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Toxic Tort and Environmental Litigation

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New York Court of Appeals Addresses Proof of Causation in Lead Paint Exposure Litigation

In many toxic tort cases, the date of exposure to the alleged toxin occurred years before the emergence of any symptoms of injury. For that reason, relatively simple rules for disclosure of medical proof may become more complicated in toxic tort cases. On June 12, 2014, the New York Court of Appeals issued a decision clarifying the extent of disclosure to be made prior to an examination by defense physicians, and in so doing also clarified the need for proof of causation in lead-paint exposure litigation.

The Court jointly addressed the appeals in *Hamilton v. Miller* and *Giles v. A. Gi Yi*, two decisions that previously issued from the Appellate Division, Fourth Department court in Rochester, NY. Both cases focused on the obligation of a plaintiff to make full disclosure of records and reports concerning the injuries alleged in the action and the causal relationship of the injuries to lead-paint exposure. In *Giles*, plaintiff disclosed medical and educational records as part of normal discovery in the action. Although the disclosed records documented elevated lead levels and academic difficulties, the records did not substantiate the specific injuries claimed by Plaintiff, nor causally relate the documented problems to lead poisoning. The trial court ordered plaintiff to produce medical reports that both diagnosed the specific injuries alleged and causally related the injuries to lead-paint exposure, under threat of preclusion from offering any such evidence of those injuries at trial. The Fourth Department affirmed the lower court, holding that it was not an abuse of discretion for the Trial Court to direct production of medical reports regarding diagnosis and causal relationship. The *Hamilton* case followed a similar fact pattern: the records provided by plaintiff in discovery did not substantiate the alleged injuries, nor causally relate the injuries to lead poisoning. The trial court in *Hamilton* ordered plaintiff to produce medical reports that detailed the injuries alleged in the action and causally related the injuries to exposure to lead-based paint. The Fourth Department affirmed.

The Court of Appeals began its analysis by noting that under court rules, a plaintiff in a personal injury action may be required by defendants to submit to examination by a designated physician; when a notice of examination is served by defendant, the plaintiff is obligated to deliver copies of reports of the medical providers that have previously treated or examined the plaintiff, which are to include “the description of the injuries, a diagnosis and a prognosis.” The Court stated that this disclosure rule requires a plaintiff to provide comprehensive reports from medical providers who have “previously treated or examined” the plaintiff, and that a plaintiff cannot avoid disclosure simply because his or her medical providers had not previously drafted any “reports” within the meaning of the rule. To the extent the plaintiff’s medical records do not contain the information required by the rule, the Court held that plaintiffs must have the medical providers “draft” reports setting forth that information, or seek relief from that obligation by motion to the Court.



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However, the Court held that the rule requiring disclosure prior to defense examination does not obligate a plaintiff to *hire* a new medical provider solely to conduct an examination and create a report for litigation. While noting that a trial court has “wide, inherent discretion to manage discovery,” the Court of Appeals concluded that the penalty of preclusion in these actions was too strong of a sanction. The Court stated that there is “no requirement that [the pre-existing] medical providers causally relate the injury to the defendant’s negligence or, in this case, the lead paint exposure.” Where the determination of causation requires evidence from a medical professional, the Court held that the issue “is more appropriately dealt with at the expert discovery phase and pursuant to CPLR § 3101(d).” As a practical matter, the conclusion of the Court may have more to do with timing than with substance. To the extent that a defendant believes that no proof of causation is present in the initial discovery provided by Plaintiff, the Court of Appeals’ proposed remedy is that the aggrieved defendant seek a scheduling order expediting expert discovery and/or pursue a motion for summary judgment.

The Court’s decision offers something for both plaintiff and defense bar. From the plaintiff’s perspective, the decision is a potential shield against the need to retain an expert prior to a defense IME. For the defense bar, the Court affirms the obligation of plaintiffs to provide “comprehensive reports” from treating and examining medical providers, and supports the argument that a plaintiff’s medical providers must obtain reports setting forth the information required by the Rule if such reports do not otherwise previously exist.

The Court of Appeals also addressed a separate “causation” question raised by the *Hamilton* case: whether a trial court must take “judicial notice” of the legislative findings of the United States Congress made in support of a federal statute. Here, plaintiff sought judicial notice of certain Congressional findings that lead presents a hazard to children – and did so in an effort to avoid the requirement to prove at trial that lead could cause some or all of the alleged injuries. The Court of Appeals was not buying it: while it noted that the CPLR allows a court to take notice of federal and foreign state law, the Court held that it would be “inappropriate” to take judicial notice of the Congressional findings made in support of the cited legislation. The Court rejected the concept that the need to satisfy general causation in a scientifically complex case could be dispensed with merely by asking the Court to take judicial notice of Congressional fact finding. Instead, the Court stated clearly that the plaintiff must prove, “through scientific evidence, that exposure to lead-based paint can cause the injuries of which he complains. . . . [plaintiff] cannot avoid that burden simply because Congress, in statutory preambles, has opined on the dangers of lead-based paint.” In short, the Court denied plaintiff’s gambit for a causation “short-cut”, and re-iterated long-standing principles of proof in a toxic tort case.

To learn more, contact:

[Thomas R. Smith](#)

315-218-8325; smithtr@bsk.com

[Richard L. Weber](#)

315-218-8375; rweber@bsk.com