

### **Excerpt from *Sullivan v. San Gobain***

The choice between permitting and excluding a medical monitoring remedy for potential future illness is a choice between competing values. The jurisdictions which do not permit the remedy do so on the basis of concerns about unforeseen economic consequences to the defendant. The jurisdictions which allow the remedy value the potential saving of lives which may be achieved through early detection and treatment. The cases lie along a continuum from the smokers' cases in which medical monitoring is consistently denied —*see*, for example, *Lowe v. Philip Morris USA, Inc.*, [344 Or. 403, 183 P.3d 181](#) (2008) —to cases like *Save the Children* and *Sadler*, in which victims of a catastrophic accident or negligent health care seek follow-up monitoring for potential illness. This case falls much closer to the cases in which medical monitoring has been permitted by the highest courts in other states because of the presence of an objective test for exposure and the relatively small, defined class of people who tested positive for PFOA after consuming water within the affected area. For these reasons, the court anticipates that this is the type of case in which Vermont decisional law will follow cases permitting proof of the elements of a medical monitoring remedy. *Sullivan v. San Gobain* (D. Vt Dec. 27, 2019)