



Toxic Torts and Product Liability: Holding Someone Accountable for Your Cancer

Cancer is a complex medical condition that can vary dramatically in its symptoms, treatment, and causes. After receiving a cancer diagnosis, many people try to figure out why this happened to them. Sometimes, this answer may be apparent—a smoking habit, for example, may help to explain a lung cancer diagnosis—but in other cases, it may be more difficult to determine why someone became ill. In general, the harder it is to determine the cause of a cancer diagnosis, the more difficult it will be to succeed on a toxic torts or product liability claim.

If you knowingly interacted with cancer causing chemicals, known as carcinogens, it will likely be more difficult for you to receive compensation for becoming ill. However, if you believe that someone else—such as a corporation, employer, or drug manufacturer—is responsible for your exposure to carcinogens, you may want to talk to an attorney about a lawsuit where you can potentially receive financial compensation.

What can I do if I want to hold someone responsible for my exposure to a carcinogen?

If you believe your cancer was caused by exposure to carcinogens without your consent, you may choose to file one of two types of lawsuits: a toxic tort lawsuit or a product liability lawsuit. Both of these are lawsuits where one party is claiming that the other party harmed them in some way. These lawsuits are filed to recover money, called damages, for harm suffered. Courts can award damages to pay for medical expenses, pain and suffering, and even as punishment for wrongdoing in extreme cases.

A toxic tort case typically arises when someone believes that they were exposed to a toxic chemical during their day-to-day life that caused them to become sick over a long period of time. For example, if an oil company was polluting a water supply near a town, and the town's residents became seriously ill because of that pollution, the residents might consider filing a toxic tort complaint against the oil company to receive compensation for the harm they suffered.

A product liability case, on the other hand, occurs when someone is injured in a way that they could not have anticipated or expected by something they purchased, or by something that was so dangerous it should never have been available for purchase. Product liability cases for cancer diagnoses most often arise when someone believes that a medication, or a product that the patient believed to be safe (such as talcum powder), caused their cancer.



If I sue someone for causing my cancer, how likely am I to win?

Generally, the success of a tort claim depends on three things: proving that a harm occurred, identifying who is responsible, and proving that a certain person or company caused the harm. In a lawsuit in which someone with cancer claims that something caused their cancer, it may be difficult to prove each of these things. The following is an example that may help illustrate the complex nature of these lawsuits.

If, for example, John is a 65-year-old man who lived next to a farm for 30 years, and one day John is diagnosed with cancer, he may believe that his disease was caused by exposure to pesticides sprayed on the farm next door. However, for a court to find the farm liable for injuring John, John and his lawyer may have to prove:

- that John's cancer was more likely caused by exposure to cancer-causing chemicals than by genes he inherited from his family;
- that the pesticides used by the farm next door can cause cancer when used in the way that they were used on the farm;
- that the carcinogens which caused John's cancer were the pesticides used by the farm, and not by a different chemical used by one of John's other neighbors.

Because of how complex these cases can be, it may be easier for lawyers to get positive outcomes for clients through class action lawsuits than by helping an individual client with their claim. A class action lawsuit is where a large group of people who were injured by the same person, product, or action sue the responsible party as a group. These large groups of people are called a "class," and can be more successful in showing evidence of someone's wrongdoing than would any one person by him or herself.

What kind of lawyer do I need to sue someone responsible for causing my cancer?

If you would like to file a product liability lawsuit, you should speak to a personal injury attorney. Personal injury attorneys represent individuals who have been physically or psychologically harmed by the negligence or wrongdoing of another person, corporation, or organization. If you believe that you may have a toxic tort case, you should speak with an experienced personal injury attorney, or an attorney who has handled cases with a similar toxic tort subject. For example, if you believe you have been harmed through exposure to tobacco, you should speak with an attorney who has experience with tobacco litigation.

If you would like to speak with an attorney about possible legal action, you should do so as soon as possible, as time limits for filing a lawsuit may exist. You can locate attorneys who specialize in these fields through your state, county, or city's lawyer referral service. A good attorney will be able to advise you about whether the statute of limitations (time limit for filing suit) for your claim has passed, whether you should join a class action lawsuit, and the financial realities of this type of legal action.

Can I receive monetary compensation for my cancer without suing anyone or joining a class action lawsuit?

The federal government and some states have recognized some specific situations where someone is likely to be exposed to carcinogens, and have taken steps to address these situations. There are established organizations to investigate unsafe conduct involving chemicals, and in some cases there are procedures and / or funds to compensate people who have developed cancer after being exposed to certain carcinogens. For example:

- **If you believe you were exposed to cancer causing chemicals such as asbestos or fertilizer while working**, the Occupational Safety and Health Act of 1970 (OSHA) gives employees the right to file a complaint and have their workplace inspected if they believe their employer is not complying with the law. Generally, to comply with OSHA regulations, employers must make sure the workplace is free of serious recognized hazards. If you believe that your employer is not acting in compliance with OSHA regulations, you may file a complaint online at https://www.osha.gov/workers/file_complaint.html. Your complaint will be investigated, and OSHA may act against your employer if they find evidence of violations. In some states, additional state laws may also provide you with other options to hold your employer responsible for unsafe working conditions.
- **If you are a veteran with cancer and were exposed to Agent Orange or other herbicides during your service**, you and your family members may be eligible for a variety of Veteran's Affairs (VA) benefits, including monetary compensation. For information about eligibility for these benefits, please see http://www.benefits.va.gov/compensation/claims-postservice-agent_orange.asp.
- **If the government tested nuclear weapons in an area where you lived, and you developed cancer after being exposed to radiation**, you may be eligible to file a claim under the Radiation Exposure Compensation Act (RECA) and receive a lump sum payment for your injury. For more information about eligibility for RECA compensation, please see <https://www.justice.gov/civil/common/reca>.

You may qualify for compensation through other programs and laws depending on your specific situation. For more information on this subject, you may consider speaking with an attorney or completing an online intake form with the CLRC at www.clrcintake.org.

If I was harmed by a side effect of a medication that I was not warned about ahead of time. How can I make sure this does not happen to someone else?

The U.S. Food and Drug Administration (FDA) oversees testing and approval of medications, medical devices, vaccines, and other health-related products. Under the FDA's rules, all medications must be labeled with information about how to use the drug safely and whether the drug has any potential side effects. Generally, if a side effect is listed on a drug's label or in materials that you were given when you received the medication, that is considered enough warning and you cannot hold a doctor, drug manufacturer, or other party liable if you experience that side effect. Most state's laws assume that if you were given a warning, you read and understood it.

However, when people experience problems with these medications or products that the FDA did not discover during its testing, the FDA wants to know about them. If you believe that you were harmed by a medication or other medical product in a way that was not described in warnings from a medical professional or materials you were given, you may file a complaint with the FDA at <https://www.fda.gov/safety/reportaproblem/>.

If my doctor prescribed me a medication or treatment that injured me, can I hold him or her accountable?

This depends on the type of harm that you believe you experienced, and the law in your state. If you believe that your doctor provided you with poor-quality care, such as prescribing you the wrong kind of medication or recommending that you complete a cancer treatment that was not appropriate for you, then you should consider filing a medical malpractice lawsuit or reporting your doctor to your state's medical board.

A medical malpractice lawsuit is different than a product liability lawsuit because a medical malpractice lawsuit alleges that a doctor violated standard medical procedures in treating your illness, whereas a product liability lawsuit alleges that a product that you used (such as medicine) was manufactured or designed in such a way that it would have been unsafe for anyone in your situation. The CLRC has created a handout about medical malpractice entitled "Complaints About Poor Quality Care" which provides a more in-depth look at options available for people who believe they have been harmed by medical malpractice. You can find this handout on our website.

Additional Resources

- For information about mesothelioma and other asbestos-related injuries, please contact the Mesothelioma Information Resource Group: <http://www.mirg.org/> or the Asbestos Disease Awareness Organization: <http://www.asbestosdiseaseawareness.org/>.
- For information about tobacco litigation and cancer, please visit: <http://www.phaionline.org/category/tobacco/> and www.tobacco.org.
- To file a complaint with the Environmental Protection Agency (EPA) about unsafe carcinogens in your area: www.epa.gov.
- For more resources about carcinogens and health, please visit www.cdc.gov.
- To view and join open class action cases, please see www.classaction.com or <https://www.consumer-action.org/lawsuits/by-status/open>.

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