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Court-ordered Genetic Testing: The Defendant’s Right to Examine the Plaintiff’s Genome? – *Sara Golru*

This article provides an original analysis of the small but growing number of Australian and United States personal injury cases where defendants have sought to compel genetic testing of plaintiffs in order to identify potential alternative causes of their injury. It finds that, despite the concerns of some scholars, courts continue to show a willingness to order genetic testing on the basis that possible benefits of the test results outweigh any risks to the plaintiff’s privacy and autonomy. It concludes that genetic testing should usually be ordered so long as the test is directed towards causation of the plaintiff’s injury and the defendant has identified a sufficient prospect that the findings of the proposed testing may reveal an underlying genetic trait or condition as an alternative cause. This is not to suggest that this evidence should be determinative of causation, this article simply asserts that genetic evidence should be collected in the form of court-ordered genetic testing – it will be for the trial court to determine what weight to give to that evidence and what conclusions can actually be drawn from the evidence. 171

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