

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MARCO COY

CIVIL ACTION

VERSUS

NO. 19-10343

BP EXPLORATION & PRODUCTION INC.
AND BP AMERICA PRODUCTION COMPANY

SECTION "B" (4)

ORDER & REASONS

Defendants, BP Exploration & Production Inc. and BP America Production Company, have filed a motion for summary judgment. (Rec. Docs. 18)

Local Rule 7.5 of the Eastern District of Louisiana requires that memoranda in opposition with citations of authorities be filed **and** served no later than eight (8) days before the noticed submission date. No memoranda in opposition to subject motions, set for submission on **April 15, 2020**, have been submitted. Further, plaintiff has not filed a motion to continue the noticed submission date or filed a motion for extension of time within which to oppose the motions. Accordingly, the motion is deemed to be unopposed. The motion for summary judgment has merit. In a toxic torts case, a plaintiff must rely on expert testimony to prove his medical diagnosis and causation. *See Seaman v. Seacor Marine LLC*, 326 F. App'x 721, 723 (5th Cir. 2009) (noting that expert testimony is required to establish causation); *United States v. Crinel*, No. 15-61, 2016 WL 6441249, at *7 (E.D. La. Nov. 1, 2016) ("[A]n opinion regarding a patient's medical diagnoses or prognoses 'falls within

the scope of expert testimony under [Federal Rule of Evidence] 702' ") (quoting *Barnes v. BTN, Inc.*, 2013 WL 1194753, at *2 (S.D. Miss. Mar. 22, 2013), *aff'd*, 555 F. App'x 281 (5th Cir. 2014)). There is no indication that plaintiff has retained an expert to provide testimony at trial related to his medical diagnosis or causation. See Fed. R. Civ. P. 26(a)(2)(B). Nor is there an indication that plaintiff will present expert testimony from a non-retained treating physician. See *id.* 26(a)(2)(C). Plaintiff has failed to present competent evidence to prove his medical diagnosis or causation at trial.

IT IS ORDERED that the motion for summary judgment is **GRANTED**, **DISMISSING WITHOUT PREJUDICE** the instant case.

A motion for reconsideration of this Order based on the appropriate Federal Rule of Civil Procedure, if any, must be filed within thirty (30) days of this Order. The motion must be accompanied by opposition memoranda to the original motions.

Because such a motion would not have been necessary had timely opposition memoranda been filed, the costs incurred in connection with the motion, including attorney's fees, may be assessed against the party moving for reconsideration. See Fed. R. Civ. P. 16, 83. A statement of costs conforming to Local Rule 54.3 should be submitted by all parties desiring to be awarded costs and

attorney's fees no later than eight (8) days prior to the noticed submission date of the motion for reconsideration.

New Orleans, Louisiana this 28th day of April, 2020

A handwritten signature in black ink, appearing to read "W. J. Zwick", written over a horizontal line.

SENIOR UNITED STATES DISTRICT JUDGE