

District Court Finds Expert Proof Insufficient to Prove Causation

Causation is often the biggest hurdle a plaintiff must clear in proving a toxic tort case. For that reason, it would be expedient if a plaintiff could get to trial on the issue of causation merely by showing that contamination existed at the property after a defendant engaged in activity at the site. This approach would be even more appealing if the plaintiff could present this proof in the form of an expert opinion. However, on December 17, 2014, the United States District Court for the Western District of New York issued a decision reiterating the well-established principle that a plaintiff may not rely solely upon the temporal proximity between a defendant's activity and contamination as proof of causation. Importantly, the Court emphasized that an expert opinion must rest on more than plausibility; it must be based on sound analysis grounded in provable facts.

Baker v Anschutz Exploration Corp. is a toxic tort case related to alleged contamination of water from drilling activities by defendant Anschutz Exploration Corporation. Plaintiffs were residents of Chemung County, New York, who relied upon individual residential wells for their water. In 2010, Anschutz drilled two natural gas wells, Dow #1 and Dow #2. As part of the design and permitting phase, the New York Department of Environmental Conservation took note that local residents obtained their water supply from residential wells. The DEC was also aware that shallow sources of naturally occurring methane gas might affect the construction of Dow #1. As a result of these circumstances, Anschutz designed Dow #1 with redundant features to prevent methane from contaminating the residential water supply. During construction, the DEC conducted inspections, ensuring that Anschutz complied with all applicable regulations and design requirements.

Following completion of Dow #1 in June 2010, Plaintiffs reported turbidity and methane issues with their wells to the Chemung County Health Department, which referred these complaints to the DEC. After an investigation, the DEC issued a fact sheet concluding that gas in area wells existed prior to Anschutz's exploration activities. The DEC found that Anschutz constructed the wells in a way that made it highly unlikely that gas could migrate from those sites to any residential wells. The DEC posited that the problems reported by Plaintiffs likely stemmed from seasonal low water levels that exacerbated the effect old pre-existing methane.

Plaintiffs commenced an action in February 2011, asserting numerous claims based on alleged methane contamination of their wells by Dow #1 and seeking \$150 million for each cause of action, plus \$500 million in exemplary or punitive damages. Following discovery, Anschutz moved for summary judgment on all causes of action, relying on expert testimony supported by analytical testing. In response, Plaintiffs offered the expert testimony of a hydrologist. Defendant moved to exclude this testimony as inadmissible under Federal Rule of Evidence 702 and the principles set forth in *Daubert v Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), which serve to screen out unreliable expert opinions.

The Court granted Anschutz's motion to exclude the expert testimony of Plaintiff's hydrologist. The Court determined that Plaintiff's hydrologist "posited a possible means by which gas could migrate from the deep well to Plaintiffs' water wells, but his conclusion is one at which a lay person could also have arrived by the simple process of relating water well problems to the timing of the gas well drilling." The Court also emphasized that although Plaintiff's hydrologist alluded to defects in Defendant's construction of the wells, the hydrologist also confirmed at deposition that he did not have sufficient expertise "to say that there was something [Defendant] should have done but didn't when they constructed [Dow #1 and Dow #2]."

In addition, the Court criticized the hydrologist's ultimate conclusion that the mere presence of gas in Plaintiffs' wells proved the connection between that contamination and the drilling, stating: "This circular reasoning fails to reveal a sufficiently rigorous analytical connection between [the hydrologist's] methodology and his opinion. It is as if he is saying that the temporal proximity of the well water problems to [Defendant's] exploration proves that [Defendant's] operations are the cause, and that conclusion is documented by the presence of natural gas in Plaintiffs' water wells." Accordingly, the Court concluded that the hydrologist's testimony was not admissible because his "testimony at trial would not be based upon sufficient facts or data, would not be the product of reliable principles and methods, and that, in any event, [he] has not applied the principles and methods reliably to the facts of the case." Quoting the Supreme Court, the District Court noted that "[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence which is connected to existing data only by the *ipse dixit* of the expert." (citing *General Electric Co. v Joiner*, 522 U.S.136 [1997]).

Having ruled in Defendant's favor on their motion to exclude the testimony of Plaintiff's hydrologist, the Court also granted Defendant's motion for summary judgment and dismissed the complaint in its entirety. As an initial matter, the Court observed that Plaintiffs' counsel conceded that without the hydrologist's testimony, Plaintiffs could not prove causation. Moreover, the Court noted, speculation by a hydrologist would not be sufficient to establish causation, as "[i]t is well settled that a causation opinion based solely on a temporal relationship is not derived from the scientific method and is therefore insufficient to satisfy the requirements of" the Federal Rules of Evidence. Because Anschutz had demonstrated that Plaintiffs could not meet their burden of showing that Dow #1 caused the contamination of their wells, the Court held that none of the claims could survive.

This decision of the District Court properly focuses on the reliability of expert opinion rather than mere plausibility and establishes that causation must be proved by the application of sound analytical principles to demonstrated facts. By reaffirming the established principle that temporal proximity alone cannot demonstrate causation – even when presented under the guise of expert opinion – the Court helped ensure that future litigants will continue to rely upon rigorous analytical testing rather than circular reasoning in toxic tort cases.

To learn more, contact [Richard L. Weber](#) at (315) 218-8375 or rweber@bsk.com or [Thomas R. Smith](#) at (315) 218-8325 or smithtr@bsk.com.



Commitment • Service • Value • Our Bond



Bond, Schoeneck & King PLLC (Bond, we, or us), has prepared this communication to present only general information. This is not intended as legal advice, nor should you consider it as such. You should not act, or decline to act, based upon the contents. While we try to make sure that the information is complete and accurate, laws can change quickly. You should always formally engage a lawyer of your choosing before taking actions which have legal consequences.

For information about our firm, practice areas and attorneys, visit our website, www.bsk.com. • Attorney Advertising • © 2015 Bond, Schoeneck & King, PLLC

CONNECT WITH US ON LINKEDIN: SEARCH FOR BOND, SCHOENECK & KING, PLLC

FOLLOW US ON TWITTER: SEARCH FOR BONDLAWFIRM