

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

| | | |
|--|-------------|---------------------------------------|
| LEE AUTRY JOHNSON, JR. | * | CIVIL ACTION NO. 19-10090 |
| VERSUS | * | SECTION: J(5) |
| BP EXPLORATION & PRODUCTION INC. and BP AMERICA PRODUCTION COMPANY | * * * | JUDGE BARBIER MAG. JUDGE NORTH |
| Related to: 12-968 BELO in MDL No. 2179 | * | |

ORDER & REASONS

This is an action for personal injuries brought pursuant to the “Back-End Litigation Option” (“BELO”) provisions of the *Deepwater Horizon* Medical Benefits Class Action Settlement Agreement (“Medical Settlement”).¹ Defendants BP Exploration & Production Inc. and BP America Production Company (collectively, “BP”) filed a Motion for Summary Judgment (Rec. Doc. 29) and noticed it for submission on November 4, 2020. (Rec. Doc. 29-1). Pursuant to Local Rule 7.5, any response was due by October 27. No response was filed; the motion is unopposed. The Court, having considered the motion, the record, and the applicable law, grants the motion and dismisses the complaint for the reasons briefly set out below.

¹ See generally *In re Oil Spill by the Oil Rig Deepwater Horizon*, 295 F.R.D. 112 (E.D. La. 2013) (describing the Medical Settlement and approving it as a class action settlement under FED. R. CIV. P. 23). A copy of the Medical Settlement can be found in the *Deepwater Horizon* MDL master docket, No. 10-md-2179, Rec. Doc. 6427-1 (E.D. La.). There is no dispute that the plaintiff is a member of the settlement class.

On April 20, 2010, a blowout, explosions, and fire occurred on the drilling rig DEEPWATER HORIZON as it was preparing to temporarily abandon a well it had drilled some 50 miles off the coast of Louisiana. A massive oil spill resulted. Plaintiff Lee Autry Johnson, Jr. performed oil spill cleanup work from approximately August 1 to October 31, 2010. In August of 2013, Johnson was diagnosed with chronic conjunctivitis, chronic pharyngitis, and chronic sinusitis. Johnson filed the instant BELO lawsuit against BP in May of 2019.² In it, Johnson claims that his illnesses were caused by exposure to oil and other chemicals while performing cleanup work.

A plaintiffs in a BELO cases must prove that his illness was legally caused by exposure to chemicals from the oil spill or the response. *McGill v. BP Expl. & Prod., Inc.*, No. 19-60849, 2020 WL 6038677, at *3, -- F. App'x -- (5th Cir. 2020) (unpublished). Furthermore, this proof must be accomplished through expert testimony. *See, e.g., Rabalais v. BP Expl. & Prod.*, No. 18-cv- 9718, 2019 WL 2546927, at *2 (E.D. La. June 20, 2019) (Africk, J.). Johnson, however, failed to submit an expert report or make any expert disclosures by the Court's deadline of October 7, 2020. Consequently, BP is entitled to summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (“[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden

² BP was the operator and majority owner of the Macondo Well, and a “responsible party” for the oil spill under the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq. The Medical Settlement permits a class member to sue BP, and only BP, in a BELO lawsuit for any “Later-Manifested Physical Conditions.”

of proof at trial.”); *McGill*, 2020 WL 6038677, at *3 (affirming summary judgment against BELO plaintiff case after plaintiff’s medical causation expert was excluded for failing to satisfy Fed. R. Civ. P. 702 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993)).

Accordingly,

IT IS ORDERED that BP’s Motion for Summary Judgment (Rec. Doc. 29) is GRANTED.

IT IS FURTHER ORDERED that Lee Autry Johnson, Jr.’s BELO complaint is DISMISSED with prejudice.

New Orleans, Louisiana, this 17th day of November, 2020.


United States District Judge

Note to Clerk: Mail a copy to plaintiff.