

# WASHINGTON CASE UPDATE

## The Possibility of Proving Medical Causation Without an M.D.

case in point...

**From the desk of Kyle Riley:** The Washington Court of Appeals recently addressed who could qualify as an expert to testify regarding medical causation. Find out if a toxicologist's testimony is sufficient in this case involving a moldy workplace.

**Claims Pointer:** When the causal link between allegedly negligent conduct and injury is not readily apparent to an ordinary lay person, expert testimony must be introduced to support medical causation. Such expert testimony, however, is not limited to medical doctors. Instead, the presence or lack of a medical degree goes to the weight of the testimony, not its admissibility.

Bolson v. Williams & Schloer, 71365-5-I, 2014 WL 2211401 (Wash. Ct. App. May 27, 2014) (unpublished)

Six months after the offices of Williams & Schloer (W&S) flooded, employee Bonny Bolson (Bolson) was diagnosed with sarcoidosis of the lungs, an inflammatory disease. Bolson had begun experiencing flu-like symptoms a few weeks after the flood, including fatigue, backache, and coughing. The symptoms persisted and an x-ray and CT scan revealed scarring in her lungs. Bolson was diagnosed with sarcoidosis following a biopsy of her lungs. Bolson then filed a worker's compensation claim through the Washington Department of Labor and Industries (L&I), alleging that her sarcoidosis was caused by workplace exposure to mold. After L&I rejected Bolson's claim, Bolson sued W&S for negligence, among other causes of action.

At trial, W&S moved for summary judgment, arguing that Bolson's claims should be dismissed as she had not produced expert testimony on medical causation. In opposition to W&S's motion for summary judgment, Bolson offered the declaration of Toxicologist, Jack Thrasher, Ph.D. (Thrasher). Thrasher stated that "potentially dangerous and pathogenic mold and bacteria were more likely than not present in the water damaged interior" of W&S's building and that Bolson's sarcoidosis was, "on a more probably than not basis, caused by her exposure to [the building's] mold." At the summary judgment hearing, the trial court granted summary judgment to W&S on the basis that Bolson had failed to illustrate medical causation. Bolson appealed.

On appeal, Bolson argued that the trial court erred when it required expert testimony to establish that mold in the workplace was the proximate cause of her sarcoidosis. Instead, Bolson stated that a jury could infer causation based on the temporal proximity between the mold and Bolson's injuries. Additionally, Bolson argued that the trial court's determination that Thrasher was not qualified as an expert was in error.

In addressing Bolson's temporal proximity argument, the Washington Court of Appeals drew a distinction between the results of allegedly negligent conduct observable to a lay person and injuries that involve medical factors beyond a lay person's knowledge, necessitating expert testimony. Due to the fact sarcoidosis is a disease which an ordinary lay person may not be familiar, and the connection between mold exposure and sarcoidosis not readily apparent, expert testimony is required to establish the causal link. Additionally, the expert testimony must establish causation on a "more likely than not" basis.

Turning to Bolson's argument that Thrasher was qualified as an expert, the court noted that there is no rule in Washington that only medical doctors can testify to causation. Indeed, the Washington Supreme Court had previously stated that "the line between chemistry, biology, and medicine is too indefinite to admit of a practicable separation of topics and witnesses." While a license to practice medicine may assist in determining whether an individual is qualified to testify as an expert, it is not dispositive. Thrasher had received his doctorate in human anatomy and cell biology. He had extensive experience in both toxicology and immunotoxicology, and had published a significant number of articles on the topics. Furthermore, Thrasher has specialized expertise in these fields regarding mold, bacteria, and mycotoxins resulting from water intrusion on indoor environments. Thrasher's prolific expertise qualified him as an expert to testify regarding the causal link between the mold present in W&S's building and Bolson's sarcoidosis. Challenges to his opinions and lack of a medical degree would influence the weight and credibility of his testimony, not its admissibility. Accordingly, the Washington Court of Appeals reversed the trial court's dismissal of Bolson's claims.



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