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ACOEM'S UPDATED POSITION ON THE "ADVERSE HUMAN HEALTH EFFECTS ASSOCIATED WITH MOLDS IN THE INDOOR ENVIRONMENT" – WHAT THE ATTORNEY SHOULD KNOW

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In defending litigants in mold exposure cases, one of the key tasks is educating your judge and jury at trial or, for purposes of resolving the case pre-trial, the plaintiff and his/her attorney, as to the true health risks associated with exposure to elevated concentrations to airborne molds in an indoor environment.

To that end, the American College of Occupational and Environmental Medicine has recently released an update to its Position Paper, originally published in 2002, on the "[Adverse Human Health Effects Associated with Molds in the Indoor Environment](#)." The ACOEM Paper reiterates some of the important medical agreements regarding the probable health effects associated with exposure to mold in an indoor environment.

Some of the key points made by the Paper are:

- "The most common form of hypersensitivity to molds is immediate type hypersensitivity or IgE-mediated [immunoglobulin E] 'allergy' to fungal proteins." Oftentimes plaintiffs will make generalized claims to ill health effects from alleged exposure to mold without understanding that without a "mold allergy," the chances are very small that any symptoms are in fact related to any mold exposure. The ACOEM paper sets out that only 10% of the population has "allergic antibodies to common inhalant molds" and the most common reactions are rhinitis or asthma. Sinusitis may occur secondarily due to obstruction.
- While there are certain respiratory illnesses associated with exposure to damp or water –damaged buildings, this can often be caused by exposure to dust mites or bacteria as well as mold.
- Allergic bronchopulmonary aspergillosis (ABPA) and allergic fungal sinusitis (AFS) are rare illnesses and there is no evidence to link these illnesses to indoor fungal exposure.
- The frequency and severity of internal infections due to mold is rare, usually limited to severely immunocompromised individuals.
- Topical infections are common, but rarely serious and can be readily treated.
- The Paper thoroughly addresses the issue of toxicity of certain molds and makes the following observations:
 - The presence of toxigenic molds (i.e, *stachybotus chartarum*) should not in and of itself be determinative of exposure. The actual presence of mycotoxins from those molds must be confirmed.

- Mycotoxins themselves are relatively large and not significantly volatile, do not evaporate and do not migrate through walls or floors. Thus, inhalation exposure requires generation of an aerosol of substrate, fungal fragments or spores.
 - Most reported episodes of toxicity come from eating moldy foods or agricultural exposure to silage or spoiled grain products.
 - "Sick building syndrome" is poorly defined and generally finds no specific cause.
 - To have an adverse effect, there needs to be (1) actual presence of mycotoxins, (2) a pathway of exposure, and (3) absorption of a toxic dose of a sufficiently short period of time.
 - What constitutes a toxic dose to humans is currently unknown.
 - In summary, the authors conclude that "years of intensive study have failed to establish exposure to *S. chartarum* in home, school, or office environments as a cause of adverse human health effects. Levels of exposure in the indoor environment, does-response data in animals, and dose-rate considerations suggest that delivery by the inhalation route of a toxic dose of mycotoxins in the indoor environment is **highly unlikely**, even for the most vulnerable subpopulations." [Emphasis added.]
- Only contemporaneous indoor and outdoor air sampling can assist in determining whether there is indoor mold growth and the extent of possible indoor exposure. Other testing methodologies (bulk, wipe and wall cavity) can address whether mold is present but do not address exposure.

The ACOEM Paper is a valuable tool in litigating indoor mold exposure cases and can be used to set "playing field" of what are and what are not medically recognized adverse health effects to molds in an indoor environment. Having your expert familiar with and embracing these points, while using the Paper's findings to limit the points of disagreement by the plaintiff's expert (or having the expert try to explain why he or she is right and ACOEM is wrong) can be powerful in defending your case.



John C. Hentschel's practice includes the defense for a wide variety of manufacturing and premise clients in toxic tort, product liability and other personal injury litigation.