IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

SAM CALLOWAY, *Plaintiff,* *v.* MONSANTO COMPANY, *Defendant.*	Case No.: 3:23-cv-00338-TAV-DCP

MONSANTO COMPANY'S MOTION FOR SUMMARY JUDGMENT ON CAUSATION GROUNDS

Defendant Monsanto Company ("Monsanto") hereby moves this Court for an order, pursuant to Federal Rule of Civil Procedure 56(c), entering judgment in its favor and against Plaintiff Sam Calloway ("Plaintiff"), on the grounds that there is no genuine issue of material fact as to any claim for relief brought by Plaintiff, and Monsanto is entitled to summary judgment.

INTRODUCTION

To prevail on any of his claims, Plaintiff Sam Calloway ("Plaintiff") must prove that Roundup was the proximate cause of his cancer. Whether Roundup—a chemical compound—is defective, can cause cancer generally, and whether it actually did cause Plaintiff's cancer specifically, are specialized issues for which expert testimony is required. Plaintiff failed to disclose any expert reports regarding specific causation, which were due February 27, 2025. Without expert testimony to prove specific causation, none of Plaintiff's claims may proceed.

BACKGROUND

Plaintiff is a resident of Tennessee who alleges that exposure to Monsanto's Roundup-branded herbicides ("Roundup") caused him to develop cancer. *See* Complaint (ECF #2) ¶¶ 1-3, 8. Plaintiff seeks to hold Monsanto responsible for his cancer. The lynchpin of Plaintiff's

complaint is that glyphosate—the active-ingredient in Roundup—caused Plaintiff's cancer. *See id*.

On April 19, 2024, this Court ordered Plaintiff to serve expert disclosures under Fed. R. Civ. P. 26(a)(2) no later than 180 days before trial, which was February 27, 2025 based on the August 26, 2025 trial date. *See* Scheduling Order dated April 19, 2024 ("Scheduling Order") (ECF #14). The expert disclosure required by the Scheduling Order must be accompanied by written reports signed by the experts and must contain "a complete statement of all opinions the witnesses will express and the basis and reasons for them," among other information. Fed. R. Civ. P. 26(a)(2)(B)(i).

Plaintiff did not submit any expert reports by the February 27, 2025 deadline. Specifically, Plaintiff has not served any expert report containing case-specific evidence of a causal link between Roundup exposure and Plaintiff's cancer. (Declaration of Kathryn Skagerberg ("Skagerberg Decl."), ¶ 4.) In fact, Plaintiff did not even serve initial disclosures under Fed. R. Civ. P. 26(a)(1), which were due on May 14, 2024, pursuant to the Joint Discovery Plan (ECF #15). Skagerberg Decl., ¶ 5.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is "no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material when it could affect the outcome of the case, and a dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the burden of "informing" the Court that there exists the "absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the moving party has met this burden, the

nonmoving party must come forward with evidence to show there is in fact a genuine issue for trial. *Id.* at 323-24. A "complete failure of proof concerning an essential element of the nonmoving party's case" warrants summary judgment and "necessarily renders all other facts immaterial." *Id.* at 323.

ARGUMENT

I. Summary Judgment Is Required Because Plaintiff Lacks the Required Admissible Expert Testimony on Causation.

Under Tennessee law, a plaintiff must provide admissible expert testimony as to both causation and product defect to prove liability in a products action. *Pride v. BIC Corp.*, 218 F.3d 566, 580-81 (6th Cir. 2000) (citing *Fulton v. Pfizer Hosp. Prods. Group, Inc.*, 872 S.W.2d 908, 912 (Tenn Ct. App. 1993) and *Browder v. Pettigrew*, 541 S.W.2d 402, 404 (Tenn. 1976)). Furthermore, "under Tennessee law, medical causation must be established by expert testimony." *Tomazin v. Lincare, Inc., No.* 3:13-CV-0875, 2015 U.S. Dist. LEXIS 98270, 2015 WL 4545658, at *12 (M.D. Tenn. July 27, 2015) (citing *Thomas v. Aetna*, 812 S.W.2d 278, 283 (Tenn. 1991)); *see also Jastrebski v. Smith & Nephew Richards, Inc.*, No. 02A01-9803-CV-00068, 1999 Tenn. App. LEXIS 169, 1999 WL 144935, at *6 (Tenn. Ct. App. Mar. 18, 1999) ("The product in dispute is a technically complex prescription medical device, and expert testimony is required to establish the causal connection between the alleged defect in the device and Plaintiff's claimed injuries."); *Fitzgerald v. Manning*, 679 F.2d 341, 350 (4th Cir. 1982) ("expert testimony is usually necessary to support the conclusion as to causation" where the cause of the alleged injury is "determinable only in the light of scientific knowledge").

Here, Plaintiff alleges that he was diagnosed with cancer, which he claims was caused by his exposure to Roundup. *See* Compl. ¶¶ 8, 119. "With cancer the question of causation is especially troublesome[;] . . . it is frequently difficult to determine the nature and cause of a particular cancerous growth." *Jones v. Ortho Pharm. Corp.*, 163 Cal. App. 3d 396, 403 (1985). As a result, "the unknown and mysterious etiology of cancer is beyond the experience of laymen and can only be explained through expert testimony." *Id*. (citation and internal quotation marks omitted). Thus, the causal link between Plaintiff's injury and Roundup is a highly technical question of science that is beyond the jurors' understanding.

Plaintiff's deadline to disclose expert reports was February 27, 2025. *See* Scheduling Order. To date, Plaintiff has not disclosed a single expert witness or report regarding specific causation. Plaintiff had ample time and opportunity to satisfy his expert disclosure obligations under Rule 26(a)(2) and the Scheduling Order, which was entered nearly a year ago on April 19, 2024.

The Roundup MDL Court has granted summary judgment in favor of Monsanto in similar cases where the plaintiff failed to disclose a specific causation expert, finding that expert testimony was required to prove causation:

> Expert testimony also is required to establish causation for Matthaus-Shelton's other product liability and tort claims. That's because whether Roundup caused her multiple myeloma is a highly technical question that is not within the common knowledge and experience of an ordinary layperson.

Matthaus-Shelton v. Monsanto Company, 20-cv-00168, ECF #17 (N.D. Cal., November 29, 2022); *see also Adrine Hann v. Monsanto Company*, 20-cv-7213, ECF #23 (N.D. Cal., November 3, 2022)

("Whether Roundup caused [Plaintiff's] multiple myeloma is a highly technical and scientific question. Without expert testimony, a jury can only speculate.").

As a result of Plaintiff's failure to disclose any expert on the issue of specific causation, he cannot prove causation—an essential element of all his claims. Without any evidence of case-specific causation, Monsanto is entitled to summary judgment on all Plaintiff's claims. *See Downs v. Perstorp Components, Inc.*, 26 Fed. Appx. 472, 477 (6th Cir. 2002) (reaffirming that without expert testimony, no reasonable jury could find for Plaintiffs on causation issue in a Tennessee products liability case involving a complex product); *Pride*, 218 F.3d at 580-81 ("The district court properly concluded that, without admissible expert testimony on causation and product defect, no reasonable jury could find for [plaintiff] because, under Tennessee law, expert testimony is required to establish liability in cases alleging manufacturing and design defects."); *see also Martinez v. Ethicon Inc.*, No. 7:19-CV-00164, 2020 U.S. Dist. LEXIS 77635, 2020 WL 2113638, at *2 (S.D. Tex. May 1, 2020) ("Products liability cases are quintessentially expert cases, and failure to designate experts almost always leads to summary judgment."); *Sterling v. United States*, 834 F. App'x 83, 87 (5th Cir. 2020) (upholding summary judgment where the plaintiff failed to designate expert witnesses); *Cooper v. Smith & Nephew, Inc.*, 259 F.3d 194, 196-197 (4th Cir. 2001) (affirming dismissal of product liability claims where appellant "had no admissible medical evidence indicating that [defendant]'s device was the proximate cause of his injuries").

CONCLUSION

For the foregoing reasons, Monsanto is entitled to summary judgment on all of Plaintiff's claims.

Dated: March 17, 2025

Respectfully submitted,

By: */s/ Kathryn Skagerberg*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 17, 2025, a copy of the foregoing document was served on counsel for Plaintiff through CM/ECF:

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