

***New York Court of Appeals Clarifies “Specific Causation”
Standard Of Proof In Toxic Tort Cases***

Synopsis

On April 26, 2022, the Court of Appeals issued an important decision that tidies up the elements of causation in toxic tort cases. Plaintiff in [Nemeth v. Brenntag N.A., 2022 NY Slip Op 02769](#), alleged that decedent developed peritoneal mesothelioma from over a decade of repeated exposure to talcum powder purportedly contaminated with asbestos. The jury agreed. On appeal from the final judgment, the First Department rejected defendant’s argument that plaintiff failed to carry his burden of proving specific causation, finding that his experts adequately tied decedent’s purported exposure to the asbestos-laced powder to her cancer. Despite affirming the judgment, the First Department granted defendant leave to appeal.

The Court of Appeals reversed. As the majority explained, consistent with its seminal decision in [Parker v. Mobil Oil Corp.](#), 7 N.Y.3d 434 (2006), plaintiff in a toxic tort case must establish specific causation, which requires proving (a) the level of toxin needed to cause the illness and (b) a “scientific expression” of the degree of plaintiff’s exposure to that toxin. Plaintiff’s experts, the Court found, failed to offer sufficient proof on these points.

The Causation Element

While the frequency of decedent’s exposure to the asbestos was largely undisputed, causation was sharply contested. Although the parties essentially agreed that plaintiff had to prove general and specific causation, they disagreed as to the contours of specific causation under [Parker v. Mobil Oil Corp.](#) Accordingly, the bulk of the Court of Appeal’s analysis centered on clarifying the evidence necessary to establish this element.

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Initially, the majority acknowledged that precise quantification of exposure is not always required to prove specific causation, but nonetheless observed that “plaintiffs must, using expert testimony, based on ‘generally accepted methodologies,’ still establish sufficient exposure to the toxin[.]” The Court essentially treated this as a two-part inquiry: plaintiff must first establish the minimum level of exposure capable of causing the alleged ailment and then introduce a “scientific expression” of plaintiff’s actual exposure to that toxin.

Applying this standard to plaintiff's case, the Court found that he did not carry his burden on either front. First, the Court held that plaintiff failed to establish the minimum level of asbestos exposure capable of causing peritoneal mesothelioma. Along these lines, the Court found the conclusion of plaintiff's expert that "brief or low exposure to asbestos" could cause mesothelioma was insufficient. Nor were the expert's cited studies adequate, as they too failed to actually quantify the level of asbestos exposure required to cause mesothelioma. Finally, the Court dismissed plaintiff's expert's efforts to close the gap in her testimony by relying on government standards, explaining that "standards promulgated by regulatory agencies as protective measures are inadequate to demonstrate legal causation."

Second, the Court found that plaintiff neglected to offer a "scientific expression" relating to the amount of decedent's asbestos exposure, rejecting the conclusion gleaned from his expert's "glove box test" because it did not actually furnish information relating to the amount of asbestos decedent inhaled. Instead, his opinions were necessarily limited to the amount of asbestos fibers that were released during the experiment, irreparably tainting the other expert's opinions that were derived from this data.

The Takeaway

Nemeth is an important win for defendants in toxic tort cases. While plaintiff introduced expert testimony to support his case, the Court carefully scrutinized the substance of these opinions, rather than prophylactically deferring to the jury. Consequently, when litigating a toxic tort case, defendants should focus on the issue of specific causation, ensuring that plaintiff has established the level of exposure required to cause the illness *and* a "scientific expression" of plaintiff's actual exposure. In this way, a proper record is created for an appellate court to apply a degree of analytical rigor to the issue of causation in toxic tort cases that provide defendants with fertile grounds for mounting a dispositive defense.

SHAUB, AHMUTY, CITRIN & SPRATT, LLP

1983 Marcus Avenue • Lake Success, NY 11042 • (516) 488-3300 • www.sacsllaw.com

For further information, please contact Christopher Simone • csimone@sacsllaw.com

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