

industry line

MANAGING THE HAZARDS OF ENVIRONMENTAL TOXIC TORT LITIGATION

9.26.06

Presence of Mold-Producing Material Does Not Establish Notice of Mold

By Cleo N. Fekaris

Knowledge of the presence of mold-producing material on an owner's property does not equate to knowledge of the presence of mold spores or the danger posed by their existence. Even though feces can produce mold, its presence on a landowner's property does not establish that the landowner had actual or constructive notice of the presence of mold.

Generally, in a personal injury action arising from exposure to mold, the plaintiff must show that her injury was caused by the defendant's breach of a duty owed to the plaintiff. When the plaintiff enters the land for a business purpose, the landowner has a duty to warn the plaintiff of any known dangers and to make the premises safe. The landowner becomes liable if the landowner knew or should have known of a danger, should expect that the plaintiff would not discover or realize the danger, and failed to exercise reasonable care to protect the plaintiff from the danger. However, if the landowner does not know or should not know of the danger, then there is no liability.

Recently, the Michigan Court of Appeals addressed the issue of whether a landowner had actual or constructive notice of mold on its land. In *Henderson v Volpe-Vito, Inc, d/b/a Four Bears Water Park*, unpublished, Docket No. 266515, Plaintiff, who was several months pregnant at the time, reserved the Defendant's park for a picnic. Upon arrival at the park, Plaintiff discovered goose feces in the picnic area. After a park employee failed to adequately clean the picnic area, Plaintiff and some of her guests cleaned the area. Approximately two weeks later, Plaintiff developed a high fever, was admitted to Providence Hospital, and gave birth to her child several months early. A bone-marrow analysis of Plaintiff revealed that

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Based on the Court of Appeals reasoning, a property owner's knowledge of a condition that can produce mold does not establish notice of the mold or the danger it may create. For example, water entering a building under construction does not equate to knowledge that mold may grow or that it could become airborne and produce a danger to invitees.

This ruling by the Michigan Court of Appeals is unpublished and as such is not binding on the lower courts. However, it does reflect the position the Michigan Court's take with regard to mold on one's property and personal injury.

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she had histoplasmosis. (A disease caused by inhaling spores from fungus that grows in soil enriched by bird feces.)

Plaintiff argued that the goose feces that caused the formation of the mold were similar to a defectively manufactured product. The mold was, however, produced by the geese and was not manufactured by the landowner. Consequently, the landowner did not create the condition that produced the mold.

The Court of Appeals found that Plaintiff did not provide sufficient evidence to demonstrate that Defendant knew or had reason to know that mold spores would be released into the air. The Court of Appeals refused to extend Defendant's knowledge of the presence of goose feces to imply that the defendant had knowledge that mold would be produced or become airborne.

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