Independent Cause of Action for Medical Monitoring Not in the "New York State of Mind"

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Courts across the country have long grappled with awarding medical monitoring as a remedy in toxic tort claims brought by asymptomatic plaintiffs who might develop a disease due to their alleged exposure. Despite the absence of a present physical injury, some courts have awarded medical monitoring expenses as part of consequential damages where plaintiffs meet their burden of proof under a traditional theory of liability, such as strict liability or negligence. Other courts have been less willing to award this remedy where plaintiffs allege no physical injuries and thus cannot sustain a prima facie case in tort.