

NEW MEXICO INJURY ATTORNEY BLOG

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Proof of Causation in Personal Injury Actions: "But For" Analysis Under New Mexico Law

In order to establish liability in a personal injury action, the plaintiff must show causation. In other words, the plaintiff must show that the actions of another party or person caused his or her injuries and damages. This seems like a relatively simple matter but it is not always real clear what caused a plaintiff's injuries. And without causation, there is no liability on the part of the defendant.

In *Wilcox v. Homestake Mining Company*, the 10th Circuit Court of Appeals addressed the requirement of causation under New Mexico law in the context of a toxic tort case. The basic facts involved the exposure of numerous individuals to radioactive and non-radioactive hazardous substances that were released from Homestake's uranium milling mining facility in Cibola County, New Mexico. Over the years following the exposure, these individuals developed a number of health problems including cancer, and some had died from their illnesses.

The District Court granted the defendant summary judgment for the failure of the plaintiffs to prove that the exposures caused their illnesses. The District Court ruled, and the 10th Circuit Court of Appeals agreed, that New Mexico law required a "but for" showing of causation. Essentially, this standard means that the plaintiffs must show that but for the exposure, they would not have developed their illnesses. The Court found that the plaintiffs had not met this standard.

The plaintiffs made a fairly compelling argument that the requirement to show but-for causation would prevent virtually all toxic tort claims since it is impossible to prove conclusively that the injuries would not have occurred but for the exposure. The Court in response stated that "but-for causation in this context, as in other contexts, does not require proof to an absolute certainty." The Court drew from medical negligence cases which requires proof of causation only to a "reasonable degree of medical probability." The Court stated that the same standard would apply in the toxic tort case.

The standard of "proof to a reasonable degree of medical probability" essentially applies across a broad spectrum of New Mexico personal injury cases. In addition to the problems in a toxic tort case where illness arises years after an incident, there is a related problem with preexisting injuries. Personal injury plaintiffs often have preexisting illnesses

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or injuries, such as preexisting back or neck problems in an auto accident. In fact, those with neck and back issues are in the majority for older individuals. The problem in auto accidents or any other personal injury case is identifying the additional injuries or in the alternative the aggravation of injuries or illnesses caused by the accident.

Preexisting injuries, as with injuries caused by factors other than the accident or negligence of another, are not compensable. However, the aggravation of existing injuries as well as additional injuries are recoverable. The challenge, particularly with some miserly insurance companies, is establishing the additional or aggravated injuries or damages. It is not always as straightforward as one might wish.

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