

Massachusetts Supreme Court Expands Toxic Tort Liability; Rejects Single Controversy Rule

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On October 19, the Massachusetts Supreme Judicial Court (SJC) expanded toxic tort liability to encompass medical monitoring claims while at the same time rejecting application of the “single controversy” rule in such cases. *Donovan v. Philip Morris USA, Inc.*, SJC-10409 (Oct. 19, 2009).

In a question of first impression certified to it by the U.S. District Court for the District of Massachusetts, the SJC held that medical monitoring claims may go forward when hazardous substances induce subcellular changes that put the plaintiff at higher risk of developing disease. In its decision, the court noted that tort law must change with the times: “Our tort law developed in the late Nineteenth and early Twentieth centuries, when the vast majority of tortious injuries were caused by blunt trauma and mechanical forces. We must adapt to the growing recognition that exposure to toxic substances and radiation may cause substantial injury which should be compensable even if the full effects are not immediately apparent.”

The SJC held, therefore, that medical monitoring claims may proceed if the plaintiff can allege, and later prove, the following seven points: “(1) The defendant’s negligence (2) caused (3) the plaintiff to become exposed to a hazardous substance that produced, at least, subcellular changes that substantially increased the risk of serious disease, illness, or injury (4) for which an effective medical test for reliable early detection exists, (5) and early detection, combined with prompt and effective treatment, will significantly decrease the risk of death or the severity of the disease, illness or injury, and (6) such diagnostic medical examinations are reasonably (and periodically) necessary, conformably with the standard of care, and (7) the present value of the reasonable cost of such tests and care, as of the date of the filing of the complaint.”

Although the ruling was issued in the context of smoking claims, the rationale could have broad implications beyond that arena. Any manufacturer, distributor, or seller of alleged toxic substances may now face medical monitoring claims within the Commonwealth of Massachusetts. Such cases will, as the SJC noted, generally turn on “competent expert testimony,” and thus will tend to be fairly complex litigation matters.

Notably, the court also rejected the “single controversy” rule as inapplicable in toxic tort situations: “[T]he ‘single controversy rule,’ which requires a party to include in the action all related claims against the opposing party, would bar a future action for damages in the event a plaintiff subsequently

contracts cancer. This rule was never intended to address the problem of toxic torts, where a disease may be manifested years after the exposure. In this context, the rule acts as a deterrent to persons seeking early detection of catastrophic disease, and it would expose both plaintiffs and defendants to far more serious consequences should the disease later manifest itself in an advanced stage. Such a result makes no sense.”

This finding could apply beyond the smoking context. For example, Massachusetts has an “Inactive Docket” for asbestos claims on which plaintiffs who have radiological evidence of asbestos exposure but no symptoms of disease generally place their claims, so as to avoid later argument that their claims are barred by the statute of limitations. The *Donovan* ruling increases the odds that such plaintiffs could seek medical monitoring claims.

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