



Center for Justice & Democracy
90 Broad Street, Suite 401
New York, NY 10004
Tel: 212.267.2801
centerjd@centerjd.org
<http://centerjd.org>

ANYONE CONCERNED ABOUT THE ENVIRONMENT SHOULD ACTIVELY OPPOSE "TORT REFORM" LEGISLATION

Lawsuits by those who are sick and injured are sometimes the only way the public and government regulators learn about environmental hazards. For example, the PBS program *Trade Secrets*, hosted by Bill Moyers, revealed a secret archive of thousands of documents uncovered during a lawsuit against a chemical company. The suit had been filed by Elaine Ross, widow of Conoco chemical plant worker Dan Ross, who died of brain cancer in 1990 after working for the company for 23 years. For eight years, Ross' lawyer, William Baggett Jr., fought for the release of previously-secret documents about the hazards of vinyl chloride, used to make plastic. The documents showed that beginning in the 1950s, the major chemical companies, including Monsanto, B.F. Goodrich and Union Carbide, covered up information about the chemical's health effects in order to "avoid disclosure and deny liability." Jim Morris, *Toxic Secrecy*, *Houston Chronicle*, 1998.

Lawsuits by those who are sick and injured play a critical role filling in environmental enforcement gaps. Today's underfunded environmental agencies do not adequately monitor polluters. They rely heavily on self-reporting by industry, a situation which less responsible businesses can exploit to their advantage. Also, some sources of pollution have always escaped control. Lawsuits by the sick and injured play a critical role in filling in these enforcement gaps by holding polluters accountable for harm. (See CJ&D Mythbuster, *Environmental Tort Lawsuits — Holding Polluters Accountable*.)

Proposed tort reforms would limit the liability of polluters and other reckless corporations, making it difficult or impossible to hold them accountable for harm to individuals, workers and the environment.

- **Class action legislation.** Class actions are a critical tool used by individuals and workers to hold accountable reckless corporations that pollute the environment and cause disease and death. Class action limits would severely hurt the ability of individuals and workers to bring class action lawsuits. In Congress, legislation passed in 2005 that provides polluters and other reckless corporations with the authority to decide, in most cases, which court will hear a class action case that accuses them of wrongdoing.
- **Caps on punitive damages.** Judges and juries award punitive damages against companies that engage in particularly outrageous, deliberate or harmful misconduct. Their purpose is to deter companies from engaging in similar misconduct in the future. It is well recognized that the prospect of having to pay punitive damages causes corporations to operate more safely. Legislation capping or limiting punitive damages

allows companies to treat liability as a cost of doing business, weakening the law's deterrent impact. A study of hazardous waste litigation by an MIT research team led by Dr. Nicholas Ashford found that wrongdoers who are not assessed the full cost of damages they cause do not take sufficient precaution to prevent future harm. *The Role of Changes in Statutory/Tort Law and Liability Insurance in Preventing and Compensating Damages from Future Releases of Hazardous Waste* (October 1987).

- **Statute of Repose.** A statute of repose for products completely cuts off liability of the manufacturer or seller of a defective product after an arbitrarily-established number of years, such as 10 years or 15 years. Such proposals may let companies off the hook if their negligence or recklessness exposed someone to a chemical that causes a latent disease, such as cancer or infertility, which may not become apparent for many years. Such harmful products could include asbestos-containing materials, building and furniture products that out-gas formaldehyde or other harmful chemicals (some wood chips, for example) and tobacco.
- **Limits on Joint and Several Liability.** The doctrine of joint and several liability is a fairness rule, developed over centuries to protect injured individuals. It applies when more than one defendant is found *fully or substantially responsible* for causing an injury (not 1% or 10% responsible, as is commonly misstated). If one wrongdoer is insolvent or cannot pay its share, the other fully-responsible wrongdoers must pick up the tab to make sure the innocent victim is fully compensated.

For example, suppose two wealthy chemical companies dump toxic waste on a site and contaminate drinking water, causing leukemia in neighborhood children. The actions of any one of them alone would be sufficient to cause leukemia. Without joint and several liability, these companies could point their finger at a third company that dumped there but has since gone bankrupt, reducing what they owe these families by the amount the third company should—but can't—be compelled to pay. The families are then forced to bear the costs of the harm unpaid by the third company.