

Toxic Tort Lawsuits Now Easier to Win in Michigan

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The Michigan Court of Appeals in a case called *Genna v Jackson* recently ruled that plaintiffs alleging injury from exposure to mold did not have to present an expert witness to prove that they had suffered physical ailments as a result of exposure to mold. According to the court, it was enough that mold was present and that the plaintiffs had physical ailments that could be attributed to mold exposure, even though they did not present a witness that could make a causal connection between the exposure and the injuries that the plaintiffs allegedly suffered. The court left it to the defendant to disprove that the mold exposure did not cause the alleged illnesses.

One of the classes any first year law student must take is one called "torts." Torts is the area of law that describes lawsuits for things like personal injury or property damage outside the realm of contract law. To maintain a cause of action for a tort, the plaintiff has the burden of proving (1) that the defendant owed a particular duty to the plaintiff, (2) that the defendant breached that duty, (3) the breach of that duty was the cause of an injury to the plaintiff, and (4) that the plaintiff suffered damages as a result. Without any one of these elements, there is no cause of action against a particular defendant. If the plaintiff is able to present a *prima facie* case (there is enough evidence to present to a jury according to a judge), then the burden to disprove any of these elements falls upon the defendant, but not before. This is basic tort law every first-year student learns.

Of course, tort law is not as simple as all that, but I've described the bare bones of it. The devil is in the details of each of the required elements. The element that the *Genna v Jackson* case deals with is number three, the plaintiffs' burden to establish causation. Normally, when dealing with complex scientific and medical detail, it is necessary to rely on expert witnesses to provide the necessary detail to juries, who likely do not have the necessary expertise in complex cases.

The *Genna* Court, however, decided that it was not necessary to use expert testimony to tie the plaintiffs' claims of illness to the type of exposure, although often such a determination would need medical testimony that can connect the exposure to a specific illness that the plaintiff has suffered. The medical doctors who treated the *Genna* plaintiffs could not state with a scientific medical certainty that the plaintiffs suffered a direct harm as a result of mold exposure, but the court determined that a lay jury could. It then required the defendants to disprove the medical conclusion without it ever being introduced by the plaintiffs in the first place.

As it stands now, the law in the State of Michigan is that in toxic tort lawsuits, plaintiffs need not necessarily establish medical causation with respect to their claimed injuries. It is enough that they can prove that an exposure occurred and that their symptoms are consistent with exposure to that type of toxic substance. This would presumably hold true for mold exposures, as well as exposure to any sort of substance or cause, even electromagnetic fields. This eases the plaintiffs' burdens in such suits and makes them easier to win.

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