



### WSHB Report Spots Trends in Mold Bodily Injury Litigation

Mold may not be “the next asbestos” when it comes to litigation, but it’s not a trend that will soon disappear either, according to a report from Wood, Smith, Henning & Berman (WSHB). The firm released its mold personal injury litigation update to answer the question frequently posed to its attorneys about whether “the number of mold cases is increasing or whether this is a dying breed of litigation.”

According to the report authored by Steve Henning and Patrick Schoenburg, both partners in the firm, mold claims began receiving significant attention about five years ago, and many people were predicting millions in claims to be won by plaintiffs of personal injury suits. “A combination of successful defense strategies in litigated cases, the drafting of mold exclusions in insurance policies and the inherent difficulties plaintiffs have in proving their cases have limited the scope of this problem,” the report states.

The report finds that the science in regard to “toxic” mold favors defendants. Defendants now have a significant body of literature to call from stating that there is insufficient scientific evidence of the toxic effects of mold to support many personal injury mold claims. These studies have prevented many of the more serious injury claims from ever reaching a jury.

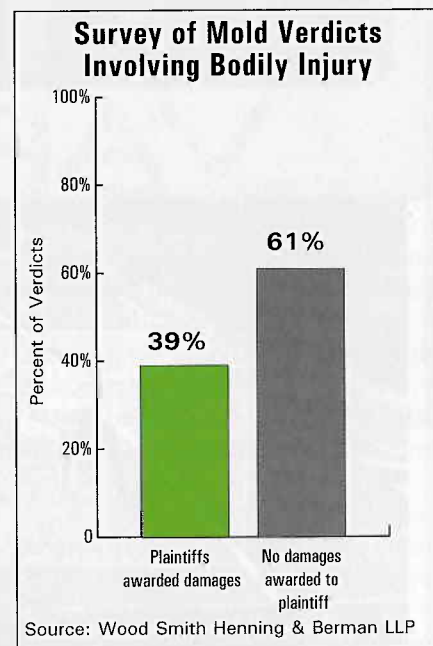
“Only by demonstrating that molds release toxins in sufficient quantities can plaintiffs prove that mold is responsible for brain damage, cancer and similar conditions,” the report states.

Due to this, the authors predict that most plaintiffs’ attorneys will

limit their cases to claims of asthma and allergy, which have greater scientific credibility than toxic mold claims. This will decrease the potential value of the claims, but increase the likelihood of some recovery. The authors also state that it is unlikely that medical science will change enough in the next several years to significantly impact mold claims. The same issues that make each mold claim unique—the hundreds of thousands of species of different molds, the varying circumstances of exposure and the different injuries that are involved—limit the ability of scientists to perform comprehensive studies.

In addition, although there have been attempts to expand the scope of potential defendants in mold cases, the target defendants remain those with interests in real property and construction. Mold claims focus on residential and commercial landlords, homebuilders and their contractors. The authors warn that these industries need to remain vigilant in responding to water damage and mold claims.

The report also warns defendants not to assume that every mold case is the same and that personal injury rewards will not be granted to plaintiffs. This is a mistake, the report says, since mold cases are by definition singular. “Assuming that every mold personal injury case will be limited to claims of allergy and asthma can be costly.” As recently as 2005, defendants in the Gorman case paid close to \$20 million to a Los Angeles family whose son allegedly suffered brain damage as a result of mold exposure. Experienced counsel still needs to quickly establish the nature of plaintiffs’



injuries and use proven techniques to prevent claims of toxic injury from reaching a jury.

In a national survey, the firm had also found that the majority of mold personal injury cases are tried in California. The lawyers expect that the number of mold cases being filed in California has stabilized and may decrease, while more cases will be filed in other jurisdictions that lack a history of these claims. Each of these areas are likely to experience a repeat of what occurred in California—early publicity and success by plaintiffs will cause an increase in filings, which will drop off once defendants begin employing the techniques and strategies that have proven successful in other states.

WSHB has been litigating mold bodily injury cases and reporting the results for almost a decade. The firm says it has taken more of these cases to verdict than any other firm in the country, and its clients have never been ordered to pay personal injury damages.

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