

## Best's Insurance Law Podcast

### [Litigating Mold Cases - Episode #224](#)

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**Hosted by:** John Czuba, Managing Editor

**Guest Expert:** Ernest Chiodo of [Ernest Chiodo P.C.](#)

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**John Czuba:** Welcome to Best's Insurance Law Podcast, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, manager of *Best's Insurance Professional Resources*. We're very pleased to have with us today qualified member expert service provider, Dr. Ernest Chiodo of [Ernest Chiodo P.C.](#) who does work nationwide and also internationally.

Dr. Chiodo earned an MD from Wayne State University School of Medicine, a JD from Wayne State University, a Master of Public Health from Harvard University School of Public Health, a Master of Science in biomedical engineering from Wayne State University, a Master of Science in threat response management from the University of Chicago.

A Master of Science in occupational and environmental health sciences with specialization in industrial toxicology from Wayne State University, a Master of Business Administration from a concentration in economics from the University of Chicago, and a Master of Science in evidence-based healthcare from the University of Oxford in the United Kingdom.

Dr. Chiodo is also board-certified in the medical specialties of internal medicine, occupational medicine, and public health in general preventative medicine. Dr. Chiodo, thanks so much for joining us again today.

**Dr. Ernest Chiodo:** Thank you. It's a pleasure.

**John:** Today's discussion is centered on mold cases. Dr. Chiodo, for our first question, can mold exposure cause disease?

**Dr. Chiodo:** Yes, it can. Mold cases are cases that should be taken very seriously because they're dangerous cases from the defense perspective. Why is that? Almost everybody in our society has heard of toxic black mold. However, if I say 1,3-Dibromopropane, which is a very horrible chemical, nobody's heard of it.

If you're handling a mold case, take it seriously. Yes, you can become ill due to exposure to mold. What mold can cause is sinusitis, skin rash, aggravation of asthma, perhaps even causation of asthma, and something called hypersensitivity pneumonitis.

However, with the exception of hypersensitivity pneumonitis, all these allergic manifestations of mold will go away once somebody gets outside of the moldy environment for a few weeks. That's why there was a lot of litigation about mold about 20, 30 years ago, but then it became realized that there's really no permanency. What are the damages?

As a result, there have been some maneuvers in order to create permanency, and we will probably talk about that with your next question.

**John:** Dr. Chiodo, what is chronic inflammatory response syndrome or CIRS?

**Dr. Chiodo:** That is why there's a lot of mold litigation going on right now. It's referred to as CIRS, C-I-R-S, is claimed to be a disease by some functional medicine physicians due to exposure to mold mycotoxins. Now first off, what is functional medicine? Functional medicine is not a recognized American Board of Medical Specialty Board.

It's really what alternative medicine doctors now tend to call themselves functional medicine doctors.

What has happened is that these functional medicine doctors have formulated a disease that they claim that 20 percent of people in the general population have a genetic abnormality where if they have mold mycotoxins that get into their body, they're not able to properly metabolize and process the mold mycotoxins and develop an inflammatory process.

A chronic inflammatory process that causes them to have a number of disease manifestations. That is the claim about, about CIRS and that is why there is a lot of mold litigation now as opposed to say 10, 15 years ago.

**John:** Dr. Chiodo, if the plaintiff in a case has mold mycotoxins in their urine or blood, what is the significance of the mold mycotoxins in the plaintiff's urine or blood?

**Dr. Chiodo:** Well, that is usually what the plaintiff and the plaintiff attorneys consider the smoking gun. By the way, this is not a lecture for defense attorneys. This is a lecture also, by the way, for plaintiff attorneys so that they know up and down about this. This is not plaintiff or defense-oriented. It's just the reality of the circumstance.

Mold mycotoxins are chemicals that are made by some molds at sometimes depending upon temperature, substrate, what have you. Not all molds that can make mold mycotoxins do make mold mycotoxins. You will not become positive for mold mycotoxins from being in a mold contaminated home or apartment or building. Just doesn't happen.

Why do people have mold mycotoxins in their urine or in their blood? It's from eating various foods or drinking various drinks. If you drink wine, there's going to be a little bit of mold contamination of the wines. It's a process, and there's going to be mold mycotoxins in the wines.

If you drink coffee, there's a little bit of contamination of the coffee beans with mold. You're going to become positive for mold mycotoxins in your urine or blood if you drink coffee. If you eat cheese, there's mold in cheese. Same thing with peanut butter. There's mold mycotoxins in peanut butter.

The reason why people are positive for mold mycotoxins is not from being in a moldy environment. It is from foods. By the way, if you take 100 people with no complaint of having been in a mold-contaminated environment, on average, 72.5 of them will be positive for mold mycotoxins in either their urine or in their blood.

Mold mycotoxins in body fluids, blood, or urine are not the marker of mold contamination that many plaintiffs and plaintiff attorneys believe.

**John:** Based on that assessment then, what elements do plaintiffs have to prove?

**Dr. Chiodo:** Then this is important for both plaintiff attorneys and defense attorneys to know. Anytime you have litigation involving some claim disease due to an occupational or environmental exposure, three elements must be established. First off, exposure. What was the exposure? Whether it's exposure to mold or exposures to some air toxin.

There's an old saying within toxicology, everything's a poison. Nothing is a poison. It's all a matter of dose. What is a dose? If you drink enough water, it'll cause brain swelling and kill you. The first element that must be established by plaintiff's expert is exposure.

Basically, by the way, you have a castle. If you're a defense, you have a castle with three moats around it. The first moat is what was the exposure to mold? There's mold everywhere and but there's not mold contamination everywhere. The second element is general causation. Is the person suffering from disease that can be caused by mold?

As I just told you, you can get sinusitis, you can get skin rash. You can get aggravation of asthma. You can get something called hypersensitivity pneumonitis which can cause a permanent scarring of the lungs. With the exception of hypersensitivity pneumonitis, if somebody gets out of the moldy environment, the skin rash, sinusitis, asthma will all go away.

If they still have these problems after being out of the moldy environment for a few weeks, the cause was not the moldy environment. General causation means does the plaintiff have a pattern of disease consistent with what can happen with exposure to mold? Many times, plaintiffs will claim, "They're losing their hair." "They can't concentrate anymore." "They have thyroid problems."

Everything underneath the kitchen sink. The problems for plaintiff is that they have to have peer-reviewed literature that make backs up that that is a pattern of disease that can be caused by mold. That's the second moat. It's called general causation.

The third moat is specific causation. Even if you have a problem that could be caused by mold, unless the mold is the only possible cause of the problem, a doctor has to consider other likely causes and through a process of elimination, eliminate those other causes or at least minimize those other possible causes by doing what's called a differential diagnosis of etiology.

That is the methodology that a medical expert has to utilize to satisfy Daubert. Also satisfies Frye because it is the generally accepted methodology among physicians. Both in the context and outside the context of litigation.

For example, as I testify. As I just mentioned, I didn't testify. As I mentioned earlier, you can get something called hypersensitivity pneumonitis which is a permanent scarring of the lungs. Say you had somebody in a moldy environment, really is mold contaminated, and they have imaging on, say, high-resolution CT scan that they have scarring of the lungs.

Well, was that caused by mold or was it maybe caused by having gastroesophageal reflux disease that can cause the same problem? Was it caused by some autoimmune disease like rheumatoid arthritis?

A doctor has to consider those other likely causes and eliminate or at least minimize those other causes before the doctor can say more likely than not, it was the mold. That is that third moat around your castle, specific causation.

**John:** You mentioned exposure, general causation, and specific causation. What types of experts are required to opine about them?

**Dr. Chiodo:** First off, exposure. There's mold everywhere, but there's not mold contamination everywhere. If I put my hand down on the desk and I lift it up, thousands of mold spores will be on my hand. If I take a breath, on average, I will breathe in about 20,000 mold spores. There's mold everywhere, but not mold contamination everywhere.

Who is supposed to determine whether there is contamination of mold with mold of a building is a certified industrial hygienist. That is an engineering specialty board. It is not a medical specialty board. There are about 6,600 certified industrial hygienists in the world. Only about 5 to 10 of them are physicians. I just happen to be one of those 5 to 10.

That is the discipline that is supposed to determine whether or not a building or a home or apartment is contaminated with mold. If your case is in Illinois or in Michigan, the Illinois Department of Public Health will say that. The Michigan Department of Community Health also says that.

However, there are some states where there are individuals that get licensed as licensed mold assessors. I don't think they don't have the qualifications of, say, a certified industrial hygienist. Again, that's an engineering specialty board. Difficult to become a certified industrial hygienist.

Even if a building is having some element of contamination of mold, what is the exposure of the plaintiff to the mold? How much time do they spend in the area of the home that has mold contamination? An exposure assessment must be made. Who's supposed to do that is a certified industrial hygienist.

Again, engineering specialty, physicians, unless they're one of the few physician-certified industrial hygienists, do not have that background. The next thing that is required is a toxicologist. By the way, most physicians are not qualified to give a toxicologic opinion in court. That's a different basis for me saying that is a different discussion for another day.

There are only two medical specialties that by virtual board certification qualifies a physician to give a toxicology opinion in court. One specialty is medical toxicology. They tend to be emergency room doctors. They deal with acute intoxications, things like Tylenol overdoses, not chronic exposure issues like mold.

The other medical specialty that by virtual board certification qualifies a physician to provide a toxicology opinion is occupational medicine.

That is usually the medical expert that is involved in this matter to be able to opine about general causation. That is does a peer-reviewed literature, evidence-based medicine support the assertion that is being made by a plaintiff that their disease could have been caused by mold.

Then in addition, a doctor board-certified in occupational medicine is qualified and experienced in doing a differential diagnosis of etiology to come to an opinion as a specific causation. You really need at least two experts, whether you're plaintiff or defense in a mold case, a certified industrial hygienist, and then a board-certified occupational medicine doctor.

**John:** Dr. Chiodo, how are you qualified to serve as an expert in mold cases?

**Dr. Chiodo:** Well, I have an unusual background, John. I am a physician that is board-certified among other things in occupational medicine. I am one of the few physicians certified industrial hygienists and I have some stature in that profession.

That I'm one of the past presidents of the Michigan Industrial Hygiene Society, which was the first industrial hygiene organization in the country. Industrial hygiene and occupational medicine got their start in Detroit because of the auto plants. In addition, I have served as the medical director and manager of medical and public health services for the city of Detroit.

I was the chief physician in charge of all medical and public health services provided by the city of Detroit to over a million people living and working in the city of Detroit during the time of my service.

Position of substantial public responsibility where at the time I had the direct phone number to the US White House, in case I had to get a hold of the president, Bill Clinton, if there was any public health emergency or disaster in Detroit, the arsenal of democracy, the president needed to know about right away.

In addition, all building-related disease issues in the city of Detroit were under my medical direction. The type of doctor that would say whether or not a building is safe for human habitation is public health and general preventive medicine and specifically the medical director of a health department. I have that background.

In addition, since I have had a long-standing interest in building-related disease, I have maintained a residential builder's license in the great state of Michigan since 1991. If you're a doctor that's trying to figure out if somebody got sick due to a building, you should have some idea how buildings are designed, maintained, and constructed.

Now if I get hired when I get hired, and I get hired a lot by a lawyer, I am always the expert. They are the lawyer. However, I've been a lawyer for over 35 years. I've done a fair amount of toxic tort litigation myself, representing plaintiffs. I represent over 500 plaintiffs as a lawyer in toxic tort cases. Some of which are remote cases.

Did enough of that that I used to be the chairman of the environmental litigation and administrative practice committee for the State Bar of Michigan. Mildly prestigious if you're a lawyer, but darn unusual if you're a doctor. Then I used to teach toxic tort law at two law schools in Chicago, John Marshall and Loyola Law School for about eight years.

I know a lot of the intricacies of the what's required as far as the proofs in these matters. Again, the lawyer's going to be the lawyer in the case. I will never be a pain in the neck, backstreet lawyer. The fact that I know a lot about this on the legal end tends to be handy.

**John:** Dr. Chiodo, excellent. Thanks so much for joining us today.

**Dr. Chiodo:** Thank you, sir.

**John:** You just listened to qualified member expert service provider, Dr. Ernest Chiodo of [Ernest Chiodo P.C.](#), who practices nationwide and also internationally. Special thanks to today's producer, Frank Vowinkel.

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I'm John Czuba, and now this message.

Transcription by CastingWords

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