

Indiana Law Provides Strong Causation Defense Against Toxic Tort Claims

Indiana case law governing the admission of both lay testimony and expert testimony on the issue of medical causation provides a particularly strong defense in toxic tort cases. First, plaintiffs are generally prohibited from introducing lay testimony regarding the type of injuries involved with toxic tort claims. Second, Indiana's stringent requirements for qualifying an expert to offer opinions on medical causation make it difficult for plaintiff's to lay the proper foundation in toxic tort cases.

An essential element in any negligence action is the requirement of a reasonable connection between the defendant's conduct and the plaintiff's damages. See Daub v. Daub, 629 N.E.2d 873, 877 (Ind. Ct. App. 1994). Indiana law is clear that, where the cause of an injury or ailment is neither objective in nature nor within the understanding of the lay person, but rather is a complicated medical question, expert medical testimony is required to connect the cause to the injury. See Daub at 877-78, see also Hannan v. Pest Control Serv., Inc., 734 N.E.2d 674, 679 (Ind. Ct. App. 2000) (requiring expert medical evidence that exposure to pesticides caused plaintiffs' injuries); Turner v. Davis, 699 N.E.2d 1217, 1220 (Ind. Ct. App. 1998) (testimony of medical expert required to diagnose cause of sleeping ailment). Although plaintiffs may testify regarding physical conditions that are within their personal knowledge, a lay person cannot testify as to the diagnosis of a medical condition that is outside the skill and knowledge of a lay witness. See Morphew, 419 N.E.2d at 777. "[W]ith regard to diagnosis, causes and effects of disease, and other matters of medical science, skill, and practice, knowledge of which is confined to those trained for the profession, opinions of lay or nonexpert witnesses are not competent evidence." Id. (quotations omitted); see also Armstrong v. Cerestar USA, Inc., 775 N.E.2d 360, 366 (Ind. Ct. App. 2002) (requiring opinion as to medical causation of a particular injury to be offered by physician or surgeon learned in such matters). The types of injuries claimed in toxic tort cases are not susceptible to lay proof, and Indiana law specifically requires expert testimony to prove causation in toxic tort cases. See Hannan, 734 N.E.2d 674, *infra*.

Just as a lay witness may not rely on a temporal coincidence to establish causation, neither may an expert witness. In Hannan v. Pest Control Services, Inc., 734 N.E.2d 674 (Ind. Ct. App. 2000), plaintiffs sued Pest Control alleging that they became sick after Pest Control sprayed their home for ants. The plaintiffs' experts sought to testify that the plaintiffs suffered various ailments because of their exposure to two of the chemicals sprayed by Pest Control at the residence. However, plaintiffs' experts had no information concerning the exposure level of the chemicals or the dose that plaintiffs had allegedly ingested. Furthermore, the experts did not have information regarding the size of the house or the configuration of the ventilating system. Holding that questions of medical causation of a particular injury are questions of science necessarily dependent on the testimony physicians and surgeons learned in such matters, the court found that the proposed testimony of the experts relied on nothing more than a mere temporal coincidence of the pesticide application and the plaintiffs' self-reported illnesses. Id. at 679, 682; see also Armstrong v. Cerestar USA, Inc., 775 N.E.2d 360, 366 (Ind. Ct. App.

2002) (finding that cause of fall of plaintiff who removed sludge from milling plant question of science dependent on testimony of physicians and surgeons with experience in the area). Such a relationship the court found was insufficient to establish causation. *Hannan*, 734 N.E.2d at 682. Moreover, the court noted that the experts did not rule out alternative causes of the plaintiffs' ailments. *Id.* Such differential diagnosis testing is important in toxic tort cases so that other causes may be negated. *Id.* Accordingly, the court found the opinions of the experts to be unsupported speculation. *Id.*; *see also Armstrong*, 775 N.E.2d at 368 (finding that expert's opinion was mere speculation when expert was not licensed physician with training, knowledge and experience to make proximate cause determination that plaintiff became light-headed due to exposure to hydrogen sulfide gas and failed to rule out other causes of fall).