

## Applying the Toxic Tort Statute of Limitations

Toxic tort cases may involve claims of injuries arising months or years after the date of alleged exposure. A recent Appellate Division Third Department decision addressed the application of the toxic tort statute of limitations in latent exposure cases.

Under CPLR § 214-c(2), the plaintiff in a personal injury action for damages must commence an action within a three-year statute of limitations. Unlike the normal three-year statute of limitations for personal injuries, which runs from date of injury, the CPLR § 214-c(2) time period begins to run from (a) the “date of discovery of the injury” by plaintiff, or (b) the date the injury should have been discovered by plaintiff through the exercise of reasonable diligence, whichever is earlier.

In *Malone v Court W. Developers, Inc.*, 2016 N.Y. App. Div. LEXIS 3422 (3d Dep’t, May 5, 2016), plaintiff commenced an action alleging that he was exposed to toxic mold contamination in a building owned by defendant. Plaintiff alleged that this exposure caused personal injuries in the form of asthma and permanent allergies. The trial court granted defendant’s summary judgment motion and dismissed plaintiff’s complaint, reasoning that the action was barred by CPLR § 214-c(2) because plaintiff was aware of the primary symptoms of his injuries for more than three years prior to commencement of the lawsuit.

The Appellate Court disagreed and reversed the trial court’s decision. The Court held that the evidence showed that the plaintiff was exposed to the toxic mold within three years prior to the commencement of the action, and if plaintiff’s injury was due to this exposure, it would not be time-barred by CPLR § 214-c(2). The Court then considered the possibility that plaintiff was exposed more than three years before commencement of the action, which presented the question of whether plaintiff discovered or should have discovered his injury more than three years before suit. The Court found that defendant failed, as a matter of law, to prove that the plaintiff should have discovered his injuries more than three years before he filed suit. Although the plaintiff exhibited some modest physical symptoms at the time of exposure, plaintiff did not seek medical treatment or miss work because of these symptoms until months later. The Court thus found that plaintiff’s initial symptoms “were too intermittent and inconsequential to trigger the running of the statute of limitations pursuant to CPLR § 214-c(2).”<sup>1</sup>

This ruling may complicate defenses based on CPLR § 214-c(2) in latent exposure cases where a litigant’s symptoms remain comparably mild for an extended period of time.

If you have any questions about this *Information Memo*, please contact [Thomas R. Smith](#), [Richard L. Weber](#), [Franz M. Wright](#), any of the [attorneys](#) in our [Toxic Tort and Environmental Litigation Practice](#), or the attorney in the firm with whom you are regularly in contact.

<sup>1</sup> 2016 N.Y. App. Div. LEXIS 3422 at \*3



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