

Ohio Supreme Court Alert

RCO Receives Pivotal Decision in Mold Exposure and Toxic Substance Litigation

In an area of law once predicted by some “to top asbestos as king of the toxic torts,” Robison, Curphey & O’Connell (“RCO”) recently secured a significant victory for its clients in the Ohio Supreme Court. On October 3, 2007, the Ohio Supreme Court held that a person claiming injury as a result of exposure to a toxic substance must present reliable scientific testimony not only that the substance was capable of causing injury, but that the substance in fact caused the person’s specific injury. The decision, the first of its kind from the Ohio Supreme Court in this rapidly growing area of law, promises to have a significant impact on the future of toxic tort litigation in Ohio and the rest of the country.

Thomas J. Antonini and Mark A. Ozimek, attorneys in the Toledo, Ohio law firm of RCO, represented several defendants that owned or maintained an office building in Ottawa County, Ohio. The case was brought by fifteen plaintiffs who claimed to have sustained a variety of injuries as a result of being exposed to mold while working in the building.

The Ottawa County Court of Common Pleas originally decided the case in favor of the firm’s clients, agreeing that the plaintiffs failed to present scientifically reliable expert testimony that their injuries were caused by exposure to mold. After briefing and argument in the Court of Appeals, the case was ultimately appealed to the Ohio Supreme Court.

The Ohio Supreme Court, in a 6 to 1 decision, agreed with the decision of the Ottawa County court and dismissed the plaintiffs’ claims because they “failed to provide expert medical evidence relating to the specific cause of their injuries as an element of their mold exposure claim.” The Ohio Supreme Court’s summary of the decision, along with a link to the written opinion, can be found here:

http://www.sconet.state.oh.us/Communications_Office/summaries/2007/1003/060705.asp

The case and the Court’s decision should be of practical interest to builders, employers, landlords, property managers and their insurers, as well as any other entity that owns real property that is primarily used and/or occupied by someone else. If you have any questions or concerns regarding this or a related area of law, please feel free to contact Thomas J. Antonini or Mark A. Ozimek.

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