Drug & Device Law

The definitive source for intelligent commentary on the law that matters for drug and device cases

Medical Monitoring – Another 50-State Survey

By Bexis on April 15, 2009

We've been doing some research in anticipation of the upcoming ALI meeting at which the Principles of the Law of Aggregate Litigation **will be voted on** (we hope ALI members interested in class actions and the like will come out, debate the issues, and vote), and in the spirit of cross-fertilization, we thought we'd share it with our readers. The only question we have is the format. We were impressed with reader response we had to the **50-state survey** we did not too long ago on informal defense communication with treating physicians, so we've decided to present the medical monitoring issue in a similar fashion.

The questions before the house are what states have adopted medical monitoring, which have rejected it, and what quirks are there? Our research indicates that at present, the law is all over the lot. We count 13 jurisdictions that recognize medical monitoring, or where federal courts – in violation of what **we think** are proper Erie principles – have predicted that the jurisdiction would recognize medical monitoring in the absence of present injury. Some of these claims are more or less limited in scope, which we'll discuss.

Opposing them are the federal common law and 21 other jurisdictions that either do not recognize medical monitoring where the plaintiff isn't hurt, or where a federal court has made a prediction to that effect.

In the middle are four more states (including a couple of big ones) where different courts have reached different results on the question, and we can't say with certainty what the answer is.

The remaining jurisdictions, as far as we've been able to tell, simply haven't addressed medical monitoring as a separate cause of action where the plaintiff has no present injury.

As we warned the last time around, you get what you pay for, so don't even think about using us as the be all and end all on this (or any other) subject. If you do, please see **our disclaimer**. What we're doing here is the start, not the end, of relevant research.

Also, if you think we didn't get your state right, please let us know. Show us that we've missed something and we'll add it.

Federal Common Law

No way, no how. The Supreme Court has spoken on the issue, and medical monitoring without personal injury isn't a viable theory of liability in those areas (such as railroad law) governed by federal common law. Metro-North Commuter Railroad Co. v. Buckley, 521 U.S. 424, 441-44 (1997); see Norfolk & Western Railway. Co. v. Ayers, 538 U.S. 135, 156-57 (2003)

(reaffirming Metro-North in *dictum*); June v. Union Carbide Corp., 577 F.3d 1234, 1249-51 (10th Cir. 2009) (no medical monitoring with respect to nuclear radiation under Price-Anderson Act); In re Hanford Nuclear Reservation Litigation, 534 F.3d 986, 1009-10 (9th Cir. 2008) (same); Syms v. Olin Corp., 408 F.3d 95, 105 (2d Cir. 2005) (no medical monitoring as "response costs" under CERCLA). The federal common law doesn't apply to drugs or devices, except on really unusual facts, but the Supreme Court being the Supreme Court, it's pretty influential in the substantive policy debate, so we put it first.

Alabama

The Alabama Supreme Court has spoken, and Alabama does not include any independent claims for medical monitoring. Houston County Health Care Authority v. Williams, 961 So.2d 795, 811 (Ala. 2007); Hinton v. Monsanto Co., 813 So.2d 827, 830-31 (Ala. 2001).

Alaska

As far as we can tell, no Alaska court has ever ruled on medical monitoring as a separate cause of action.

Arizona

It's only an intermediate appellate court, and it's pretty old, but based on Burns v. Jaquays Mining Co., 752 P.2d 28, 33-34 (Ariz. App. 1987), review dismissed, 781 P.2d 1373 (Ariz. 1989), Arizona permits independent claims for medical monitoring, at least in a case asserting an environmental tort. Burns listed four elements: (1) the "significance and extent of exposure," (2) the "toxicity of [the substance], [and] the seriousness of the [harm] … for which the individuals are at risk," (3) the "relative increase" in risk "in those exposed," and (4) "monitor[ing] the effects of exposure. . .is reasonable and necessary." Id. at 33.

Arkansas

In an MDL class certification decision, the court ruled that Arkansas says no. In re Prempro, 230 F.R.D. 555, 569 (E.D. Ark. 2005).

California

The California Supreme Court has recognizes medical monitoring as a remedy "when liability is established under traditional tort theories of recovery." Potter v. Firestone Tire & Rubber Co., 863 P.2d 795, 822-23 (Cal. 1993). So medical monitoring in California doesn't appear to be a completely independent cause of action. The other elements are: (1) "significance and extent of the plaintiff's exposure"; (2) the substance's "relative toxicity"; (3) "the seriousness of the diseases for which plaintiff is at an increased risk"; (4) the relative increase in the plaintiff's chances of developing a disease as a result of the exposure" when compared to preexisting risk (both plaintiff's and background); and (5) "the clinical value of early detection and diagnosis." Id. at 863 P.2d at 823.

Colorado

A long time ago, a federal court predicted that Colorado would recognize an independent claim for medical monitoring for environmental torts. Cook v. Rockwell International Corp., 755 F. Supp. 1468, 1477 (D. Colo. 1991). The court listed four elements: (1) "significant[] expos[ure] to a proven hazardous substance through the tortious actions of defendant"; (2) "an increased risk of contracting a serious latent disease"; (3) "increased risk makes periodic diagnostic medical examinations

reasonably necessary"; and (4) "procedures exist which make the early detection and treatment of the disease possible and beneficial." Id. These elements were quoted from another case, so Cook isn't 100% clear that these are the Colorado elements, but they're the only ones given in the opinion. On a later appeal the Tenth Circuit avoided the issue. Building &; Construction Dept. v. Rockwell International Corp., 7 F.3d 1487, 1490 n.2 (10th Cir. 1993). That's it. As far as we know, in 18 years no other Colorado court has followed Cook as a matter of state law.

Connecticut

Connecticut allows injury-free medical monitoring only in workers compensation. Doe v. City of Stamford, 699 A.2d 52, 55 &; n.8 (Conn. 1997). Medical monitoring has not been recognized in other areas under Connecticut law. Bowerman v. United Illuminating, 1998 WL 910271, at *10 (Conn. Super. Dec. 15, 1998) (rejecting medical monitoring common law claim); cf. Martin v. Shell Oil Co., 180 F. Supp.2d 313, 323 (D. Conn. 2002) (commenting that issue is unresolved).

Delaware

The law in Delaware is confused. The Delaware Supreme Court refused to permit an asbestos-related medical monitoring claim in Mergenthaler v. Asbestos Corp., 480 A.2d 647, 651 (Del. 1984), but did not categorically shut the door. Accord In re Asbestos Litigation, 1994 WL 16799797 (Del. Super. Aug. 5, 1994). More recently a non-Delaware federal court predicted that Delaware would allow medical monitoring under an unusual set of facts – seemingly by estoppel – where a defendant had admitted that monitoring was appropriate. There was neither an underlying tort, nor were any elements of medical monitoring discussed. See Guinan v. A.I. duPont Hospital for Children, 597 F. Supp.2d 517, 536-40 (E.D. Pa. Feb. 6, 2009) (applying Delaware law); Hess v. A.I. Dupont Hospital for Children, 2009 WL 595602, at *12-13 (E.D. Pa. March 5, 2009) (applying Delaware law). We blogged about the problems with Guinan **here**.

District of Columbia

The very first court to permit medical monitoring absent actual injury was a federal "prediction" of District of Columbia law. Friends for All Children, Inc. v. Lockheed Aircraft Corp., 746 F.2d 816, 837-38 (D.C. Cir. 1984) (recognizing equitable remedy). Subsequently, the court in Witherspoon v. Philip Morris Inc., 964 F. Supp. 455, 467 (D.D.C. 1997), refused to extend medical monitoring to product liability actions.

Florida

Medical monitoring without present injury is recognized under Florida law as available in negligence, but not in strict liability. Petito v. A.H. Robins Co., 750 So.2d 103, 106-07 (Fla. App. 1999); Zehel-Miller v. Astrazenaca Pharmaceuticals, LP, 223 F.R.D. 659, 663-64 (M.D. Fla. 2004) (dismissing strict liability claim). The elements are: (1) exposure "greater than normal background levels"; (2) "to a proven hazardous substance"; (3) "caused by the defendant's negligence"; (4) the "plaintiff has a significantly increased risk of contracting a serious latent disease"; (5) "a monitoring procedure exists that makes the early detection of the disease possible"; (6) that monitoring "is different from that normally recommended in the absence of the exposure"; and (7) the monitoring "is reasonably necessary according to contemporary scientific principles." Petito, 750 So.2d at 106-07.

Georgia

The law in Georgia is limited to a federal court's prediction that Georgia law would not allow independent medical monitoring claims. Parker v. Brush Wellman, Inc., 377 F. Supp.2d 1290, 1302 (N.D. Ga. 2005), aff'd in pertinent part,

230 Fed. Appx. 878, 883 (11th Cir. 2007).

Guam

A federal court predicted that Guam would recognize an independent claim for medical monitoring. Abuan v. General Electric Co., 3 F.3d 329, 334 (9th Cir. 1993). There have been no further developments in the ensuing decade and a half.

Hawaii

Hawaii is like Alaska. To our knowledge, no Hawaii court has ever ruled on medical monitoring as a separate cause of action.

Idaho

Idaho's even more like Alaska. There's no medical monitoring precedent either way in Idaho either.

Illinois

Courts in Illinois are all over the lot, and the state's supreme court has not yet resolved the issue. Several federal district court opinions (not all in Illinois) have concluded that Illinois would recognize independent claims for medical monitoring. Stella v. LVMH Perfumes & Cosmetics USA, Inc., 564 F. Supp.2d 833, 836 (N.D. Ill. 2008); Gates v. Rohm & Haas Co., 2007 WL 2155665, at *4-5 (E.D. Pa. July 26, 2007) (applying Illinois law); Muniz v. Rexnord Corp., 2006 WL 1519571, at *6-7 (N.D. Ill. May 26, 2006); Carey v. Kerr-McGee Chemical Corp., 999 F. Supp. 1109, 1119 (N.D. Ill. 1998). State courts, on the other hand, have been quite a bit more hesitant. See Jensen v. Bayer AG, 862 N.E.2d 1091, 1100-1101 (Ill. App. 2007) (medical monitoring claims "lack merit"); Lewis v. Lead Industries Ass'n, Inc., 793 N.E.2d 869, 877 (Ill. App. 2003) (declining to permit a medical monitoring remedy as an independent equitable claim); Campbell v. A.C. Equipment Services Corp., 610 N.E.2d 745, 748 (Ill. App. 1993) (cautioning that this decision "should not be construed as recognizing" medical monitoring); see also Guillory v. American Tobacco Co., 2001 WL 290603, at *7 (N.D. Ill. 2001) (rejecting medical monitoring).

Indiana

Indiana law is also split. In Hunt v. American Wood Preservers Institute, 2002 WL 34447541, at *1 (S.D. Ind. July 31, 2002), and Johnson v. Abbott Laboratories, 2004 WL 3245947 (Ind. Cir. Dec. 31, 2004), the courts rejected independent medical monitoring claims. On the other hand, in Allgood v. General Motors Corp., 2005 WL 2218371, at *6-8 (S.D. Ind. Sept. 12, 2005), the court denied a motion to dismiss the same kind of claim. Needless to say, there's been no definitive resolution in the state.

Iowa

There's more law on gay marriage in Iowa than on medical monitoring. No Iowa court has recognized the latter (or rejected it).

Kansas

A federal court predicted that Kansas would not recognize an independent claim for medical monitoring in a product liability case. Burton v R.J. Reynolds Tobacco Co., 884 F. Supp. 1515, 1523 (D. Kan. 1995).

Kentucky

The Kentucky Supreme Court has rejected independent claims for medical monitoring absent present personal injury. Wood v. Wyeth-Ayerst Labs, 82 S.W.3d 849, 859 (Ky. 2002).

Louisiana

After the Louisiana Supreme Court recognized no-injury medical monitoring claims in Bourgeois v. A.P. Green Industries, Inc., 716 So.2d 355, 360 (La. 1998), the legislature stepped in and passed a statute that prohibits such claims – requiring that damages be "directly related to a manifest physical or mental injury or disease." La. Civ. Code Ann. art. 2315 (1998).

Maine

No Maine court, to our knowledge, has ever decided whether or not independent medical monitoring claims are actionable in the absence of present injury.

Maryland

The Maryland Court of Appeals, the state's highest court, affirmatively decided not to decide whether to recognize medical monitoring claims without actual injury in Philip Morris Inc. v. Angeletti, 752 A.2d 200, 251 (Md. 2000) (declining to determine whether a "novel tort theory" of medical monitoring would be adopted in Maryland). Since Angeletti no other Maryland court has boldly gone where Angeletti declined to go.

Massachusetts

Although there's some linguistic quibbling about "physiological" injuries, Massachussetts effectively adopted medical monitoring in Donovan v. Philip Morris USA, Inc., 914 N.E.2d 891 (Mass. 2009).

Michigan

Michigan is the opposite of Massachusetts. In Henry v. Dow Chemical Co., 701 N.W.2d 684, 686 (Mich. 2005), the Michigan Supreme Court rejected any independent, no-injury claim for medical monitoring.

Minnesota

The Supreme Court hasn't ruled, but several other courts have held that Minnesota law does not permit independent claims for medical monitoring without present injury. Bryson v. Pillsbury Co., 573 N.W.2d 718, 721 (Minn. App. 1998); Thompson v. American Tobacco Co., 189 F.R.D. 544, 551-52 (D. Minn. 1999), Paulson v. 3M Co., 2009 WL 229667 (Minn. Dist. Jan. 16, 2009); Palmer v. 3M Co., 2005 WL 5891911 (Minn. Dist. April 26, 2005).

Mississippi

Mississippi also says "no". The state's supreme court determined that independent claims for medical monitoring would not be permitted in Paz v. Brush Engineered Materials, Inc., 949 So.2d 1, 3-6, 9 (Miss. 2007).

Missouri

Missouri says "yes" – at least sometimes. In Meyer v. Fluor Corp., 220 S.W.3d 712, 717-18 (Mo. 2007), the supreme court permitted non-injury medical monitoring claims in environmental actions. There's no specific list of elements, but the court allowed the claim where "the plaintiff has a significantly increased risk of contracting a particular disease relative to what would be the case in the absence of exposure," and if "to a reasonable degree of medical certainty, [it is] necessary in order to diagnose properly the warning signs of disease." Id. at 718. Shortly thereafter, in Ratliff v. Mentor Corp., 569 F. Supp.2d 926, 929 (W.D. Mo. 2008), a federal court determined that similar medical monitoring claims were not allowed in product liability actions.

Montana

There's nothing we could find addressing no-injury medical monitoring in Montana. However, we saw a couple of law review articles citing an unavailable trial court slip opinion, Lamping v. American Home Products, Inc., No. DV-97-85786 (Mont. 4th Dist. Feb. 2, 2000), as permitting a claim. We haven't called any state solely on the basis of an unpublished trial court opinion – let alone one that we can't even review – so under the "thin gruel" rule, we're leaving Montana in the "undecided" category.

Nebraska

Several federal courts have predicted that Nebraska wouldn't permit independent claims for medical monitoring absent present injury. Trimble v. Asarco, Inc., 232 F.3d 946, 962-63 (8th Cir. 2000) (applying Nebraska law) (later abrogated on unrelated procedural grounds); Schwan v. Cargill, Inc., 2007 WL 4570421, at *1-2 (D. Neb. Dec. 21, 2007); Avila v. CNH America LLC, 2007 WL 2688613, at *1-2 (D. Neb. Sept. 10, 2007). The state courts are silent.

Nevada

The Nevada Supreme Court has rejected independent claims for medical monitoring in the absence of present injury. Badillo v. American Brands, Inc., 16 P.3d 435, 438-39 (Nev. 2001).

New Hampshire

There is no law we could find either way on independent, no-injury claims for medical monitoring in New Hampshire.

New Jersey

New Jersey was one of the first states to recognize a no-injury medical monitoring cause of action in an environmental actions, where:

> **"the proofs demonstrate, through reliable expert testimony predicated upon the significance and extent of exposure to chemicals, the toxicity of the chemicals, the seriousness of the diseases for which individuals are at risk, the relative increase in the chance of onset of disease in those exposed, and the value of early diagnosis, that such surveillance to monitor the effect of exposure to toxic chemicals is reasonable and necessary.**

Ayers v. Township of Jackson, 525 A.2d 287, 312 (N.J. 1987). It still does. E.g., Mauro v. Raymark Industries, Inc., 561 A.2d 257, 264 (N.J. 1989) (asbestos product liability); (environmental). New Jersey also has a product liability statute that

requires present injury. Thus medical monitoring is not available in product liability actions that don't also qualify as environmental torts. Sinclair v. Merck & Co., 948 A.2d 587, 595 (N.J. 2008).

New Mexico

We couldn't find any law, pro or con, concerning independent, no-injury medical monitoring claims in New Mexico.

New York

New York's highest court has never addressed no-injury medical monitoring, and it shows. The lower courts have split into three warring camps. One group generally recognizes independent medical monitoring claims without any injury requirement. Allen v. General Electric Co., 821 N.Y.S.2d 692, 694-95 (N.Y. A.D. 2006); Askey v. Occidental Chemical Corp., 477 N.Y.S.2d 242, 247 (N.Y. A.D. 1984) (as a remedy only); Acevedo v. Consolidated Edison Co., 572 N.Y.S.2d 1015, 1018 (N.Y. Sup. 1991); Gerardi v. Nuclear Utility Services, Inc., 566 N.Y.S.2d 1002, 1004 (N.Y. Sup. 1991); Abbatiello v. Monsanto Co., 522 F. Supp.2d 524, 538-39 (S.D.N.Y. 2007); Patton v. General Signal Corp., 984 F. Supp. 666, 674 (W.D.N.Y. 1997); Gibbs v. E.I. duPont de Nemours & Co., 876 F. Supp. 475, 478-790 (W.D.N.Y. 1995). Another body of law imposes a test that requires a "clinically-demonstrable presence of a toxin in the plaintiff's body, or some other indication of a toxin-induced disease." DiStefano v. Nabsico, Inc., 767 N.Y.S.2d 891, 891 (N.Y. A.D. 2003); Major v. Astrazeneca, Inc., 2006 WL 2640622, at *7 (N.D.N.Y. Sept. 13, 2006). Finally, another appellate New York court simply rejected an independent claim for medical monitoring. Abusio v. Consolidated Edison Co., 656 N.Y.S.2d 371, 372 (N.Y. A.D. 1997).

North Carolina

An appellate court in North Carolina refused to recognize an independent medical monitoring claim in an environmental contamination case, because that was "a task within the purview of the legislature and not the courts." Curl v. American Multimedia, Inc., 654 S.E.2d 76, 81 (N.C. App. 2007); accord Carroll v. Litton Systems, Inc., 1990 WL 312969, at *51 (W.D.N.C. Oct. 29, 1990).

North Dakota

A federal court predicted that North Dakota would not recognize independent no-injury claims for medical monitoring. Mehl v. Canadian Pacific Railway Ltd., 227 F.R.D. 505, 518 (D.N.D. 2005).

Ohio

There's surprisingly little law for such a big state. We know of one federal court predicting that Ohio law would recognize an independent claim for medical monitoring, but that was a while ago. Day v. NLO, Inc., 851 F. Supp. 869, 880-81 (S.D. Ohio 1994). Fifteen years later, no Ohio court has since squarely faced the issue.

Oklahoma

Stop the presses! A federal district court has just ruled that Oklahoma would not recognize medical monitoring because of the state's present injury requirement. Cole v. ASARCO, Inc., 2009 256 F.R.D. 690, 695 (N.D. Okla. 2009).

Oregon

Of all the states whose supreme courts refuse to recognize independent claims for medical monitoring, Oregon is the most recent. Lowe v. Philip Morris USA Inc., 183 P.3d 181, 186-87 (Or. 2008).

Pennsylvania

Pennsylvania allows independent claims for medical monitoring in negligence, but not strict liability. Redland Soccer Club v. Deartment of the Army, 696 A.2d 137, 145 (Pa. 1997). The elements are: (1) exposure to "greater than normal background levels"; (2) the substance is "proven hazardous"; (3) exposure "caused by the defendant's negligence"; (4) exposure caused "a significantly increased risk of contracting a serious latent disease"; (5) "a monitoring procedure exists that makes the early detection of the disease possible"; (6) the monitoring "is different from that normally recommended in the absence of the exposure"; and (7) the monitoring "is reasonably necessary according to contemporary scientific principles." Id. at 145-46. Other Pennsylvania courts have held that Pennsylvania law does not permit medical monitoring claims in strict liability. Brown v. Dickinson, 2000 WL 33342381, at *1 (Pa. C.P. March 9, 2000); Barnes v. American Tobacco Co., 989 F. Supp. 661, 664 (E.D. Pa. 1997); (both requiring a "negligent" act); see also In re Orthopedic Bone Screw Products Liability Litigation, 1995 WL 273597, at *9-10 (E.D. Pa. Feb. 22, 1995) (finding medical monitoring inappropriate in a product liability action not involving exposure to a toxic substance).

Puerto Rico

Nothing.

Rhode Island

A Rhode Island trial court has rejected medical monitoring claims by uninjured plaintiffs. Miranda v. DaCruz, 2009 WL 3515196 (R.I. Super. Oct. 26, 2009).

South Carolina

Not much law. One federal district court has predicted that South Carolina law would refuse to recognize independent claims for medical monitoring. Rosmer v. Pfizer, Inc., 2001 WL 34010613, at *5 (D.S.C. March 30, 2001).

South Dakota

Even less law. There's no South Dakota precedent one way or the other concerning no-injury medical monitoring. No case applying South Dakota law has ever mentioned this type of cause of action.

Tennessee

Tennessee state courts haven't addressed medical monitoring. Two federal courts have predicted that Tennessee law would not recognize an independent claim for medical monitoring. Bostick v. St. Jude Medical, Inc., 2004 WL 3313614, at *14 (W.D. Tenn. Aug. 17, 2004); Jones v. Brush Wellman, Inc., 2000 WL 33727733, at *8 (N.D. Ohio 2000) (applying Tennessee law). In Sutton v. St. Jude Medical S.C., Inc., 419 F.3d 568, 575 n.8 (6th Cir. 2005), the court dropped a footnote that Tennessee medical monitoring law was "murky" but some precedent (which doesn't mention medical monitoring) "at least suggest[ed]" that such claims might be allowed. We don't think so, because the Tennessee Supreme Court unanimously reaffirmed the present injury requirement after the cases cited in the Sutton footnote. Carroll v. Sisters of Saint Francis Health Services, Inc., 868 S.W.2d 585, 593-94 (Tenn. 1993).

Texas

Like Ohio, surprisingly little law for a big state. There's one pretty recent federal district court decision predicting that Texas would not recognize an independent, no-injury claim for medical monitoring. Norwood v. Raytheon Co., 414 F. Supp.2d 659, 664-68 (W.D. Tex. 2006).

Utah

The Utah Supreme Court recognizes independent claims for no-injury medical monitoring in negligence. Hansen v. Mountain Fuel Supply Co., 858 P.2d 970, 978-80 (Utah 1993). The elements are: (1) "exposure"; (2) to a "toxic substance;" (3) that was "caused by the defendant's negligence"; (4) and results in "increased risk"; (5) of "serious disease, illness, or injury"; (6) where "a medical test for early detection exists"; (7) "early detection is beneficial" in that "a treatment exists that can alter the course of the illness"; and (8) monitoring "has been prescribed by a qualified physician according to contemporary scientific principles." Id. Utah currently holds the record for essential elements with eight.

Vermont

Almost twenty years ago, a federal court predicted that Vermont law would recognize an independent, no-injury claim for medical monitoring. Stead v. F.E. Myers Co., 785 F. Supp. 56, 57 (D. Vt. 1990). That's all we know.

Virginia

A federal court of appeals held quite a while ago that Virginia would not recognize an independent claim for medical monitoring. Ball v. Joy Technologies, Inc., 958 F.2d 36 (4th Cir. 1991) (applying Virginia law). So far it hasn't.

Virgin Islands

Virgin Islands law doesn't recognize an independent claim for medical monitoring. Louis v. Caneel Bay, Inc., 2008 WL 4372941, at *5-6 (V.I. Super. July 21, 2008); Purjet v. Hess Oil Virgin Islands Corp., 22 V.I. 147, 153-54, (D.V.I. Jan. 8, 1986).

Washington

A few years back, a federal district court predicted that Washington would not allow independent claims for medical monitoring. Duncan v. Northwest Airlines, Inc., 203 F.R.D. 601, 608-09 (W.D. Wash. 2001).

West Virginia

The West Virginia Supreme Court has recognized independent claims for medical monitoring, not limited to negligence. In re West Virginia Rezulin Litigation, 585 S.E.2d 52, 72-73 (W.Va. 2003); Bower v. Westinghouse Electric Co., 522 S.E.2d 424, 427 (1999). The elements are: (1) plaintiff has been "significantly exposed" "relative to the general population"; (2) to a "proven hazardous substance"; (3) by reason of "tortious conduct" (not just negligence) by the defendant; (4) which exposure has created "an increased risk of contracting a serious latent disease"; (5) which "makes it reasonably necessary for the plaintiff to undergo periodic diagnostic medical examinations different from what would be prescribed in the absence of the exposure"; and (6) monitoring "exist[s] that make the early detection of a disease possible." Bower, 522 S.E.2d at 426 (syllabus at 3).

Wisconsin

There's no Wisconsin law on medical monitoring that we've been able to find.

Wyoming

Ditto.

To sum up:
Jurisdictions allowing no-injury medical monitoring claims: AZ, CA, CO, DC, FL, GM, MA, MO, NJ, OH, PA, UT, VT, WV.

Jurisdictions not allowing no-injury medical monitoring claims: Federal, AL, AR, CT, GA, KS, KY, LA, MI, MN, MS, NE, NV, NC, ND, OK, OR, RI, SC, TN, TX, VA, VI, WA.

Jurisdictions with no law on no-injury medical monitoring claims: AK, HI, ID, IA, ME, MD, MT, NH, NM, PR, SD, WI, WY.

Jurisdictions with divided law on no-injury medical monitoring claims: DE, IL, IN, NY.
