoms that she described, which were diarrhea and some nausea, according to her resolved themselves in about a week.

This Court finds that the symptoms that she testified to in Court were

caused by her exposure from the Citgo air release and would award her the medical damages for her treatment as it related to her exposure; and general damages for her pain and suffering in the amount of $7,500; general damages for her fear of contracting -- herself or her family -- contracting some kind of future disease from being exposed, $2,500; and general damages for loss of enjoyment, $2,500, for a total recovery for Ms. Ann Welch, $12,500 plus her medicals.

For Mr. Daniel Welch, this Court will award him his medical expenses; and general damages for his pain and suffering also in the amount of $7,500; general damages for his fear of contracting future disease, $2,500; and general damages for his loss of enjoyment of life, $2,500, for a total recovery of $12,500 in general damages plus expenses.

For the minor sons: for Owen, this Court would award medical expenses and general damages for pain and suffering in the amount of $7,500; and for loss of enjoyment of life $2,500, for a total recovery for Owen Welch of $10,000 plus medical expenses.

For Wesley Welch, this Court would also award medical expenses and general damages for $7,500; for pain and suffering and general damages for loss of

enjoyment of life, $2,500, for a total recovery for their minor son, Wesley Welch, $10,000 plus medical expenses.

Finally, Adrian Watkins appeared by deposition. He was unavailable for Court, and Mr. Adrian Watkins was at the Winner's Choice Casino and smelled an odor and complained of symptoms of nausea, vomiting, and diarrhea, with the duration approximately three weeks.

This Court makes a finding that those symptoms were caused by the Citgo air release and would award his medicals and general damages for his pain and suffering in the amount of $7,500; and general damages for loss of enjoyment of life in the amount of $2,500, for a total award to Mr. Adrian Watkins of $10,000 plus medical expenses.

Those are all of the plaintiffs who appear before this Court during this trial. Costs will be assessed to the defendant, Citgo, and I will sign a judgment. Mr. Wilson, you will prepare it?

MR. WILSON:

Yes, I will, Your Honor.

THE COURT:

I'll sign the judgment upon presentation. Court is adjourned.

MR. WILSON:

Thank you, Your Honor.

MR. ISENBERG:

Thank you.

MR. LANDRY:

Thank you.

(MATTER CONCLUDED)

C E R T I F I C A T E

I do hereby certify that the foregoing forty-one (41) pages of typewritten matter constitute a true and correct transcription of my voicewriting notes and recording of the proceedings taken in the above numbered and entitled cause at the time and place set forth on page one hereof.

Lake Charles, Louisiana, July 11, 2016.

Darlene B. Fontenot, CCR
Certified Court Reporter
Certificate No. 23007

Not 3250358

EMMA BRADFORD, ET AL	:	**14th JUDICIAL DISTRICT COURT**
VS. NO.: 2007-2492, DIV F	:	**STATE OF LOUISIANA**
CITGO PETROLEUM CORPORATION AND R & R CONSTRUCTION, INC.	:	**PARISH OF CALCASIEU**
FILED: 10-19-16	:	**DEPUTY CLERK**

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JUDGMENT

This matter came for trial before Honorable Sharon D. Wilson beginning on May 9, 2016. Present were: Plaintiffs, Wanda Anderson, Albert Andrepont, Emma Bradford, William Breaux, Mallory Charles, Clara Espree, Hilda Johnson, Charles Jones, Shada Leblanc, Wanda Leblanc, Ellvin Love, Linda Love (individually and on behalf of her minor child, Darion Love), John Nash, Kenneth Pappion, Darrell Partner, Bridgett Richard, Lawrence Richard, Angelina Richard (individually and on behalf of her minor child, Jay'Lyn Richard), Leola Tanner (by deposition testimony), Carrie Tezeno, Randy Thomas, Edward Wannage, Adrian Watkins (by deposition testimony), Daniel Welch, Anne Welch (individually and on behalf of her minor children, Owen Welch and Wesley Welch), Richard Granger, Robert Guillory, Michael Lee, Nita Touchet, and Cheryl Wilmore with their counsel, Richard E. Wilson, Somer G. Brown, Wells T. Watson, and Jake Buford; and the Defendant, Citgo Petroleum Corporation, and its counsel, Craig Isenberg, Robert E. Landry, Kevin Fontenot, Celeste Coco-Ewing, Joshua O. Cox, and Kyle W. Siegel.

Citgo stipulated to fault. The Court ruled on May 27, 2016, finding for Plaintiffs on causation and damages and against defendant, Citgo Petroleum Corporation. As such, judgment is rendered in favor of the Plaintiffs: Wanda Anderson, Albert Andrepont, Emma Bradford, William Breaux, Mallory Charles, Clara Espree, Hilda Johnson, Charles Jones, Shada Leblanc, Wanda Leblanc, Ellvin Love, Linda Love, Darion Love, John Nash, Kenneth Pappion, Darrell Partner, Bridgett Richard, Lawrence Richard, Angelina Richard, Leola Tanner, Carrie Tezeno, Edward Wannage, Adrian Watkins, Daniel Welch, Anne Welch, Owen Welch, Wesley Welch, Richard Granger, Robert Guillory, Michael Lee, Nita Touchet, and Cheryl Wilmore and against Defendant, Citgo Petroleum Corporation, awarding damages in the following amounts:

WANDA ANDERSON:

For general damages (pain and suffering) associated with her exposure	$20,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$ 2,500.00
For medical expenses associated with her exposure	$ 200.00
TOTAL	$25,200.00

ALBERT ANDREPONT:

For general damages (pain and suffering) associated with his exposure	$15,000.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	$ 5,000.00
For medical expenses associated with his exposure	$ 200.00
TOTAL	$22,700.00

EMMA BRADFORD:

For general damages (pain and suffering) associated with her exposure	$15,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$ 2,500.00
For medical expenses associated with her exposure	$ 200.00
TOTAL	$20,200.00

WILLIAM BREAUX, JR:

For general damages (pain and suffering) associated with his exposure	$12,000.00
For general damages (mental anguish) associated with his exposure	$ 5,000.00
For general damages (fear of future injury) associated with his exposure	$ 1,500.00
For medical expenses associated with his exposure	-
TOTAL	$18,500.00

MALLORY CHARLES:

For general damages (pain and suffering) associated with his exposure	$10,000.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	$ 2,500.00
For medical expenses associated with his exposure	-
TOTAL	$15,000.00

CLARA ESPREE:

For general damages (pain and suffering) associated with her exposure	$10,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$ 2,500.00
For medical expenses associated with her exposure	$ 350.00
TOTAL	$15,350.00

HILDA JOHNSON:

For general damages (pain and suffering) associated with her exposure	$10,000.00
For general damages (mental anguish) associated with her exposure	$ 1,500.00
For general damages (fear of future injury) associated with her exposure	$ 1,500.00
For medical expenses associated with her exposure	$ 200.00
TOTAL	$13,200.00

CHARLES JONES:

For general damages (pain and suffering) associated with his exposure	$35,000.00
For general damages (mental anguish) associated with his exposure	$ 5,000.00
For general damages (fear of future injury) associated with his exposure	$ 2,500.00
For medical expenses associated with his exposure	$ 270.00
TOTAL	$42,770.00

SHADA LEBLANC:

For general damages (pain and suffering) associated with her exposure	$10,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	-
For medical expenses associated with her exposure	$ 200.00
TOTAL	$12,700.00

WANDA LEBLANC:

For general damages (pain and suffering) associated with her exposure	$25,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$ 5,000.00
For medical expenses associated with her exposure	$ 200.00
TOTAL	$32,700.00

ELLVIN LOVE:

For general damages (pain and suffering) associated with his exposure	$10,000.00
For general damages (mental anguish) associated with his exposure	$ 2,000.00
For general damages (fear of future injury) associated with his exposure	-
For medical expenses associated with his exposure	$ 200.00
TOTAL	$12,200.00

LINDA LOVE:

For general damages (pain and suffering) associated with her exposure	$15,000.00
For general damages (mental anguish) associated with her exposure	$ 1,500.00
For general damages (fear of future injury) associated with her exposure	$ 1,500.00
For medical expenses associated with her exposure	$ 200.00
TOTAL	$18,200.00

DARION LOVE:

For general damages (pain and suffering) associated with his exposure	$12,000.00
For general damages (mental anguish) associated with his exposure	$ 1,500.00
For general damages (fear of future injury) associated with his exposure	-
For medical expenses associated with his exposure	$ 200.00
TOTAL	$13,700.00

JOHN NASH:

For general damages (pain and suffering) associated with his exposure	$21,000.00
For general damages (mental anguish) associated with his exposure	$ 5,000.00
For general damages (fear of future injury) associated with his exposure	$ 2,500.00
For medical expenses associated with his exposure	$ 274.00
TOTAL	$28,774.00

KENNETH PAPPION:

For general damages (pain and suffering) associated with his exposure	$25,000.00
For general damages (mental anguish) associated with his exposure	$ 5,000.00
For general damages (fear of future injury) associated with his exposure	$ 5,000.00
For medical expenses associated with his exposure	$ 350.00
TOTAL	$35,350.00

DARRELL PARTNER:

For general damages (pain and suffering) associated with his exposure	$17,500.00
For general damages (mental anguish) associated with his exposure	$ 2,000.00
For general damages (fear of future injury) associated with his exposure	-
For medical expenses associated with his exposure	$ 475.00
TOTAL	$19,975.00

BRIDGETT RICHARD:

For general damages (pain and suffering) associated with her exposure	$10,000.00
For general damages (mental anguish) associated with her exposure	$ 1,000.00
For general damages (fear of future injury) associated with her exposure	-
For medical expenses associated with her exposure	$ 475.00
TOTAL	$11,475.00

LAWRENCE RICHARD:

For general damages (pain and suffering) associated with his exposure	$ 7,000.00
For general damages (mental anguish) associated with his exposure	$ 1,000.00
For general damages (fear of future injury) associated with his exposure	-
For medical expenses associated with his exposure	$ 475.00
TOTAL	$ 8,475.00

ANGELINA RICHARD:

For general damages (pain and suffering) associated with her exposure	$14,000.00
For general damages (mental anguish) associated with her exposure	$ 2,000.00
For general damages (fear of future injury) associated with her exposure	-
For medical expenses associated with her exposure	$ 475.00
TOTAL	$16,475.00

LEOLA TANNER:

For general damages (pain and suffering) associated with her exposure	$10,000.00
For general damages (mental anguish) associated with her exposure	$ 1,000.00
For general damages (fear of future injury) associated with her exposure	-
For medical expenses associated with her exposure	$ 200.00
TOTAL	$11,200.00

CARRIE TEZENO:

For general damages (pain and suffering) associated with her exposure	$10,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$ 5,000.00
For medical expenses associated with her exposure	$ 200.00
TOTAL	$17,700.00

EDWARD WANNAGE:

For general damages (pain and suffering) associated with his exposure	$15,000.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	$ 2,500.00
For medical expenses associated with his exposure	$ 212.00
TOTAL	$20,212.00

ADRIAN WATKINS:

For general damages (pain and suffering) associated with his exposure	$ 7,500.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	-
For medical expenses associated with his exposure	$ 200.00
TOTAL	$10,200.00

ANNE WELCH:

For general damages (pain and suffering) associated with her exposure	$ 7,500.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$ 2,500.00
For medical expenses associated with her exposure	$ 150.00
TOTAL	$12,650.00

DANIEL WELCH:

For general damages (pain and suffering) associated with his exposure	$ 7,500.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	$ 2,500.00
For medical expenses associated with his exposure	$ 150.00
TOTAL	$12,650.00

OWEN WELCH:

For general damages (pain and suffering) associated with his exposure	$ 7,500.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	-
For medical expenses associated with his exposure	$ 150.00
TOTAL	$10,150.00

WESLEY WELCH:

For general damages (pain and suffering) associated with his exposure	$ 7,500.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	-
For medical expenses associated with his exposure	$ 150.00
TOTAL	$10,150.00

RICHARD GRANGER:

For general damages (pain and suffering) associated with his exposure	$25,000.00
For general damages (mental anguish) associated with his exposure	$ 1,500.00
For general damages (fear of future injury) associated with his exposure	$ 2,500.00
For medical expenses associated with his exposure	$ 2,090.16
TOTAL	$31,090.16

ROBERT GUILLORY:

For general damages (pain and suffering) associated with his exposure	$25,000.00
For general damages (mental anguish) associated with his exposure	$ 2,500.00
For general damages (fear of future injury) associated with his exposure	$ 2,500.00
For medical expenses associated with his exposure	$ 1,795.00
TOTAL	$31,795.00

MICHAEL LEE:

For general damages (pain and suffering) associated with his exposure	$35,000.00
For general damages (mental anguish) associated with his exposure	$ 5,000.00
For general damages (fear of future injury) associated with his exposure	$15,000.00
For medical expenses associated with his exposure	$ 1,080.61
Total $56,080.61; however, award limited to: TOTAL	$50,000.00

NITA TOUCHET:

For general damages (pain and suffering) associated with her exposure	$30,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$10,000.00
For medical expenses associated with her exposure	$ 2,662.20
TOTAL	$45,162.20

CHERYL WILMORE:

For general damages (pain and suffering) associated with her exposure	$15,000.00
For general damages (mental anguish) associated with her exposure	$ 2,500.00
For general damages (fear of future injury) associated with her exposure	$ 2,500.00
For medical expenses associated with her exposure	$ 577.00
TOTAL	$20,577.00

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that this Court finds against Plaintiff, Randy Thomas on causation and damages and for defendant, Citgo Petroleum Corporation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Citgo Petroleum Corporation, be taxed for all court costs of the proceedings. The following expert fees in preparation for trial and trial testimony shall be included in the amount taxed as court costs:

Expert, Barry S. Levy, M.D., M.P.H., P.C.	$14,967.30
Expert, Frank M. Parker of Caliche, Ltd.	$41,206.16
Expert, Steve Springer, M.D.	$12,850.00
Expert, Robert Looney, M.D.	$19,913.08
Douget Court Reporting	$ 4,624.00
Reliable Court Reporting	$ 1,998.00
Lake Charles Court Reporting	$ 260.75

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, Citgo Petroleum Corporation, pay all costs of these proceedings, including court costs, together with judicial interest on all amounts from the date of judicial demand until paid.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana on this 18th Day of October, 2016.

HONORABLE SHARON D. WILSON
14TH JUDICIAL DISTRICT COURT

Respectfully submitted by:

COX, COX, FILO, CAMEL & WILSON

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