

United States District Court
Northern District of California

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FRANK J. SHELTON, ET AL.,

Plaintiffs,

vs.

AIR & LIQUID SYSTEMS CORPORATION, ET AL.,

Defendants.

Case No.: 4:21-cv-04772-YGR

**ORDER GRANTING JOINT DEFENSE MOTION
TO STRIKE THE SPECIFIC-CAUSATION
OPINIONS OF DR. EDWIN HOLSTEIN**

Dkt. No. 291

Pending before the Court is defendants’ motion to strike the specific-causation opinions of plaintiffs’ causation expert, Dr. Edwin Holstein. (Dkt. No. 291.)¹ The Court finds this matter appropriate for disposition without oral argument and **GRANTS** the motion for the reasons set forth below. The Court notes at the outset that the Dr. Holstein presented an opinion based on the requirements of California law. Having found that federal maritime law applies (Dkt. No. 303), the opinion does not comport with the more rigorous requirements of federal law and therefore must be stricken as lacking sufficient foundation.

I. BACKGROUND

The complaint (Dkt. No. 1-1, Complaint, “Compl.”) alleges the following:

Plaintiff Mr. Shelton served in the Navy from approximately the mid-1960s to the early 1970s. (Compl. ¶ 5.) During his time with the Navy, Shelton worked as a “Machinist Mate” while stationed aboard the USS Constellation, USS Repose, and USS Haleakala, where he regularly and routinely

¹ The Court notes that defendants filed the motion as a Motion to Strike the Specific-Causation Opinions of Edwin Holstein on the docket, but the caption of the motion reads “Joint Defense Motion to Exclude Dr. E. Holstein”. Having reviewed the motion and the supporting evidence, the Court considers the filing as a motion to strike Dr. Holstein’s specific-causation opinions rather than a motion to completely exclude Dr. Holstein as defendants’ briefing only focuses on Dr. Holstein’s specific-causation opinions and does not address his general causation opinions. The Court reserves on whether there would be a basis for general causation opinions to be proffered.

1 performed maintenance and repairs to various equipment in the machinery spaces to which he was
2 assigned. (*Id.*) Shelton was tasked with disturbing, sanding, scraping, cutting and abrading asbestos-
3 containing components of the equipment. (*Id.*) As a result, Shelton was exposed to asbestos-
4 containing products and developed malignant mesothelioma as a result of the exposure. (*Id.* ¶ 6.)

5 **II. LEGAL STANDARD**

6 The legal standard is not in dispute. In short, Federal Rule of Evidence 702 permits opinion
7 testimony by an expert as long as the witness is qualified and, based upon that qualification, the
8 witness's opinion is relevant and reliable. An expert witness may be qualified by "knowledge, skill,
9 experience, training, or education" as to the subject matter of the opinion. Fed. R. Evid. 702. The
10 proponent of expert testimony has the burden of proving admissibility in accordance with Rule
11 702. Fed. R. Evid. 702, Advisory Committee Notes (2000 amendments). For scientific opinions, they
12 must be based on scientifically valid principles. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579,
13 589 (1993). Experts assist the fact finder in their own evaluation of the evidence by providing the fact
14 finder with opinions based upon verifiable, scientific, or other objective analysis. *Id.* at 589–90.

15 **III. DISCUSSION**

16 **1. Overview of Dr. Holstein's Qualifications**

17 Dr. Holstein obtained his undergraduate degree from Harvard College and an M.S. from
18 Massachusetts Institute of Technology. (Dkt. No. 280-1, Dr. Holstein's Report, "Exp. Report", at ¶ 6).
19 After obtaining his M.S., Dr. Holstein received his M.D. from Mount Sinai School of Medicine. (*Id.*)
20 He is Board Certified in Internal Medicine, as well as in Preventive Medicine, with a subspecialty in
21 Occupational Medicine. (*Id.* at ¶ 4.) Dr. Holstein has been studying and/or teaching about the health
22 effects of asbestos exposure since the 1970s. (*See e.g. id.* at ¶ 5.) His work includes assessing the
23 amount of exposure a person has received to asbestos, and the likely health effects of that exposure.
24 (*Id.*) He is also knowledgeable, and able, to estimate one's past exposure to asbestos. (*Id.*)

25 **2. Overview of Dr. Holstein's Specific-Causation Opinions and Methodology**

26 Defendants argue that Dr. Holstein's specific-causation opinions should be excluded because
27 they are conclusory and not based on any sound scientific method and are therefore irrelevant and
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1 unreliable. (*See generally* Dkt. 291, Motion to Strike, “Mot.”) The parties generally agree that
2 causation experts in asbestos cases use a qualitative assessment and/or a quantitative assessment.

3 Here, in opining on specific causation, Dr. Holstein proffers a “qualitative assessment” to
4 determine whether Mr. Shelton’s exposure to the defendants’ products caused his mesothelioma. (Dkt.
5 No. 292, Opposition to Motion to Strike, “Opp.”). Dr. Holstein explains that “the causation of
6 mesothelioma has been established by the occupational history of asbestos exposure, not by
7 quantitative analysis of that exposure (air measurements in the workplace if the specific affected
8 individual), since these rarely exist now or years ago at the time of exposure.” (Exp. Report, at ¶ 211.)
9 According to Dr. Holstein, in “the medical and scientific community for the past 47 years”, one’s
10 “history of asbestos exposure is the most reliable evidence upon which to base a causation
11 determination of mesothelioma.” (*Id.*)

12 Based on this qualitative assessment, Dr. Holstein opines that whether exposure to asbestos
13 from a product is significant depends on a number of factors including: “(1) the nature of exposure;
14 (2) the level and duration of exposure; (3) whether a product gives off respirable asbestos fibers; (4)
15 the level of exposure; (5) whether a person was close to or far from the source of fiber release; (6)
16 how frequently the exposure took place and how long the exposure lasted; (7) whether engineering or
17 other methods of dust control were in place; and (8) whether respiratory protection was used.” (*Id.* at ¶
18 212.) He further opines that approximate information on these matters, rather than precision is usually
19 sufficient, and the most commonly used tool for determining causation is one’s occupational history.
20 (*Id.*)

21 Thus, in discussing Mr. Shelton’s occupational history, Dr. Holstein relies on Mr. Shelton’s
22 deposition testimony and incorporates by reference the expert report of plaintiff’s naval expert
23 Captain Arnold P. Moore, PE. Specifically, Dr. Holstein begins with the fact that Mr. Shelton served
24 upon the USS Sperry, the USS Constellation, the USS Repose, and the USS Haleakala during his time
25 in the Navy. (*Id.* at ¶ 46.) Dr. Holstein identifies Mr. Shelton’s occupational history as including work
26 as a Machinist Mate and Fireman which involves work comprised of repairing and maintaining all the
27 equipment in the machinery space to which plaintiff was assigned. (*Id.* at ¶ 47.) Dr. Holstein also
28 explains that plaintiff’s repair and maintenance activities would have been carried out on or around

1 many varieties of pumps and valves, as well as boilers, propulsion turbines, drive turbines, and other
2 types of equipment. (*Id.*) Thus, further concludes Mr. Shelton’s exposure included “bystander
3 exposures” to asbestos due to the work of others. (*Id.* at ¶ 48.)

4 Relying on Captain Moore’s report, Dr. Holstein explains nearly all the equipment in the
5 machinery spaces was insulated and usually contained a high level of asbestos. (*Id.* at ¶ 49.) Dr.
6 Holstein next relies on scientific literature to explain that exposure to asbestos containing products is a
7 major cause of mesothelioma in human beings. (*Id.* at ¶ 50.) He also relies on scientific literature to
8 approximate the level of asbestos exposure for common industrial repairs and maintenance practices,
9 which Dr. Holstein opines are “reasonably useful approximations of the air concentrations to which
10 Mr. Shelton was exposed” as he carried out his tasks. (*Id.* at ¶¶ 65, 103-123.)

11 Dr. Holstein explains that “because asbestos dust is so strongly associated with mesothelioma,
12 proof of significant exposure to asbestos dust is proof of specific causation.” (*Id.* at ¶ 170.) He opines
13 that “the total dose of asbestos that the patient breathes [] is the cause of the disease.” (*Id.* at ¶ 171.)
14 He explains that “[m]esothelioma and []asbestos exhibit a dose-response relationship such that the
15 more someone is exposed to asbestos, the greater their risk for the development of the[] cancer[]” and
16 that “significant exposure to asbestos-containing dust from the use of products has been shown to
17 contribute to cause [] mesothelioma.” (*Id.* at ¶¶ 170-71.)

18 Dr. Holstein further states that “there is no scientific evidence that a particular exposure or set
19 of exposures, whether defined by time of exposure, brand of product, fiber type or any other
20 characteristic, can be excluded from a causative role in the development of mesothelioma” and that
21 “all significant exposures contribute to the causation” of mesothelioma. (*Id.* at ¶ 172.) He does not
22 “believe that a single asbestos fiber will cause an observable case of mesothelioma” because “it is not
23 sensible to claim that every fiber contributes to the development of mesothelioma.” (*Id.*)

24 Having considered the evidence before him, Dr. Holstein concludes that Mr. Shelton’s
25 “cumulative exposures to asbestos” in connection with his repair and maintenance work on the ships
26 “were sufficient to have contributed to his overall dose of asbestos, which was the direct and sole
27 cause of his malignant mesothelioma.” (*Id.* at ¶ 69) (with respect to defendant General Electric); (*Id.*
28 at ¶ 71) (defendant Foster Wheeler); (*Id.* at ¶ 75) (defendant Westinghouse); (*Id.* at ¶ 77) (defendant

Carrier); (*Id.* at ¶ 81) (defendant DeLaval); (*Id.* at ¶ 84) (defendant Warren); (*Id.* at ¶ 85) (defendant Buffalo); (*Id.* at ¶ 88) (defendant Cleaver Brooks for Davis Engineering); (*Id.* at ¶ 89) (defendant Atwood and Morrill); and (*Id.* at ¶ 90) (defendant Powell).

3. Analysis

Defendants contend that Dr. Holstein’s specific-causation opinions should be excluded because they are not scientifically sound. Unsurprisingly, plaintiff disagrees.²

The parties concur that *Lindstrom v. A-C Product Liability Trust*, 424 F.3d 488 (6th Cir. 2005), *overruled on other grounds by Air and Liquid Sys. Corp. v. DeVries*, 139 S. Ct. 986 (2019) is the seminal case for establishing proof of causation under maritime law. In *Lindstrom*, the Sixth Circuit explains that to establish causation, a plaintiff must show, “for each defendant, that (1) he was exposed to defendant’s product, and (2) the product was a substantial factor in causing the injury.” 424 F.3d at 492. Evidence of exposure for a substantial period of time can provide a basis for the inference that the product was a substantial factor in causing plaintiff’s injury. *Id.* However, a mere showing that defendant’s product was present at plaintiff’s workplace is insufficient to establish causation. *Id.*

The Ninth Circuit has adopted the substantial factor test outlined in *Lindstrom*. See *McIndoe v. Hunington Ingalls, Inc.*, 817 F.3d 1170, 1176 n.6 (9th Cir. 2016). Ninth Circuit jurisprudence explains that a plaintiff may meet the substantial factor test by showing “that exposure from [the defendant’s] sources was ‘sufficiently sustained (or frequent) and intense to constitute [causation].’” *Stephens v. Union Pacific Railroad Company*, 935 F.3d 852, 856 (9th Cir. 2019); *McIndoe*, 817 F.3d at 1176 (“absent direct evidence of causation, a party may satisfy the substantial-factor test by demonstrating that the injured person had substantial exposure to the relevant asbestos for a substantial period of time.”). The test can also be met by “present[ing] [] evidence regarding the *amount* of exposure to dust . . . , or critically, the *duration* of such exposure during any of the[] incidents. Without such facts,

² The Court notes that plaintiffs spend significant time on the Helsinki criteria in their briefing, which relates to whether one’s exposure to asbestos *generally* causes mesothelioma. General exposure is not at issue here. See *Bobo v. Tennessee Valley Auth.*, 855 F.3d 1294, 1301 (11th Cir. 2017) (crediting experts use of Helsinki factors, noting that such factors assist in “determining whether asbestos exposure caused a particular person’s disease.”); see also Exp. Report, at ¶¶ 54-55 (discussing the Helsinki factors under general causation). Thus, such arguments do not persuade.

1 [plaintiff] can only speculate as to the actual extent of [] exposure to asbestos from the shipbuilder’s
2 materials.” *McIndoe*, 817 F.3d at 1176-77 (emphasis in original).³

3 Ultimately, the Court finds Dr. Holstein “qualitative assessment” of plaintiff’s exposure is too
4 generic. Dr. Holstein does not dispute a “qualitative assessment” requires him to assess plaintiff’s
5 exposure to asbestos in light of factors relevant to plaintiff’s occupational history. Nevertheless, while
6 Dr. Holstein states that he has considered the “frequency, duration, and proximity” of the asbestos-
7 containing products relative to Mr. Shelton’s work history, (Exp. Report, at ¶ 65), the statement is not
8 based upon any actual identification or evaluation of Mr. Shelton’s actual exposure, frequency, or the
9 regularity of the work performed on or around each of the defendants’ products.

10 For instance, Dr. Holstein does not describe how many times plaintiff would have encountered
11 each of the defendants’ products and how long those interactions would have been. While precision of
12 such information is arguably difficult given the lapse in time, Dr. Holstein concedes that he did not
13 even try to employ such method because in his mind such information was not required. (*See* Dkt. No.
14 280-2, Holstein Deposition, “Depo.” at 61:20-63-20.) Rather, as to each defendant, Dr. Holstein
15 simply looked at whether the defendants’ products were present on the ship at the time Mr. Shelton
16 was stationed on the vessel and based his conclusions thereon. Mere exposure is insufficient to
17 establish causation under federal maritime law. *Lindstrom*, 424 F.3d at 492. Specifically, Dr. Holstein
18 summarily opines that (i) each defendant provided certain equipment used on one of the ships during
19 Mr. Shelton’s time and service thereon; (ii) the equipment contained asbestos; (iii) “Mr. Shelton
20 would have experienced exposures asbestos *when he most likely* repaired, assisted in the repair,
21 supervised the repair or observed the repair or maintenance of these items”; and (iv) his “cumulative
22 exposures to asbestos in connection with his work or around [defendants’ equipment] were sufficient
23 to have contributed to his overall dose of asbestos, which was the direct and sole cause of his
24 malignant mesothelioma.” (*See e.g., id.* at ¶ 67-69) (emphasis supplied). Aside from this summary
25 approach, Dr. Holstein does not employ any method, much less one scientific or reliable, for
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27 ³ The tests of the Ninth and Sixth Circuits differ from that of California which merely requires
28 a showing that plaintiff’s “particular asbestos disease is cumulative in nature” which can be satisfied
by establishing that “a series of exposures was a ‘legal cause’ of [plaintiff’s] injury.” *Rutherford v.*
Owens-Illinois, Inc., 16 Cal.4th 953, 958, 982 (1997).

1 determining whether Mr. Shelton’s exposure to any of the defendants’ products was significant, and
2 thus, could be a substantial factor in causing his mesothelioma.

3 Instead, Dr. Holstein devotes the majority of his report to principles and the assessment of
4 general causation, mainly the idea that significant exposure to asbestos causes mesothelioma.⁴ (*See*
5 *Exp. Report*, at ¶ 172) (“the best scientific evidence is that all significant exposures contribute to the
6 causation of a subsequent mesothelioma or lung cancer.”) Ultimately, that is the problem. Dr.
7 Holstein’s opinions could apply to any asbestos case, but maritime law requires that he analyzes the
8 facts specific to each of the defendants in this case including their products. While Dr. Holstein
9 opines, generally, that “significant” exposures to asbestos causes mesothelioma, his report begs the
10 question: was Mr. Shelton’s exposures to the remaining defendants’ products “significant?” Merely
11 asking the trier of fact to trust his evaluation given his significant expertise is insufficient. (*See Opp.*
12 *at 10: 15-18.*) Further, Dr. Holstein cannot opine as to the ultimate facts. Experts are allowed to offer
13 opinions which will assist the jury in its determination of whether Mr. Shelton’s exposures to each
14 defendants’ products are significant. Dr. Holstein has to explain why the exposures are significant so
15 that the jury can do their job.

16 Accordingly, the Court finds that Dr. Holstein’s opinions do not comport with federal
17 maritime law and lack sufficient foundation upon which he may opine that plaintiff’s actual
18 interactions with the defendants’ products, including proximity and duration, were a possible
19 substantial cause of plaintiff’s mesothelioma. Due to the lack of a sufficient foundation under federal
20 law, the Court finds the opinions unreliable as to each individual defendant.

21 While Dr. Holstein’s attempt to apply a qualitative assessment of plaintiff’s exposure fail, the
22 parties agree that Dr. Holstein could have also applied a quantitative method and calculated Mr.
23 Shelton’s dose of exposure to assess whether the exposures to defendants’ products were substantial.
24 Dr. Holstein acknowledges that he can do such calculations, and has done so in other cases, but chose
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26 ⁴ Given Dr. Holstein’s medical training and past work experiences, the Court finds Dr.
27 Holstein’s opinions on general causation, and the impact that exposure to asbestos has on one’s
28 health, has foundation and are scientifically sound. Indeed, defendants do not argue that these
opinions should be excluded, and instead agree that exposure to asbestos can cause mesothelioma,
crediting such opinion as a “truism”. *Mot.* at 9.

1 not to do so here, believing that such calculation was not required under California law. (Holstein
2 Depo. at 51:20-52:7; 102:6-103:15.)

3 In sum, without either a sufficient qualitative or any quantitative methodology, Dr. Holstein
4 fails to employ any reliable methodology for determining whether Mr. Shelton's exposure to each of
5 the remaining defendants' products was significant, and thus a substantial factor in causing plaintiff's
6 mesothelioma. Accordingly, the *Daubert* factors support the Court's exclusion of Dr. Holstein's
7 specific-causation opinions under Federal Rule of Evidence 702.


8 **IV. CONCLUSION**

9 For the foregoing reasons, the motion to strike the specific-causation opinions of Dr. Holstein
10 is **GRANTED**.

11 This Order terminates Docket Number 291.

12 **IT IS SO ORDERED.**

13
14 Dated: July 11, 2022

15 
16 **YVONNE GONZALEZ ROGERS**
17 **UNITED STATES DISTRICT COURT JUDGE**