

Open courthouse doors for victims of toxic tort

By ROBERT LESLIE PALMER

“Alabama is telling its citizens we don’t think you should be able to recover.” These words were spoken not in Birmingham, or Montgomery, or Mobile, but in Austin, Texas, in 1997 testimony by a Texas law professor before the Texas Senate, which was then considering a law that ultimately closed Texas courthouses to Alabama toxic tort victims, people who have developed cancer or other serious illnesses as a consequence of exposure to dangerous chemicals.

The Texas law was enacted because thousands of Alabamians were filing cases in Texas courts. Alabama ranks fourth in the nation for the production of toxic wastes and 13th for total toxic releases. It is estimated that in 2004, more than 24,000 Alabamians were diagnosed with cancer

and 10,000 Alabamians died as a result of cancer. Many of these cancer cases are directly attributable to exposure to toxic substances. The Texas law professor’s statement acknowledged the harsh reality that Alabama has locked its own courthouse doors to these Alabamians with toxic tort claims.

How did it come to pass that Alabama citizens were forced to seek justice hundreds of miles away in another state?

The source of this injustice is our own Supreme Court and its perverse interpretation of the applicable statute of limitations, an interpretation by which the court deems toxic tort claims as having lapsed before they have even manifested themselves. In the leading case, decided in 1979, the court ruled that a case filed on behalf of a man diagnosed with radiation sickness was not timely filed.

The court reasoned that the victim should have filed his case within one year after his last exposure to the harmful radiation in 1957, even though he was not diagnosed with any illness for another 20 years. Under this bizarre reasoning, a terrorist who buries a time bomb could not be held responsible for any resulting deaths if the explosion and deaths occurred more than two years — the current limitations period — after he buried his bomb.

Because the court interpreted the statute of limitations to require a toxic tort victim to file a case within two years after exposure, reasonable people would expect that the court would permit the victim to do so. Not so.

In decisions written in 1993 and 2001, the court

ruled that “Alabama law has long required a manifest, present injury before a plaintiff may recover in tort.” This statement means the toxic tort victim cannot file a lawsuit in Alabama until he has been diagnosed with cancer or some other illness caused by his exposure. Taken together, the court’s decisions require people injured by exposure to toxic substances to file their claims before they are entitled to do so.

But to be fair, the Alabama Supreme Court is not hostile to all toxic tort claims. One class of claimants is not barred from Alabama’s courthouses. The courts remain open to landowners with toxic tort claims. That’s right, the law — as interpreted by the Alabama Supreme Court — favors property over people.

Let’s assume that XYZ Chemical Co. 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 their way into Lake Martin. When Joe Citizen, who lived near the XYZ plant and was exposed to the harmful chemicals, from 1960 to 1990 is diagnosed with cancer in 2005, his case is already time-barred under Alabama law.

In contrast, according to a 2001 court decision, the owners of valuable lakeshore property on Lake Martin may bring their cases within two years after learning, through a 2005 fish advisory, that chemicals from the XYZ plant have contaminated Lake Martin.

Alabama’s toxic tort victims cry out for justice, and no one with a heart in his chest can deny that reform is needed. Fortunately, two bills to correct this longstanding injustice will soon be introduced in the Alabama Legislature. Concerned citizens should urge their legislators to pass the long-needed legislation, and they can do that by signing the petition at the Alabama Legal Reform Foundation’s Web site, www.AlabamaLegalReform.org.

Now is the time to open the doors of Alabama’s courthouses and declare to the world that “Alabama thinks that its citizens matter, that people are at least as important as property, and that toxic tort victims deserve their day in court.”

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