

Greene County

The Democrat

Wednesday April 6, 2005 Vol.114, No. 14

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Serving West Alabama Like No Other Community Newspaper

Toxic Substances and Racial Injustices

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By Robert Leslie Palmer

The laws of 49 states and the District of Columbia provide open access to the courts for "toxic tort" victims, people that have developed various cancers and other dreadful diseases as a consequence of exposure to deadly chemicals. In sharp contrast, Alabama has decided that toxic tort victims don't deserve any opportunity to present their cases in court.

This injustice has been perpetrated by our own Supreme Court, which has decided that the statute of limitations in a toxic tort case should commence when the victim is exposed to the toxic substance, even if the victim does not yet have any disease. And because it generally takes 20, 30, or even 40 years before exposure may result in disease, the two-year statute of limitations expires and the victim's case is barred long before he or she is ever diagnosed with a disease. But the Alabama Supreme Court did not stop there – it also ruled that a toxic tort victim must be sick before he or she can bring a case, thereby effectively giving absolute to the industries responsible for maiming and killing thousands every year, for it is estimated that every single year more than 24,000 Alabamians are diagnosed with cancer and approximately 10,000 Alabamians die as a result of

cancer. Many of these cancer cases are directly attributable to exposure to toxic substances.

How – and perhaps more significantly, why – did the Alabama Supreme Court render such manifestly unjust decisions? The answer is as old as Alabama itself. Our law often benefits the wealthiest and most powerful members of society at the expense of the most vulnerable.

Alabama ranks fourth in the nation for the production of toxic wastes and 13th for total toxic releases. Significantly, plants that release toxic substances are more likely to be located in or near minority neighborhoods and minorities in the workplace are often given the jobs with the greatest risk of exposure to toxic substances. Thus, minorities constitute a disproportionate number of toxic tort victims, and the injustice resulting from existing Alabama law is therefore peculiarly consistent with Alabama's tradition and history of denying due process to minorities.

In contrast, the industries that produce and release toxic wastes are populated by some of the wealthiest and most powerful corporations in Alabama. These same corporations, which have built their wealth on the graves of the weakest and most vulnerable citizens of Alabama, exercise tremendous influence in state

politics and have absolutely no interest in being held accountable for what they have done.

For those readers who by now are rolling their eyes and declaring this writer a hopeless cynic, I invite you to consider yet another twist. Alabama courts remain open to toxic tort claims that affect the wealthy and powerful, for the Alabama Supreme Court has declined to apply the same rules to wealthy landowners that it applies to the poor victims afflicted by disease. Let's assume that XYZ Chemical Company dumped cancer-causing chemicals into a creek from 1960 to 1990, and then shut its doors. Assume further that those chemicals contaminated the surrounding groundwater and also made its way into a beautiful lake resort. When the unfortunate individuals that lived near the XYZ plant and were exposed to the harmful chemicals for 30 years, from 1960 to 1990, are diagnosed with cancer in 2005, their cases are already time-barred under Alabama law. In contrast, based on a 2001 ruling of the Alabama Supreme Court, the owners of valuable lakeshore property may bring their cases within two years after learning, through a 2005 fish advisory, that chemicals from the XYZ plant have contaminated the lake.

There are, therefore, two distinct rules – one for wealthy landowners

whose property values have been affected by toxic substances, and quite another for the poorer victims that have been maimed and killed by exposure to the same toxic substances.

The citizens of Alabama, black and white, rich and poor, who believe that every person is of equal worth should stand up and demand that this terrible injustice be terminated now. Fortunately, legislation intended to do that is now being considered by the Alabama legislature. Concerned citizens should urge their legislators to pass the long-needed legislation, and they can do just that by signing the petition at the Alabama Legal Reform Foundation's website, www.AlabamaLegalReform.org.

You can be certain that the wealthy and powerful corporations responsible for so much death and disease will make their opposition to such reform made known to the legislature. Isn't your voice just as important?

Robert Leslie Palmer is a Birmingham attorney and President of the Alabama Legal Reform Foundation, a non-profit corporation spearheading the effort to reform the statute of limitations in toxic tort cases. You may contact him by e-mail to Bob@AlabamaLegalReform.org.