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North Carolina Case Brings Toxic Mold Concerns Back Into the Courtroom

Just a few years ago, “toxic mold” cases were resulting in multi-million-dollar awards. Health agencies, insurance companies, builders, architects, employers, homeowners, and personal injury attorneys all showed significant interest in mold. However, within a few years, mold was no longer in the headlines, and plaintiffs struggled to satisfy courts and juries that their injuries were caused by exposure to mold. But a recent case from North Carolina may reinvigorate litigation relating to mold claims.

In *Cameron v. Merisel Properties, Inc. and Brian Goldsworthy*, N.C. Ct. App., No. 07-54, November 6, 2007 (unofficial), the plaintiff worked for a computer company in North Carolina from December 1998 to April 2000. The building in which his office was located had a history of leaks and dampness. During the time of his employment, “he developed irreversible damage to his vestibular system, which is the inner ear organ responsible for balance” allegedly due to his exposure to toxic mold. The plaintiff sued his employer and building owner and ultimately recovered \$1.6 million under a negligence theory of premises liability against the building owner. The defendant challenged the sufficiency of evidence on causation. The court held that sufficient evidence was presented to show that the plaintiff’s injuries were proximately caused by his exposure to mold.

While the plaintiff was in excellent health when he started working in the North Carolina facility, after just a few weeks, he started to have balance and vision problems. Over the next six months, the symptoms worsened. In fall 1999, he was diagnosed with permanent and irreversible bilateral vestibular dysfunction — the loss of the balance function in both ears. When the plaintiff began working for the defendant in December 1998, the walls, carpeting, and ceiling in his office had evidence of water damage, including the presence of mold. Air quality tests performed by the defendant in November 1999 confirmed the presence of mold in the North Carolina facility, and further testing in March 2000 identified *Stachybotrys* mold in the plaintiff’s office.

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The plaintiff was treated by Dr. Joseph Farmer, who performed many tests and ruled out most known causes of vestibular dysfunction. Dr. Farmer concluded that the plaintiff's bilateral vestibular dysfunction was "caused by ototoxicity, or poisoning of the ears." After his review of the 2000 air sample results that identified toxigenic molds, including *Stachybotrys*, Dr. Farmer concluded that the ototoxin causing the plaintiff's vestibular dysfunction was a mycotoxin, or mold byproduct, from the North Carolina facility.

The plaintiff presented testimony from Dr. Eckhardt Johanning, an expert in the area of occupational and environmental medicine and the effects of mold on human health. Dr. Johanning testified that exposure to mold was "more likely than not" the cause of the plaintiff's disorder. The plaintiff also offered the testimony of Dr. Jerry Tulis, who was qualified as an expert in mold science, assessment, control, and remediation. Dr. Tulis testified that the plaintiff "was exposed to mold and mycotoxins" at the North Carolina facility, and such exposure "presented a health hazard."

The defendant argued that Dr. Farmer's testimony was "mere conjecture and speculation." However, the court disagreed, finding that Dr. Farmer's opinion was based upon "far more than speculation" and other evidence offered at trial "established that exposure to toxigenic molds can cause vestibular dysfunction."

The court's finding of a causal link in this case could prove to be significant as other cases make their way through the courts, and as additional medical research comes to light. This is an important reminder that clients should continue to adhere to best practices to evaluate, prevent, and address any indoor moisture conditions.