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## La. Court Rejects Arguments that Benzene Complaint is Time-Barred

NEW ORLEANS — A Louisiana federal court has denied attempts made by two Shell defendants to dismiss a benzene complaint as time-barred, ruling that it must accept the plaintiff's argument that he did not find out the cause of his kidney cancer when it was diagnosed.

In the Oct. 29 order, the U.S. District Court for the Eastern District of Louisiana denied the motions to dismiss filed by Shell Oil Co. and Shell Offshore Inc., who argued that the plaintiffs had not stated a claim upon which relief could be granted.

In their August motion, the defendants argued that O'Quain was diagnosed with kidney cancer in November 2007, but did not file his complaint until more than three years later, in June 2012.

The plaintiffs contend that Joseph O'Quain's work as an instrument technician and crewmember on a number of seismic vessels for nearly 20 years. During the course of his employment, O'Quain worked with benzene-containing products.

The Shell companies were named as defendants as the owners and operators of the vessels on which O'Quain worked.

However, the defendants argue that O'Quain was made aware of the alleged causal connection between his work on the vessels and his development of kidney cancer well before he filed the instant suit.

"Under the maritime law 'discovery rule,' Plaintiffs' allegations, even if accepted as true, do not give rise to entitlement to relief," the defendants argued. "If, as alleged, Plaintiff O'Quain's exposure ended in 1993 and if, as alleged, he was diagnosed almost five years ago, in 2007, he had a reasonable opportunity to discovery his injury, its cause, and the link between the two within the extended three-year prescriptive period provided under admiralty law, which time period ended several years before he filed his untimely lawsuit in 2012. There is nothing in the Complaint to indicate Mr. O'Quain did not have a reasonable opportunity to discovery a possible link between his cancer diagnosis and his 19-year work history on vessels in maritime commerce working with benzene, as alleged in the complaint."

The federal court disagreed, however, noting that it must accept the factual allegations in the complaint as true.

"Here, accepting Mr. O'Quain's factual allegation that he discovered the alleged connection between his kidney cancer and the exposure to benzene in October 2011, the plaintiffs filed a timely complaint in June 2012," the court opined. "The Court finds that since the complaint was filed within three years after making the discovery,

it is not time barred.”

The defendants are represented by Mary S. Johnson and Ingrid M. Kemp of Johnson Gray McNamara in Mandeville, La.; S. Suzanne Mahoney of Johnson Gray McNamara’s New Orleans office; and Stan Perry and Heidi Thomas Bundren of Hanes & Boone in Houston.

The plaintiffs are represented by L. Eric Williams Jr. of The Williams Law Office in Metairie, La.; and Richard J. Fernandez and Amber E. Cisney of Richard J. Fernandez LLC in Metairie, La.

O’Quain, et al. v. Shell Offshore Inc., et al., No. 12-01693 (E.D. La.).

Documents are Available Call (800) 496-4319 or Search [www.harrismartin.com](http://www.harrismartin.com) Order Ref# BEN-1211-02  
Motion Ref# BEN-1211-03

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HarrisMartin Publishing - 30 Washington Avenue, Suite D-3, Haddonfield, NJ 08033  
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