

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

WENDY J. PAULUK, *et al.*,  
  
Plaintiffs,  
  
vs.  
  
CLARK COUNTY HEALTH DISTRICT,  
*et al.*,  
  
Defendants.

2:07-CV-01681-PMP-VCF

**ORDER**

This case arises from the July 17, 2007 death of Daniel Pauluk, which was allegedly caused by toxic mold at his government work place maintained by Defendant Clark County Health District. The action was originally filed in state court but was removed to this Court on December 17, 2007. On June 30, 2008, this Court entered an Order (Doc. #17) granting in part and denying in part Defendants' motion to dismiss. A Discovery Plan and Scheduling Order was approved by the Court on July 14, 2008 (Doc. #21), and extensive discovery was thereafter conducted and litigated by the parties over the ensuing three years.

///

1 On April 7, 2011, the Court entered an Order (Doc. #74) granting Plaintiffs'  
2 Motion to Stay (Doc. #73) based on Plaintiff Wendy J. Pauluk's ill health. The period of  
3 stay was effectively lifted by October 22, 2012 (See Doc. #109 & #110).

4 On August 15, 2013, Defendants filed a Motion for Summary Judgment (Doc.  
5 #122) which was accompanied by more than 1,000 pages of exhibits. Defendants' Motion  
6 provoked a Response from Plaintiffs (Doc. #131) which similarly was supported by more  
7 than 1,000 pages of exhibits. The parties completed briefing on Defendants' motion for  
8 summary judgement with the filing of Defendants' Reply Memorandum (Doc. #165) on  
9 December 5, 2013.

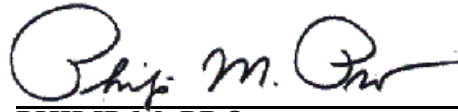
10 The Court will grant Defendants' Motion as to Plaintiffs' negligent supervision  
11 and training claim because Defendants are entitled to discretionary immunity with respect to  
12 this claim. See Neal-Lomax v. Las Vegas Metro. Police Dep't, 574 F. Supp. 2d 1170, 1192  
13 (D. Nev. 2008). However, after thorough review of the record in this case, the Court finds  
14 there remain genuine issues of material fact with regard to Plaintiffs' remaining claims  
15 which survived this Court's Order (Doc. #17) entered June 30, 2008 on Defendants' Motion  
16 to Dismiss. Additionally, as to Defendants' argument that Plaintiffs' claims are barred by  
17 the Nevada Industrial Insurance Act and the Nevada Occupational Disease Act, Defendants  
18 fail to address how Daniel Pauluk's alleged exposure to and death from toxic mold qualifies  
19 as an occupational disease as defined by the statute and relevant case law. See Nev. Rev.  
20 Stat. § 617.440; Palmer v. Del Webb's High Sierra, 838 P.2d 435, 436 (Nev. 1992). This  
21 very old case needs to be set for trial forthwith.

22 **IT IS THEREFORE ORDERED** that Defendants' Motion for Summary  
23 Judgment (Doc. #122) is **GRANTED** in part and **DENIED** in part. The Motion is granted  
24 as to Plaintiffs' negligent supervision and training claim. The Motion is denied in all other  
25 respects.

26 ///

1           **IT IS FURTHER ORDERED** that counsel for the parties shall forthwith meet  
2 and confer and shall not later than January 23, 2014, file a Joint Pretrial Order following  
3 which this Court will schedule this matter for both Settlement Conference before a  
4 Magistrate Judge, and trial.

5  
6 DATED: December 9, 2013.

7  
8 

9 PHILIP M. PRO  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26