

**MULTIPLE CHEMICAL SENSITIVITY SYNDROME
AS INADMISSABLE JUNK SCIENCE**

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Multiple Chemical Sensitivity Syndrome ("MCSS") is a catch all phrase that has gained attention in recent years and has been claimed in many personal injury law suits. Fortunately, under the Supreme Court's standards in Daubert v. Dow Chemical and Frye v. United States, the potential that expert testimony regarding MCSS will be deemed admissible at trial remains slight. Generally speaking, such claims should be dismissed as scientifically invalid under a Daubert analysis, and as not generally acceptable under a Frye analysis. Both standards allow Courts to avert the disastrous effects that judicial recognition of MCSS would have to insurers and employers alike. Judges apply scientific scrutiny (i.e., gatekeeping) to protect against the admission of junk science at trial.

What is or is not MCSS?

Multiple Chemical Sensitivity Syndrome (a/k/a, Idiopathic Environmental Intolerance, Ecological Illness, Multiple Environmental Sensitivities, Universal Allergy, Chemical Hypersensitivity Syndrome, Cerebral Allergy, Environmentally-Induced Illness, Total Environmental Allergy, the Twenty First Century Disorder, Chemical Aids) is a concept of hypersensitivity or disturbance of the immune system as the result of exposure to chemicals that subsequently weakens the immune system to future chemical exposure of any kind — even exposure to natural producing elements such as dust particles. Depending on which proponent of the disorder one listens to, future attacks of symptoms (that are completely subjective to the complainant) are caused either by a weakened immune system to chemical exposure, or by a heightened allergic reaction to chemicals in general.

Unfortunately for employers whose employees claim to have contracted the condition because of a work related exposure, elimination of the offending chemical from the employee's environment is purportedly a necessary treatment of the condition that prevents the sufferer from returning to their place of employment. Of even greater significance is the purported inability of an MCSS sufferer from exposure to any number of chemicals and natural producing agents because they allegedly trigger symptoms of the initial exposure that results in both isolation from the workplace altogether and even from comfortably remaining at home where chemical offenders most certainly co-exist. It is this aspect of the claimed disorder that creates a potential windfall in damages to litigants who seek judicial recognition of MCSS.

Claimed symptoms of the disorder may include anything from digestive or dermatological problems, to hearing and vision loss, back pain, depression, and dyslexia. MCSS has been diagnosed by medical practitioners as having caused conditions such as tongue cancer, pulmonary and heart disease, arterial sclerosis, hypoxemia and as being the controlling cause of such amorphous disorders (for which there is currently no known cause) as: Reactive Airway Dysfunction, Sick Building Syndrome, Chronic Fatigue Syndrome, Toxic Encephelopathy, Fibromyalgia, Fatigue Immune Dysfunction Syndrome. The environmental culprits of MCSS are claimed to include: perfume products, cigarette smoke, chemical and exhaust fumes, cleaning products, pesticides, adhesives, paints, copy machine toner, ink, utility gas, toiletries, cosmetics, deodorant, oil, nail polish, synthetic starch, road asphalt fumes, preservatives, chlorine, solvents, new carpets, carpet cleaners, other air pollution, formaldehyde, food, food additives, drugs, electromagnetic fields, mercury in dental fillings, and dust.

Aside from complete isolation from the environment where the initial environmental culprit is believed to lurk, other, and somewhat more desirable, treatments of the disorder may

include oxygen therapy, herbal remedies, saunas and special diets. Drug treatments are usually avoided due to their chemical nature. Proponents of MCSS have not yet established whether the immune system or the allergic component of the disorder at some point corrects itself so that environmental tolerance improves, but most litigants allege that the condition is permanent.

Published material on the subject abound in support of and in opposition to MCSS. However, the persuading and majority commentary on the subject characterizes MCSS as merely speculative. The threat of MCSS's heightened acceptance in the scientific and medical communities, as a reliable diagnosis with identifiable causes, is not significant now that the Supreme Court has rejected the former standard for admissibility of scientific expert testimony — general acceptance in the scientific community. The new standard for admissibility of scientific evidence requires that a plaintiff establish the reliability of its methodology rather than on the popularity of it. Nonetheless, proponents of MCSS are indeed dwarfed by peer skepticism. The Council on Scientific Affairs of the American Medical Association has concluded that there have been no well-controlled studies establishing a clear cause for MCSS, and the Council has further found that no scientific evidence supports the contention that MCSS causes other diseases or that diagnostic tests and treatment have any value. The American Academy of Allergy, Asthma and Immunology has concluded that MCSS does not refer to a clinically defined disease that was based upon accepted theories or mechanisms, and that there exists no validated clinical criteria for its diagnosis. Simply stated, the relationship between chemical exposure and purported symptoms remains unproven.

Most significantly, courts around the country continue to hold that expert testimony regarding MCSS is inadmissible, whether by using the former "general acceptance" standard still followed by some states under Frye, or by applying what has become known as the reliable and

relevant standard as set out in the Daubert decision, which is followed by all federal and many state courts.

Method or madness

Although the extent of the symptomology associated with MCSS may provide a potential windfall for plaintiffs, the expansive nature of the symptoms tends to actually convince the medical, scientific, and judicial communities that MCSS is not a scientifically valid diagnosis. Any symptom an MCSS sufferer *believes* is caused by MCSS is generally included within the definition of MCSS. Proponents of MCSS accept the subjective symptoms as part of the disease without any scientific verification of cause for the recurrence of symptoms. Similar to the fad disorder at or about the turn of the 19th century, autointoxication — thought to be caused by an over abundance of toxins in the environment with symptoms of general poor health — symptoms of MCSS are completely subjective. Proponents of MCSS concede this.

Some courts have precluded testimony regarding MCSS, but allow testimony that the plaintiff instead suffers from anxiety, phobias, and or hypochondria resulting from chemical exposure. This too supports the case against MCSS, where litigants concede that their symptomology is the result of the anxiety caused from an initial exposure. Studies show that 75% of MCSS sufferers meet the psychological criteria for at least one personality disorder.

Proponents of MCSS recognize that no valid methodology exists to prove an allergic reaction. Intolerance to low levels of chemicals in the environment cannot be scientifically traced to an initial exposure. It could instead result from exposure to an entirely different chemical. It is difficult to imagine a test will ever be created that can establish this and if the test will survive judicial scrutiny as reliable and relevant. For the time being, defense counsel and claims professionals should make every effort to strongly defend against these claims.