

Environmental Law & Litigation

November 6, 2025

Chemical Exposure Alone Is Insufficient for Toxic Tort Standing in Colorado

By [Kegan A. Brown](#) and [Taylor R. West](#)

On October 30, the Colorado Court of Appeals affirmed the dismissal of a putative class action complaint seeking medical monitoring, holding that the representative plaintiff lacked standing because mere exposure to ethylene oxide (EtO) does not constitute a cognizable injury under Colorado law.¹

Background

Edward Smith Jr., as the named plaintiff of a putative class, brought a suit against defendants Terumo BCT Sterilization Services Inc. and Terumo BCT Inc. (collectively, Terumo) in connection with the defendants' use of EtO to sterilize medical equipment.² The plaintiff sought "'the cost of a program of diagnostic testing for the early detection of illnesses, disease processes or disease' to ensure that any illnesses caused by EtO exposure could be 'immediately identified and aggressively treated.'"³

The plaintiff asserted he suffered an injury in fact from exposure to EtO and the corresponding alleged increased risk of developing a disease.⁴ Importantly, the plaintiff "did not allege that he or any other member of the proposed class [had] suffered any adverse physical effects from EtO exposure."⁵ Terumo moved to dismiss the complaint.⁶

The Jefferson County District Court held that since the plaintiff and putative class were not alleging any "tangible adverse effects as a result of their chemical exposure," they had not suffered an actual injury and therefore lacked standing.⁷ The District Court thus dismissed the complaint.⁸

The plaintiff did not appeal the dismissal but filed a motion to amend the complaint.⁹ The District Court denied the motion to amend because it "did not 'address or cure the legal deficiencies'" and was "futile."¹⁰ The District Court found that while the amended complaint included allegations to bolster the plaintiff's assertions of EtO exposure, "the proposed amended complaint still failed to allege that [the plaintiff] or any other class member [had] been 'diagnosed with cancer or any other illness or disease.'"¹¹ Absent an allegation of "any manifestation of illness or disease" as a result of EtO exposure, the amended complaint still failed to allege an injury in fact to establish standing.¹² The plaintiff appealed.

Analysis

The Court of Appeals evaluated whether the District Court erred in denying the plaintiff's motion to amend the complaint on futility grounds.¹³ The court acknowledged that some states have held that allegations of exposure to a "toxic chemical," even absent an accompanying disease, can support a claim for medical monitoring.¹⁴ "In recent years, however, a trend has emerged as courts throughout the country have repeatedly held that a toxic tort claim cannot proceed in the absence of a present physical injury."¹⁵ The Court of Appeals held that the latter approach is "consistent with Colorado's longstanding rejection of tort claims based on the potential of future harm," and thus the lower court correctly denied the plaintiff's motion to amend the complaint.¹⁶

Finally, the Court of Appeals considered whether the plaintiff could satisfy the injury-in-fact requirement for standing by asserting that the present need for medical monitoring constituted a present economic injury.¹⁷ The court agreed with

the District Court that this argument “blurred the line between establishing injury and damages” and determined that a present physical injury still is required if the economic damages are predicated on a physical harm.¹⁸ As the proposed amended complaint did not allege a present physical injury, the District Court did not err.

Potential implications

The Court of Appeals’ decision confirms that in Colorado, plaintiffs alleging chemical exposure without a manifested physical injury lack standing to assert tort claims. This decision continues the trend away from permitting medical monitoring claims to move forward without a present physical injury.

For more information, please contact the authors of this client alert.

¹ Smith v. Terumo BCT, Inc., No. 24CA1393, 2025 Colo. App. LEXIS 1411 (Colo. App. 2025).

² *Id.* at *3.

³ *Id.* at *4 (internal citations omitted).

⁴ *Id.* at *2.

⁵ *Id.* at *4.

⁶ *Id.*

⁷ *Id.* at *2, *4.

⁸ *Id.* at *2.

⁹ *Id.*

¹⁰ *Id.* at *6 (internal citations omitted). The District Court also denied a motion by separate parties to intervene as plaintiffs under C.R.C.P. 24(a) or (b). *Id.* at *2.

¹¹ *Id.* at *15 (internal citations omitted).

¹² *Id.*

¹³ *Id.* at *12.

¹⁴ *Id.* at *17.

¹⁵ *Id.* at *18.

¹⁶ *Id.*

¹⁷ *Id.* at *20.

¹⁸ *Id.*

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

KEGAN A. BROWN

Partner

T: 212.419.5866

kbrown@lowenstein.com

TAYLOR R. WEST

Counsel

T: 212.204.8691

twest@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C

This Alert has been prepared by Lowenstein Sandler LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. Lowenstein Sandler assumes no responsibility to update the Alert based upon events subsequent to the date of its publication, such as new legislation, regulations and judicial decisions. You should consult with counsel to determine applicable legal requirements in a specific fact situation. Attorney Advertising.