



1982

Toxic Torts: Judicial and Legislative Responses - Editor's Preface

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Recommended Citation

Kathleen A. Frederick, *Toxic Torts: Judicial and Legislative Responses - Editor's Preface*, 28 Vill. L. Rev. 1083 (1982).

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VILLANOVA LAW REVIEW

VOLUME 28

1982-83

NUMBER 6

Symposium Toxic Torts: Judicial and Legislative Responses

EDITOR'S PREFACE

ON August 26, 1982, the Manville Corporation—one of America's Fortune 500 companies—filed for chapter 11 reorganization under the Bankruptcy Reform Act.¹ This move resulted from the avalanche of personal injury cases brought against Manville alleging injury from exposure to asbestos. Latent diseases caused by toxic substances like asbestos are unquestionably tragic for the victims and their families and there is a public policy interest that those injured be compensated. On the other hand, companies may face billions of dollars of potential liability, or even bankruptcy, for decisions made not only long ago, but also in some cases, before the toxicity of a given product became evident.

Although products liability law is over a century old, many judicial developments in this branch of tort law have occurred since 1960.² Usually these changes in products liability law have greatly increased the liability exposure of product manufacturers and sellers³ and have in some instances abrogated the traditional tort requirement of causation.⁴ In reaction to the specialized problems that products liability actions create, state legislatures have passed a variety of products liability tort laws since 1977.⁵ The federal government began studying the products liability problem in 1976, initially focusing upon insurance reform proposals.⁶ In 1979, the Commerce Depart-

1. Granelli, *The Future Claims Fight*, Nat'l L.J., Apr. 4, 1983, 1, at 28, col. 1.

2. Hollenshead, *Historical Perspective on Product Liability Reform*, 1 J. PRODS. L. 75, 75 & 79-80 (1982).

3. *Id.* at 75.

4. *Id.* at 82.

5. *Id.* at 86.

6. *Id.* at 87-93.

ment drafted a Model Uniform Product Liability Act (UPLA), and several products liability tort reform bills have subsequently been introduced into Congress.⁷ At this date, Congress has not yet passed a federal products liability tort reform law, although S. 2631 which Senator Kasten introduced in the Ninety-seventh Congress received impressive bipartisan support in the Senate.⁸

In an effort to examine the ways in which the judicial and legislative branches of our government are coping with the difficult problems presented by toxic torts, the *Villanova Law Review* dedicated its 1983 Symposium to a discussion of this topic. At the Symposium, panelists presented a brief summary of the article which each was submitting for publication in this volume. Robert St. Leger Goggin, a Philadelphia trial lawyer who has represented defendants in many asbestosis and Agent Orange cases, explored the various defenses available to a defense attorney in toxic tort litigation. Looking at such litigation from a somewhat different perspective was panelist Gene Locks, a well-known plaintiffs' attorney in asbestos cases. Mr. Locks described the problems plaintiffs' attorneys encounter in such suits and surveyed some of the alternatives to litigating these cases. Professor Francis E. McGovern of Boston University's Law School, whose paper did not arrive before this issue went to press, discussed the procedural problems which are posed in toxic tort cases.

Completing the panel were three speakers who focused upon the need for federal legislation and critically examined S. 44, the federal "Product Liability Act" under consideration by the Ninety-eighth Congress. Victor Schwartz, who headed the Task Force which published the Model Uniform Product Liability Act, discussed the reasons why federal legislation is needed in this area. Professor Kircher of Marquette University Law School examined S. 44, and concluded that defendants should not support this bill, while Professor Jerry Phillips of the University of Tennessee Law School scrutinized the bill from the perspective of a plaintiff.

7. *Id.* at 94 & 97-99.

8. Taylor, *Note: Proposed Federal Products Liability Legislation—A Summary and Analysis*, 1 J. PRODS. L. 103, 130 (1982). For additional information regarding the proponents and opponents of S. 2631, see Hollenshead, *supra* note 1, at 100. S.44, which was introduced by Senator Kasten in the 98th Congress, is essentially identical to its predecessor, S. 2631. Compare S. 44, 98th Cong., 1st Sess., 129 CONG. REC. 5284 (daily ed. Jan. 26, 1983) with S. 2631, 97th Cong., 2d Sess., 128 CONG. REC. 6878 (1982). For additional discussion regarding the differences between these two bills, see Kircher, *Federal Product Liability Legislation and Toxic Torts: The Defense Perspective*, 28 VILL. L. REV. 1116 (1983).

According to Victor Schwartz, one of the Symposium panelists, S.44 has also garnered considerable support from various members of Congress and other outside groups. See Remarks by Victor Schwartz, 28 VILL. L. REV. 1286, 1286-87 (1983).

After each panelist presented a summary of his article, Villanova Law School Professor John Hyson moderated a debate between the speakers. An audience question and answer session followed. This Symposium issue of the *Villanova Law Review* contains the full text of the articles submitted by the participants as well as an edited transcript of the debate and question period. The articles by the Symposium panelists and the student work in this issue endeavor to provide a scholarly discussion of some of the major recurring issues in the area of toxic torts.

On behalf of the *Law Review*, I would like to thank both the panelists in this year's Symposium and those who attended the oral presentation. I would also like to express my appreciation for the assistance which Professors John Hyson, Janet Perry, and Walter Taggart of Villanova Law School provided in planning this Symposium. Finally, I wish to thank the secretarial staff of the law school and the many dedicated staff members of the *Law Review* for the many hours of work which made the Symposium and this issue possible.

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