



## And The Defense Wins

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### John G. Mitchell and Lauren Frederick



DRI members [John G. Mitchell](#) and [Lauren Frederick](#) of **Secrest Wardle's** Farmington Hills, Michigan, office recently obtained a defense verdict after a 10-day trial involving a unique toxic tort matter pending in the Midland County Circuit Court. After decisions on motions in limine and motions for directed verdict, the 10-count complaint was reduced to claims of negligence and breach of contract for consideration by the jury.

This trial is believed to be a first-of-its-kind in Michigan and involved plaintiffs' claim that they had suffered injuries subsequent to a fire restoration contractor's use of an ozone-generating machine to remove smoke odors from their home. In addition to various claims of defective workmanship and damage to property caused by the ozone generator, plaintiffs' primary claim was for significant and permanent respiratory injuries resulting from the generated ozone.

While there was no doubt of some level of exposure, the substantive and technical issue turned on whether the plaintiffs could present credible proof that an acute ozone exposure could cause permanent injuries, as claimed by the plaintiffs. Dr. Eckardt Johanning, expert for the plaintiffs, specifically opined that he believed to a reasonable degree of medical certainty that there is an association between acute exposure and chronic problems. Defense experts, Dr. John Bernick and certified industrial hygienist Del Malzahn, testified to the contrary.

The jurors found no negligence and no breach of contract, including any breach of the standards applicable to a fire restoration contractor's use of an ozone generator. Post-trial discussions with jurors affirmed they did not accept the plaintiffs' causation argument.

Mr. Mitchell previously defended a similar case pending in the Washtenaw County Circuit Court that was resolved prior to trial by way of the court's favorable determination of causation issues subsequent to a *Daubert* hearing.

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