

LANDMARK MEDICAL MONITORING RULING BENEFITS NEW YORK EMPLOYERS AND CORPORATE DEFENDANTS

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New York's highest court recently issued a significant decision for all New York employers and corporate defendants. On December 17, 2013, a divided Court of Appeals declined the opportunity to create an independent equitable cause of action for medical monitoring. In the four-week-old decision *Caronia v. Philip Morris*, the Court of Appeals specifically rejected the argument to certify a class action for medical monitoring purposes. The plaintiffs, who are all over the age of 50, and who are current and/or former smokers of Marlboro cigarettes, requested equitable relief in the form of a court-supervised medical monitoring class. None of the Marlboro plaintiffs alleged any current personal injury. They simply argued that they fear lung cancer based upon their long-term exposure and their statistically enhanced risk of developing the disease.

According to the Court of Appeals, fear is not enough to obtain relief. Leaving no doubt, the court eliminated the possibility of a medical monitoring class without proving injury:

A threat of future harm is insufficient to impose liability against a defendant in a tort context. The requirement that a plaintiff sustain physical harm before being able to recover in tort is a fundamental principal of our state's tort system. The physical harm requirement serves a number of important purposes: it defines the class of persons who actually possess a cause of action, provides a basis for the fact-finder to determine whether a litigant actually possesses a claim, and protects court dockets from being clogged with frivolous and unfounded claims.

Plaintiffs alleged nothing more than a fear of becoming ill based upon the enhanced risk they perceive.

In a thoughtful decision written by Judge Eugene F. Pigott, Jr., the court cited two policy reasons to support its important decision. First, the court feared that recognizing such a cause of action would open the floodgates for future litigation, thereby creating exposure for corporations. "The potential systemic effects of creating a new, full-blown tort law cause of action cannot be ignored," wrote the court. Dispensing with the physical injury requirement could permit "tens of millions" of potential plaintiffs to recover monetary costs, "effectively flooding the courts while concomitantly depleting the [corporation's]resources for those who have actually sustained damage." The court noted that it would be speculative, at best, whether currently asymptomatic plaintiffs would ever contact a disease. Allowing them to recover medical monitoring costs without first establishing physical injury would lead to "the inequitable diversion of money away from those who have actually sustained an injury as a result of the exposure."

Second, and perhaps most important, from a practical standpoint, a framework regarding how such a medical monitoring program would be implemented and administered does not currently exist. Courts generally lack "the technical expertise" necessary to effectively administer a program "heavily dependent on scientific disciplines such as medicine, chemistry, and environmental science." A contrary decision would have created an administrative and economic Pandora's box.

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The decision distinguishes New York from other states. Its significance for employers and corporate defendants is obvious: New York is often viewed as being hostile to business and placing onerous obligations on employers. This decision takes a big step toward reducing the unreasonable cost of doing business in New York.