

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION

DARRYLL TAYLOR-FIFIELD,

Plaintiff,

v.

FLINT GROUP PACKAGING  
INKS NORTH AMERICA  
CORPORATION,

Defendant.

CIVIL ACTION FILE

NO. 3:19-cv-122-TCB

**ORDER**

On September 13, 2019, Plaintiff Darryll Taylor-Fifield brought this action asserting claims for strict products liability and negligence.

From 2015 through early summer of 2017, Taylor-Fifield was exposed to Dynagloss Catalyst, a chemical manufactured by Flint Group North American Corporation, at his place of work. He alleges that Dynagloss contains p-toluenesulphonic acid (“toluene”) and sulfuric

acid, and his exposure to these chemicals led to the development of a carcinoid (also called neuroendocrine) tumor in his right lung.

Now before the Court are the motions [73, 74] of Defendant Flint Group Packaging Inks North America Corporation (“Flint”)<sup>1</sup> to exclude specific causation testimony by Dr. Minesh Patel and the expert testimony of Ronald J. Kendall, Ph.D. Also before the Court is Flint’s motion [75] for summary judgment.

## **I. *Daubert* Motions**

Flint moves to exclude specific causation testimony by Dr. Patel, Taylor-Fifield’s treating oncologist, and all testimony by Dr. Kendall, Taylor-Fifield’s retained toxicology expert, pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

### **A. Legal Standard**

Rule 702 of the Federal Rules of Evidence, which governs the admissibility of expert testimony, provides that

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the

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<sup>1</sup> Defendant Flint Group Packaging Inks North America Corporation has assumed any liability of Flint Group North American Corporation.

form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

Although the rules provide the Court with only limited guidance, the Supreme Court expounded upon Rule 702's requirements in *Daubert* and explained that the inquiry is a "flexible one." 509 U.S. at 594. "Unlike an ordinary witness, . . . an expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation." *Id.* at 592 (citation omitted). Trial courts therefore act as "gatekeepers" to ensure that a proposed expert's testimony is not only relevant, but reliable. *Id.* at 589. To that end, district courts are "charged with screening out experts whose methods are untrustworthy or whose expertise is irrelevant to the issue at hand." *Corwin v. Walt Disney Co.*, 475 F.3d 1239, 1250 (11th Cir. 2007).

As gatekeepers, trial courts should conduct a "rigorous three-part inquiry" to resolve *Daubert* motions. *United States v.*

*Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004). Expert testimony may be admitted when

(1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue.

*Id.* (quoting *City of Tuscaloosa v. Harcros Chems., Inc.*, 158 F.3d 548, 562 (11th Cir. 1998)). Although there is inevitable overlap among the three prongs of this analysis, trial courts must be cautious not to conflate them, and the proponent of expert testimony bears the burden of showing that each requirement is met. *Id.* (citations omitted); *see also Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1292 (11th Cir. 2005).

The reliability prong requires the Court to “determine whether [the expert] used the proper methods and procedures of his discipline and whether [the expert], in preparing his report, employed ‘the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.’” *Carpenters Health & Welfare Fund v. Coca-Cola Co.*, No. 1:00-cv-2838-WBH, 2008 WL 4737173, at \*2 (N.D. Ga. Mar. 14,

2008) (internal citation omitted) (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999)). The primary purpose of the reliability inquiry is “to exclude ‘junk science’—or . . . junk economics or junk statistics—from consideration.” *Id.* (citations omitted).

In *Daubert*, the Supreme Court identified four non-exclusive factors to aid courts in assessing the reliability of a proposed expert’s testimony: (1) whether the expert’s theory can be and has been empirically tested; (2) whether the expert’s theory has been subjected to peer review and publication; (3) the known or potential error rate of the expert’s theory; and (4) whether the expert’s theory is generally accepted in the scientific community. 509 U.S. at 593–94. When analyzing reliability, “[t]he focus, of course, must be solely on principles and methodology, not on the conclusions that they generate.” *Id.* at 595.

These factors bear on the Court’s inquiry but do not compose a definitive checklist. *Id.* at 593. Not every factor “will apply in every case, and in some cases other factors will be equally important in evaluating the reliability of proffered expert opinion.” *Frazier*, 387 F.3d

at 1262. Thus, the trial court has considerable leeway to determine whether proffered expert testimony is reliable. *Id.*

Finally, the district court must assess whether the expert testimony will assist the trier of fact. Put another way, the Court must ask whether the expert testimony “concerns matters that are beyond the understanding of the average lay person.” *Id.*

**B. Dr. Minesh Patel**

In this toxic tort case, Taylor-Fifield must offer reliable expert testimony as to (1) general causation, whether the chemicals at issue can cause the harm alleged; and (2) specific causation, whether his exposure to the chemicals did in fact cause his carcinoid tumor.

*McClain v. Metabolife Int’l, Inc.*, 401 F.3d 1233, 1239 (11th Cir. 2005).

Dr. Minesh Patel is Taylor-Fifield’s treating oncologist, and it is his medical opinion that Taylor-Fifield’s exposure to sulfuric acid and toluene caused his carcinoid tumor. Flint argues that Dr. Patel’s specific causation testimony should be excluded under *Daubert* because his methodology is not scientifically reliable.

First, Taylor-Fifield responds that Dr. Patel may testify as a fact witness that Taylor-Fifield's tumor is consistent with a tumor that is the result of exposure to a chemical without being subject to Rule 702 and *Daubert*.

“The testimony of treating physicians presents special evidentiary problems that require great care and circumspection by the trial court.” *Williams v. Mast Biosurgery USA, Inc.*, 644 F.3d 1312, 1316 (11th Cir. 2011). When a physician's proffered testimony goes beyond an account of his experience providing care to his patient and “purport[s] to provide explanations of scientific and technical information not grounded in [his] own observations and technical experience,” the trial court must be “vigilant” in ensuring that Rule 702's requirements are not being evaded. *Id.* at 1317 (citing *United States v. Henderson*, 409 F.3d 1293, 1300 (11th Cir. 2005)).

The Eleventh Circuit has clarified that “a treating physician is not considered an expert witness if he or she testifies about observations based on personal knowledge, including the treatment of the party.” *Id.* (quoting *Davoll v. Webb*, 194 F.3d 116, 1138 (10th Cir. 1999)). However,

when the physician’s testimony is “based on a hypothesis, not the experience of treating the patient, it crosses the line from lay to expert testimony, and it must comply with the requirements of Rule 702 and the strictures of *Daubert*.” *Id.* at 1317–18.

While Dr. Patel may testify as a lay witness concerning his experience caring for and treating Taylor-Fifield, his hypothesis as to the specific cause of Taylor-Fifield’s tumor crosses into the realm of expert testimony. *See Henderson*, 409 F.3d at 1300. Thus, the Court turns to the reliability analysis pursuant to Rule 702 and *Daubert*.

As an initial matter, the Court agrees with Flint regarding the speculative nature of Dr. Patel’s testimony. In a one-page physician questionnaire, Dr. Patel checked “Agree” in response to the proposition: “It is my medical opinion that Mr. Taylor-Fifield’s exposure to p-toluenesulphonic acid at work *more likely than not* contributed to the development of his carcinoid tumor.” [83-4]. But when pressed during his deposition, Dr. Patel twice refused to say that it is more likely than not that the chemicals in Dynagloss caused Taylor-Fifield’s tumor:

Q: Now, Doctor, I guess the bottom line is, can you say that it’s more likely than not that Mr. Taylor-Fifield’s



neuroendocrine tumor was caused by sulphuric [sic] acid exposure?

A: Cannot say definitively.

Q: Can you say that it's more likely than not that Mr. Taylor-Fifield's neuroendocrine tumor was caused by Toluene exposure?

A: I cannot say definitively.

[82] at 99:15-23.

Taylor-Fifield would have the Court believe that “Dr. Patel admitted that he could not say *definitively* that Mr. Taylor-Fifield's neuro-endocrine tumor was caused by sulfuric acid or by toluene exposure.” [83] at 16. But that is not Dr. Patel's testimony. The Court is left with Dr. Patel's answer to the direct questions posed to him during his deposition: whether the Dynogloss chemicals more likely than not caused Taylor-Fifield's tumor. Dr. Patel could not definitively answer the questions. In other words, he could not say whether the chemicals more likely than not caused the tumor. Such speculation is unreliable and should not reach the jury. *Kilpatrick v. Breg, Inc.*, 613 F.3d 1329,

1335 (11th Cir. 2010) (citing *Daubert*, 509 U.S. at 597 n.13); *Daubert*, 509 U.S. at 590.<sup>2</sup>

Flint also points out that Dr. Patel's testimony lacks scientific support and has not been subjected to peer review. In reaching his causation opinion, Dr. Patel reviewed the National Cancer Institute's website, which states that sulfuric acid could be carcinogenic. He relied on evidence that California has determined that toluene is carcinogenic. However, he repeatedly admitted that he is not aware of any authority indicating that there is a connection between sulfuric acid (or any other chemical in Dynagloss) and neuroendocrine tumors. Indeed, Taylor-Fifield concedes that neither sulfuric acid nor toluene has been specifically linked to neuroendocrine or carcinoid tumors.

The absence of literature supporting Dr. Patel's causation opinion is not fatal to his ability to testify. *See Hendrix ex rel. G.P. v. Evenflo Co.*, 609 F.3d 1183, 1198 n.11 (11th Cir. 2010) (citing *Rider v. Sandoz*

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<sup>2</sup> Given that Dr. Patel could not say whether it is more likely than not that Dynagloss chemicals caused the tumor, his testimony would not assist the trier of fact or allow a reasonable jury to find causation under Georgia law. *See, e.g., Walker v. Blitz USA, Inc.*, 663 F. Supp. 2d 1344, 1363–64 (N.D. Ga. 2009); *Murphy v. Precise*, No. 1:16-cv-143-WKW-DAB, 2017 WL 1632870, at \*7 (M.D. Ala. Apr. 28, 2017).

*Pharms. Corp.*, 295 F.3d 1194, 1198 (11th Cir. 2002)). However, supporting studies may be powerful causation evidence, without which Taylor-Fifield must show the reliability of Dr. Patel’s testimony by other means. *Id.*; see also *Kilpatrick*, 613 F.3d at 1336–37.

Taylor-Fifield contends that Dr. Patel’s causation opinion is reliable because it based on his extensive experience and general observations as an oncologist. But he cites inapposite case law.

In *Rider*, a case cited by Taylor-Fifield, the Eleventh Circuit emphasized that under Supreme Court precedent, “testimony based solely on the experience of an expert would not be admissible. The expert’s conclusions must be based on sound scientific principles and the discipline itself must be a reliable one.” 295 F.3d at 1197 (internal citation omitted) (citing *Kumho Tire*, 526 U.S. at 156–57); see also *Frazier*, 387 F.3d at 1261 (explaining that while an expert may be *qualified* by experience, that by no means guarantees *reliability* (citations omitted)).<sup>3</sup>

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<sup>3</sup> Taylor-Fifield also cites *American General Life Insurance Co. v. Schoenthal Family, LLC*, which stands for the proposition that *nonscientific* expert testimony based on personal knowledge or experience may be considered reliable. 555 F.3d

The Committee Note to the 2000 Amendments to Rule 702 states that “[i]f that witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts” to survive the reliability assessment. FED. R. EVID. 702 advisory committee’s note (2000 amends.); *Frazier*, 387 F.3d at 1261.

To show that Dr. Patel’s experience as a treating physician reliably led to his causation conclusion, Taylor-Fifield argues that Dr. Patel properly employed the scientifically accepted methodology of differential diagnosis. Differential diagnosis is “a process of identifying external causes by a process of elimination.” *McClain*, 401 F.3d at 1252 (citation omitted). It is accomplished by “determining the possible causes for the patient’s symptoms and then eliminating each of these potential causes until reaching one that cannot be ruled out or

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1331, 1338 (citing *Kumho Tire*, 526 U.S. at 150). He further relies on *In re Wright Medical Technology Inc., Conserve Hip Implant Products Liability Litigation*, 127 F. Supp. 3d 1306, 1336–37 (N.D. Ga. 2015), which is equally unpersuasive. The expert in that case was a retained expert who reviewed the relevant medical evidence to prepare his Rule 26 expert reports.

determining which of those that cannot be excluded is the most likely.” *Guinn v. AstraZeneca Pharms. LP*, 602 F.3d 1245, 1253 (11th Cir. 2010) (quoting *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 262 (4th Cir. 1999)). “[A] reliable differential diagnosis need not rule out all possible alternative causes,” but it “must at least consider other factors that could have been the sole cause of the plaintiff’s injury.” *Id.*

To reach his specific causation conclusion, Dr. Patel examined Taylor-Fifield; examined diagnostic tests and slides taken from a biopsy of his tumor; reviewed his personal and family medical history and his social activities (including that Taylor-Fifield is an active drinker and a smoker who smoked half a pack of cigarettes a day for thirty-eight years); reviewed his environmental conditions such as his work with chemicals; reviewed medical literature on sulfuric acid; and relied on his experience working with his approximately thirty patients who had neuroendocrine tumors.

But “an expert does not establish the reliability of his techniques or the validity of his conclusions simply by claiming that he performed a differential diagnosis on a patient.” *McClain*, 401 F.3d at 1253. There is

no evidence that Dr. Patel sufficiently considered the possible alternative causes of Taylor-Fifield's tumor, such as by compiling a comprehensive list of hypotheses. *Id.*; *Hendrix*, 609 F.3d at 1195 (citing *McClain*, 401 F.3d at 1253). Nor has he offered reasonable explanations for ruling out alternative causes. *Guinn*, 602 F.3d at 1253 (collecting cases). And importantly, in his past history of treating patients with neuroendocrine tumors, Dr. Patel has never "draw[n] any connections between the onset of their conditions or the cause of their tumors and any proliferation of causality." [82] at 55:5-9.

In arguing that Dr. Patel's methodology is valid and reliable, Taylor-Fifield cites *Heller v. Shaw Industries, Inc.*, 167 F.3d 146, 153–54 (3d Cir. 1999), where the treating physician used the same differential diagnosis analysis to reach his causation conclusion.

But again, Taylor-Fifield misstates the case law. In *Heller*, the Third Circuit concluded that the exclusion of this expert's causation testimony was proper. While the expert employed the differential diagnosis in a reliable manner, he relied on few, if any, scientific studies linking the levels of dangerous compounds to which the plaintiff was

allegedly exposed and her illness. Instead, he relied heavily on a questionable temporal relationship between the installation of the plaintiff's carpet and the presence of her illness. Thus, the Third Circuit concluded that even if the differential diagnosis methodology were reliable, the expert had no valid means to reach his causation conclusion—it did not “reliably flow from [his] data and methodology.” 167 F.3d at 159; *see also Guinn*, 602 F.3d at 1254 (“Temporal proximity is generally not a reliable indicator of a causal relationship.”).

The Court finds *Heller* persuasive. As the Eleventh Circuit has emphasized, “[a] valid differential diagnosis . . . only satisfies a *Daubert* analysis if the expert can show the general toxicity of the drug by reliable methods.” *McClain*, 401 F.3d at 1253. Even if Dr. Patel's differential diagnosis was properly conducted, he has not offered any valid means to reliably conclude that the Dynagloss chemicals were the likely cause of Taylor-Fifield's neuroendocrine tumor. Without such a foundation, his differential diagnosis is not a reliable basis for his expert opinion on causation in this case. *Id.*; *Hendrix*, 609 F.3d at 1195 (explaining that an expert's use of the differential etiology method

cannot overcome a fundamental failure to lay the scientific groundwork for specific causation (citation omitted)).

In sum, the Court finds that Dr. Patel's specific causation testimony is not based on sound scientific principles or a reliable discipline and must be excluded.<sup>4</sup>

**C. Dr. Ronald Kendall**

Taylor-Fifield has retained Dr. Ronald Kendall, professor of environmental toxicology at Texas Tech University, as an expert toxicologist in this case. In his expert report, Dr. Kendall opines that Taylor-Fifield's "[c]hronic exposure" to Dynagloss's chemicals "resulted in chronic chemical toxicity manifesting itself in lung cancer." [74-3] at 6. Flint argues that Dr. Kendall's testimony must be excluded because he is not qualified to give specific causation testimony in this case and because his general causation testimony is unreliable.

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<sup>4</sup> Taylor-Fifield asks for a *Daubert* hearing if the Court is unable to determine the reliability of Dr. Patel's testimony. But a hearing is not required, and the Court finds that Flint's motion to exclude Dr. Patel's testimony can properly be decided on the parties' written submissions. *Corin v. Walt Disney Co.*, 475 F.3d 1239, 1252 n.10 (11th Cir. 2007).



Dr. Kendall is a well-published and experienced toxicologist. In addition to his forty-one years as a professor, he is the founding department chairman of Texas Tech's environmental toxicology department and is the founding director of The Institute of Environmental and Human Health at Texas Tech. He is a charter member and past president of the global Society of Environmental Toxicology and Chemistry and was a member of the EPA's Clean Air Scientific Advisory Committee. In addition, he has served on the editorial board and/or as editor of the Environmental Toxicology and Chemistry scientific journal for over thirty years, and he has published books and peer-reviewed publications on the effects of toxic substances related to environmental and human health.

Flint argues that because Dr. Kendall is not a licensed physician, has no medical training, and does not give specific medical diagnoses, he is not qualified to opine on specific causation in this case. *See, e.g., Plourde v. Gladstone*, 190 F. Supp. 2d 708, 719 (D. Vt. 2002) (finding that a toxicologist was not qualified to testify as to causation); *Heller*,

167 F.3d at 153, 159 n.9 (doubting that a non-medical expert is qualified to testify as to the cause of the plaintiff's illness).

Taylor-Fifield's only response is that federal courts have allowed toxicologists or other non-medical doctors to give testimony on specific causation. This general assertion does not satisfy Taylor-Fifield's burden of showing that Dr. Kendall is qualified to testify in this case as to whether the Dynagloss chemicals caused his carcinoid tumor.

As elicited during Dr. Kendall's depositions, he has no prior experience with Dynagloss and limited experience with its constituent chemicals. Though Dr. Kendall reviewed Taylor-Fifield's deposition, he is not a medical expert and did not meet with Taylor-Fifield or discuss with him his diagnosis or medical history. *Heller*, 167 F.3d at 159 n.9. Whatever his expertise on sulfuric acid and toluene and the adverse health effects of overexposure to these chemicals, the Court does not find him qualified to offer an opinion on the specific cause of Taylor-Fifield's carcinoid tumor. *Id.*; see also *Bowers v. Norfolk S. Corp.*, 537 F. Supp. 2d 1343, 1377 (M.D. Ga. 2007) (excluding the specific causation testimony of a biomechanical engineer—who trained in physiology and

taught at a medical school—because he lacked the medical training necessary to identify and diagnose the plaintiff’s medical condition).

Next, Flint contends that Dr. Kendall’s general causation testimony is not reliable because there is no scientific basis for his opinion that the chemicals in Dynagloss cause or contribute to carcinoid tumors.

After Dr. Kendall produced his expert report addressing causation, Flint took his deposition, during which he could not point to a single test or study indicating that toluene is a carcinogen. When asked for support for his opinion that Dynagloss can cause lung cancer, he responded, “The language, “Within a reasonable degree of scientific certainty”—okay—I’m not positive, but I’m highly suspicious . . . .” [80] at 42:15-17. And later, when asked if he had data on whether Dynagloss’s ingredients are carcinogenic, he responded, “No, but I’m highly speculative of it.” *Id.* at 47:1-4.

Dr. Kendall then submitted an amended report. However, during his second deposition, he continued to acknowledge the lack of

epidemiological or other scientific studies finding an association between sulfuric acid or toluene and carcinoid tumors.

Taylor-Fifield responds that even if studies do not link the chemicals to carcinoid tumors, epidemiological studies relied on by Dr. Kendall do link the chemicals to lung cancer, and Dr. Kendall is permitted to extrapolate based on his experience and understanding of physiology.

Because the absence of epidemiological evidence does not preclude the admission of a causation opinion, *Rider*, 295 F.3d at 1198, the Court does not find that the absence of scientific linking sulfuric acid or toluene to carcinoid tumors necessarily renders Dr. Kendall's testimony unreliable, especially in light of studies showing a "positive association" between sulfuric acid and lung cancer. [74-3] at 5 (citation omitted). But "[s]howing an association is far removed from proving causation." *Kilpatrick*, 613 F.3d at 1338 (quoting *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1315 n.16 (11th Cir. 1999)). And "*Daubert* decisions 'warn against leaping from an accepted scientific premise to an unsupported one.'" *Leathers v. Pfizer, Inc.*, 233 F.R.D. 687, 691 (N.D.

Ga. 2006) (quoting *Allison*, 184 F.3d at 1314) (agreeing with the defendants that the type of general causation the plaintiff asserts is not recognized in the medical community).

Taylor-Fifield still must show that the basic methodology employed by Dr. Kendall to reach his conclusion has scientific credibility. *Kilpatrick*, 613 F.3d at 1337 (citing *Wells v. Ortho Pharm. Corp.*, 788 F.2d 741, 745 (11th Cir. 1986)); see *United Fire & Cas. Co. v. Whirlpool Corp.*, 704 F.3d 1338, 1342–43 (11th Cir. 2013). And he has failed to meet his burden.

According to Taylor-Fifield, Dr. Kendall’s methodology is reliable because his expertise allows him to identify and describe the physiological process by which the Dynagloss chemicals caused the carcinoid tumor. Taylor-Fifield cites *McClain* for the proposition that “[t]he underlying predicates of any cause-and-effect medical testimony are that medical science understands the physiological process by which a particular disease or syndrome develops and knows what factors cause the process to occur.” 401 F.3d at 1253 (quoting *Black v. Food Lion, Inc.*, 171 F.3d 308, 314 (5th Cir. 1999)). But “such general rules

must . . . be applied fact-specifically in each case.” *Id.* (quoting *Black*, 171 F.3d at 314). Here, not only is there an absence of medical science regarding the cause of Taylor-Fifield’s carcinoid tumor, Dr. Kendall has not reliably applied his methodology to the facts of this case.

In concluding that inhalation of toluene and sulfuric acid caused Taylor-Fifield’s tumor, Dr. Kendall “assum[ed] that exposure to Dynagloss occurred from approximately 2015–2017 on a weekly basis, if not more.” [74-3] at 5. He believed that Taylor-Fifield’s exposure was “[c]hronic,” *id.* at 6, and estimated that Taylor-Fifield handled Dynagloss about one hundred times over the course of two years. [80] at 51:20 – 52:1. In fact, Taylor-Fifield testifies that he handled Dynagloss at least thirty-eight times. *Id.* at 52:11-17; [78] at 43:21 – 44:14 In his deposition, Dr. Kendall agreed that this is material difference.

The dose-response relationship—“a relationship in which a change in amount, intensity, or duration of exposure to an agent is associated with a change . . . in risk of disease”—is “the hallmark of basic toxicology.” *McClain*, 401 F.3d at 1241–42 (citations omitted). “When analyzing an expert’s methodology in toxic tort cases, the court should

pay careful attention to the expert's testimony about the dose-response relationship." *Id.* at 1241. In these cases, "scientific knowledge of the harmful level of exposure to a chemical plus knowledge that plaintiff was exposed to such quantities are minimal facts necessary to sustain the plaintiff's burden." *Id.* (alterations adopted) (quoting *Allen v. Pa. Eng'g Corp.*, 102 F.3d 194, 199 (5th Cir. 1996)).

The law does not require Taylor-Fifield to show the precise level of his exposure to the chemicals. *Curtis v. M&S Petroleum, Inc.*, 174 F.3d 661, 671 (5th Cir. 1999). However, Dr. Kendall's causation opinion is not based on sufficient or accurate information regarding Taylor-Fifield's chemical exposure, and he did not lay a reliable groundwork for determining a dose-response relationship. *McClain*, 401 F.3d at 1241. Thus, his methodology is not reliable. *See Curtis*, 174 F.3d at 671; *Williams v. Mosaic Fertilizer, LLC*, 889 F.3d 1239, 1246, 1248 (11th Cir. 2018) (affirming the exclusion of a toxicology expert's testimony who never conducted an independent dose calculation specific to the plaintiff and who failed to demonstrate a scientific basis for concluding that her

exposure levels would likely produce, contribute to, or exacerbate her conditions).<sup>5</sup>

Dr. Kendall's testimony appears to be based "less on a scientific understanding of the specifics of [Taylor-Fifield's] workplace exposure and the potential effects . . . and more on merely a general understanding of [sulfuric acid and toluene], with only unsupported speculation having been used to relate the general knowledge to the facts." *Wintz v. Northrop Corp.*, 110 F.3d 508, 514 (7th Cir. 1997) (excluding a toxicologist's causation opinion as speculative and lacking in scientific reliability).

In sum, Dr. Kendall has failed to show that his testimony is based on sufficient facts or data or that his methodology comports with the strictures of Rule 702 and *Daubert*. Thus, his testimony will be excluded.

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<sup>5</sup> Further, Dr. Kendall reviewed Taylor-Fifield's testimony that he did not work with any vapor or mist from Dynagloss and that there was ventilation in his workplace. But in his expert report, Dr. Kendall "assum[ed] inappropriate ventilation" and that Taylor-Fifield was exposed to vapor or mist. [74-3] at 5. When asked to reconcile these apparent contradictions, Dr. Kendall explained that proper ventilation includes a ventilated hood, and he suggested that he was interpreting the question about vapor or mist differently from how Taylor-Fifield would have.



## II. Motion for Summary Judgment

Flint argues that it is entitled to summary judgment because Taylor-Fifield has failed to produce admissible expert testimony as to causation. The Court agrees.

### A. Legal Standard

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). There is a “genuine” dispute as to a material fact if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *FindWhat Inv. Grp. v. FindWhat.com*, 658 F.3d 1282, 1307 (11th Cir. 2011) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). In making this determination, “a court may not weigh conflicting evidence or make credibility determinations of its own.” *Id.* Instead, the court must “view all of the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor.” *Id.*

“The moving party bears the initial burden of demonstrating the absence of a genuine dispute of material fact.” *Id.* (citing *Celotex Corp.*

*v. Catrett*, 477 U.S. 317, 323 (1986)). If the nonmoving party would have the burden of proof at trial, there are two ways for the moving party to satisfy this initial burden. *United States v. Four Parcels of Real Prop.*, 941 F.2d 1428, 1437–38 (11th Cir. 1991). The first is to produce “affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial.” *Id.* at 1438 (citing *Celotex Corp.*, 477 U.S. at 331). The second is to show that “there is an absence of evidence to support the nonmoving party’s case.” *Id.* (quoting *Celotex Corp.*, 477 U.S. at 324).

If the moving party satisfies its burden by either method, the burden shifts to the nonmoving party to show that a genuine issue remains for trial. *Id.* At this point, the nonmoving party must “‘go beyond the pleadings,’ and by its own affidavits, or by ‘depositions, answers to interrogatories, and admissions on file,’ designate specific facts showing that there is a genuine issue for trial.” *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593–94 (11th Cir. 1995) (quoting *Celotex Corp.*, 477 U.S. at 324).

## B. Discussion

“Toxic tort cases, such as this one, are won or lost on the strength of the scientific evidence presented to prove causation.” *Rider*, 295 F.3d at 1197. “No genuine issue of material fact exists if a party has failed to ‘make a showing sufficient to establish the existence of an element . . . on which that party will bear the burden of proof at trial.’” *Mast Biosurgery USA*, 644 F.3d at 1318 (quoting *Am. Fed’n of Lab. & Cong. of Indus. Orgs. v. City of Miami*, 637 F.3d 1178, 1186–87 (11th Cir. 2011)).

The parties agree that general and specific causation are essential elements of Taylor-Fifield’s claims. Without admissible expert evidence establishing general and specific causation, Taylor-Fifield cannot show a genuine issue of disputed fact regarding causation. Accordingly, Flint is entitled to summary judgment. *See, e.g., Chapman v. Procter & Gamble Distrib., LLC*, 766 F.3d 1296, 1316–17 (11th Cir. 2014); *Hendrix*, 609 F.3d at 1203–04.<sup>6</sup>

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<sup>6</sup> Taylor-Fifield moves to strike Exhibit 3 to Flint’s motion for summary judgment, the affidavit of Timothy Wagner. He also moves for leave to file a

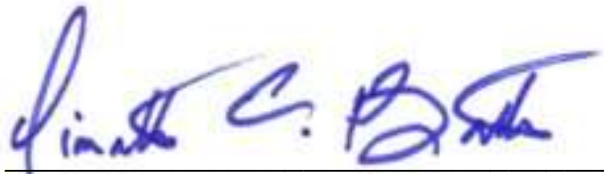
### III. Conclusion

For the foregoing reasons, Flint's motion [73] to exclude specific causation testimony by Dr. Patel is granted, as is its motion [74] to exclude the testimony of Dr. Kendall. Taylor-Fifield's motion [96] to strike and his motion [100] for leave to file a surreply are granted.

Finally, Flint's motion [75] for summary judgment is granted, and judgment is hereby entered in favor of Flint.

The Clerk is directed to close this case.

IT IS SO ORDERED this 30th day of March, 2022.

A handwritten signature in blue ink, appearing to read "Timothy C. Batten, Sr.", written over a horizontal line.

Timothy C. Batten, Sr.  
Chief United States District Judge

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surreply. The Court will grant both motions and has considered Taylor-Fifield's surreply brief. However, Flint remains entitled to summary judgment.