

CENTER FOR JUSTICE & DEMOCRACY
NEWS

Dear Friend,

If you haven't been to our Web site lately -- centerjd.org -- we hope you will be pleasantly surprised by what you'll find.

You may recognize some of it -- information about our cutting edge studies, White Papers, fact sheets (called Mythbusters) and news alerts on key civil justice topics.

In addition, we have some great new features, to which we hope you'll pay special attention -- breaking news stories from today's headlines, updated each weekday; issue summaries on a range of civil justice topics; our press room containing news articles, published letters and columns; and a special "Ask the Experts" page with some key links.

We also now have a password-protected library for Associates, Fellows and Group Subscribers. There you can access such publications as our studies, White Papers and close to 50 new fact sheets to help you debate "tort reform," write letters to newspapers and even talk to juries.

If you would like access to the CJ&D library, please see the Membership information on page 4, or call us, toll free, at 1-888-450-5545.

We welcome your feedback, comments and suggestions about our site, so please check it out! Thanks so much.

Joanne Doroshow
Executive Director

IN THIS ISSUE: FOCUS ON THE ENVIRONMENT

Lawsuits and the Environment: The Critical Connection

For 23 years, Dan Ross worked at the Conoco (later Condea Vista) chemical plant in Lake Charles, Louisiana. While there, he, along with thousands of other employees, was repeatedly exposed to vinyl chloride, a carcinogenic chemical used to make plastic. Despite assurances from his employer that he was safe, in the spring of 1989 Ross was diagnosed with a rare form of brain cancer. He died the following year at the age of 46.

Before his death, Ross and his wife, Elaine, filed a personal injury lawsuit against Conoco and Condea Vista, a

case that led to the discovery of a secret chemical industry archive showing what corporations and their trade associations had known for years about the dangers of vinyl chloride but failed to tell anyone.

Not until the March 2001 PBS program *Trade Secrets* (3/26/01), hosted by Bill Moyers, did we finally learn what the chemical companies knew. And it was largely thanks to the Ross' suit that details emerged of how, beginning in the 1950s, major chemical companies like Monsanto, B.F. Goodrich and

Union Carbide decided to hide health and safety-related information about vinyl chloride from employees and the public.

Thanks to the decade-long efforts of the Ross' lawyer, William Baggett, Jr., those documents are now part of the Chemical Industry Archives, a project of the non-profit Environmental Working Group. John Coequet, Director of the Archives, says, "There should be no doubt that such lawsuits provide an extremely important window

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Lifting the Veil of Environmental Secrecy

What you don't know can hurt you. The story of Dan Ross, the Conoco chemical plant worker who died of brain cancer in 1990 after prolonged exposure to the chemical vinyl chloride (*see [Lawsuits and the Environment: The Critical Connection](#)*) is one example.

William Baggett, Jr., the Ross family's attorney, says, "The thousands of pages of reports, studies and internal memoranda we obtained in discovery revealed that the major vinyl chloride manufacturers had a common interest in hiding all health and safety-related information from workers and the public so that

they could minimize the possibility of any negative publicity weakening their foothold in the marketplace."

Such is the lesson learned by countless individuals and workers who have suffered terrible illnesses due to the actions of polluters and reckless manufacturers, only to learn the extent of their diseases and injuries, and the corporate cover-ups, through lawsuits.

Environmental agencies in the United States typically have limited resources or may lack the political will to adequately monitor corporate polluters.

The regulatory alternative -- relying heavily on self-reporting by industry -- not only allows less responsible businesses to exploit situations to their advantage but also permits many sources of pollution to escape regulatory controls. Lawsuits therefore are an absolutely indispensable means for uncovering evidence of pollution and corporate abuses. Take, for example, a recent case involving a young Florida child who died after playing in and around a Durex Industries dumpster that con-

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In Pursuit of Justice...

Praise for CJ&D from law professors around the world:

Professor Andy Popper of American University's Washington College of Law writes: I am teaching in Japan this summer ... and have devoted about half my class time to undoing the insane misperceptions the Japanese have about the U.S. tort system. Your "10 Points" on punitive damages shocked them. Like most people, they are willing to believe what is written and so they first believed the press -- and now, a group of 40 law faculty and several hundred students have a new and fresh view. ... Your work continues to impress and stimulate me. Please know how much you are appreciated.

Professor Marc Galanter of the University of Wisconsin Law School writes: The Center for Justice & Democracy is a valuable source of reliable information about the civil justice system that is difficult or impossible to find elsewhere.

Professor Jerry Phillips of the University of Tennessee Law School writes: The Center for Justice & Democracy publications are invaluable for keeping up with what is really going on out there in the world of tort law and politics.

Professor Michael Rustad of the Suffolk University Law School writes: The Center for Justice & Democracy is the single best resource for the positive role tort law plays in protecting us from irresponsible corporate conduct. ... The materials from the Center provide a treasure trove for law students, law professors and others interested in learning about tort law in action. I use the Center's publications in my introductory tort law class to help law students understand how tort remedies punish and deter defendants endangering women, consumers, and ordinary Americans. The Center's studies rely upon the best available case studies, empirical studies, and difficult to find sources.



A few examples of how lawsuits create a safer environment

Refinery and Smelter. Beginning in the mid-1920s, residents of Globeville, Colorado were subjected to cadmium and arsenic exposure from the nearby Asarco Inc. refinery and smelter. After nearly 600 homeowners pursued a class action lawsuit in 1991 over an agreement between Asarco and the State of Colorado that left dangerous levels of cadmium at the plant site, Asarco settled the case for \$24 million plus an additional \$11 million to clean up the contaminated soil.

Waste Treatment Facility. Beginning in 1994, residents of Grand Bois, Louisiana suffered headaches, dizziness, nausea and diarrhea after breathing toxic fumes from oilfield sludge owned by Exxon Corp. and disposed of at a Campbell Wells Corp. waste treatment site adjacent to the community. After lawsuits were filed by 301 individuals, Campbell Wells and its new owner, U.S. Liquids, agreed to pay \$7 million, expand the waste treatment facility's buffer zone and erect screens.

PG&E Chromium Exposure (*Erin Brockovich* case). In 1993, 650 residents of Hinkley, California filed suit against Pacific Gas & Electric (PG&E) for contaminating their water supply with cancer-causing chromium over a 20-year period. In addition to settling the case for \$333 million, PG&E agreed to clean up the environment and stop using chromium.

Electromagnetic Pulse Radiation. From the early- to mid-1980s, hundreds of employees were continually exposed to high doses of electromagnetic pulse (EMP) radiation while working for the Boeing Corporation. After an employee filed a \$7 million class action suit against Boeing and other companies, Boeing minimized employee EMP radiation exposure, implemented an employee health-monitoring program and warned employees of possible dangers during medical examinations.

Contaminated Wells (*A Civil Action* case). In 1982 residents of Woburn, Massachusetts filed a class action lawsuit against W.R. Grace and Beatrice Foods Co. for contaminating city wells with high levels of industrial waste that caused injury and death to many children. Following a \$7 million settlement with Grace, the EPA filed suit against both Grace and Beatrice, obtaining more than \$70 million for remediation.

Lawsuits and the Environment: The Critical Connection continued...

into corporate behavior.”

Given the lack of oversight by underfunded or politically constrained environmental agencies, civil lawsuits are often the only mechanism for holding polluters and other reckless corporations responsible for the harm they cause. According to Joan Mulhern, Legislative Counsel of the Earthjustice Legal Defense Fund, the connection between tort lawsuits and protecting the environment cannot be overstated. “The civil justice system not only alerts government regulators to previously unknown environmental dangers and hazardous practices but also safeguards the public by helping prevent similar tragedies from occurring in the future,” says Mulhern.

Yet in many states, and in

Congress, so-called “tort reform” bills, which would drastically limit the rights of those who have been hurt by toxic chemicals and other environmental hazards to go to court, have been on the table for years. Earthjustice’s Mulhern cautions that in Congress,

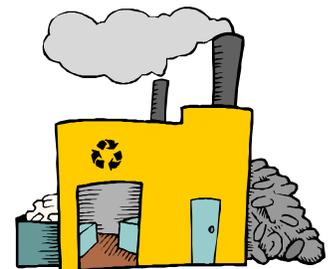
...The civil justice system not only alerts government regulators to previously unknown environmental dangers and hazardous practices but also safeguards the public by helping prevent similar tragedies from occurring in the future...

a Democratic Senate may have dimmed the prospects for passing major “tort reform” bills for now, but “that doesn’t mean that proposals to limit

environmental class action and product liability lawsuits won’t become issues in the House and Senate or for the Bush administration.”

“Nevertheless,” says Mulhern, “on the positive side, this change in the Senate allows the environmental community to raise issues about the utility of mass tort and class action suits in protecting the public.”

The message to lawmakers is clear: lawsuits by those who are sick and injured are often the only means for the public and government regulators to learn about environmental abuses and hazards. Lawsuits play a vital role filling in environmental enforcement gaps. They are critical for improving our environment and making us all safer.



Class Actions and Environmental Justice

It is a tragic and unjust fact of life that minority and low-income communities and workers are frequently forced to bear a disproportionately large share of the health and safety burden created by toxic landfills, industrial dumping and other environmentally hazardous activities in or near their neighborhoods.

The United States Environmental Protection Agency is legally obligated to enforce the “fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies.” Due to limited regulatory oversight and corporate indifference to public safety, however, such fairness exists in

theory only.

That’s where class actions step in. Perhaps in no other area of environmental law have injury class actions been so essential, providing some of the most vulnerable members of society with the only available means to combat environmental injustice. History is replete with examples.

Over 8,000 residents of the Gentilly section of New Orleans, Louisiana can certainly attest to this. In September 1987, a rail tank car filled with 29,000 tons of the carcinogenic chemical butadiene, caught fire and exploded. The chemical seeped into the sewer system and

eventually ignited. A black vapor covered the poor, predominantly minority neighborhood, forcing the evacuation of 1,000 people. Information uncovered in the Gentilly residents’ class action lawsuit showed ten previous leaks from sitting railroad tankers in

the three years before the explosion. By February 2000, six defendants in the case had agreed to pay sick and injured residents a total of \$215 million. On June 27, 2001, a unanimous state appeals court upheld a \$850 million punitive damages award against the remaining three defendants who had refused to settle.

Similarly, when thousands of workers at the Paducah, Kentucky uranium enrichment site were unknowingly exposed to highly toxic radioactive materials while working at the facility between



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Lifting the Veil of Environmental Secrecy continued...

tained toluene, a toxic cleansing agent the company used to clean printing rollers and manufacturing equipment. The dumpster was located across the street from a residential mobile home park which included families with young children. When the child's family sued, they discovered that company officials had already been cited once for improper storage and disposal of toxic chemicals, especially toluene. After promising to stop, the company continued to illegally dispose of toluene, waste products containing toluene and other chemicals.

In another case, it was learned that between 1963 until 1980, Firestone Tire & Rubber Co. sent large amounts of hazardous solvents and liquid waste

from a manufacturing plant to the Crazy Horse landfill, run by the city of Salinas, California. In 1984, two families living next to the landfill discovered that benzene, toluene, chloroform, vinyl chloride and other

..It was not until the victims sued that they found internal Firestone ... memoranda showing that [the] company ... knew as early as 1977 that dumping ... wastes was illegal yet the company continued to dump toxic waste ...

carcinogenic chemicals had contaminated their waterwells. It was not until the victims sued that they found internal Firestone memoranda showing

that company plant managers knew as early as 1977 that dumping liquid and semi-liquid wastes was illegal yet the company continued to dump toxic waste at Crazy Horse.

Lawsuits can also bring the corrupt practices of an entire industry to the public's attention. Such was the situation in the Ross case, which formed the basis of the Chemical Industry Archives, a website project of the Environmental Working Group dedicated to collecting and storing internal chemical industry documents. According to John Coeuyt, Director of the Archives, "We hope that our site will continue to expand as injured people, whistleblowers and their lawyers provide us with documents of historical and

environmental-health importance that they believe should be made public." (For more information about the Chemical Industry Archives, visit <http://www.chemicalindustryarchives.org>.)



Class Actions and Environmental Justice continued...

1952 and 1998, they filed a federal class action suit against the plant operators.

Following an eight-month investigation, the U.S. Department of Energy concluded in February 2000 that workers had been exposed to toxic chemicals and set aside \$109.2 million for medical monitoring, environmental cleanup and a conversion program for uranium hexafluoride.

Congress is currently considering legislation that would provide reckless corporations with the authority to decide, in most cases, which court will hear a class action case that accuses them of wrongdoing. Its likely

result will be thousands of complex state class actions put into already overburdened federal courts, to the benefit of corporate defendants. If such legislation passes, the cause of environmental justice would be profoundly weakened in the United States.



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