

## NEWS RELEASE

---

**FOR IMMEDIATE RELEASE April 3, 2007**

Contact: Deborah Mathis, Communications Director, at (202) 797-8600 Ext. 246

### **PUBLIC JUSTICE ASKS U.S. SUPREME COURT TO OVERTURN ALABAMA HIGH COURT'S DENIAL OF TOXIC TORT CLAIMS**

*State law left leukemia victim in "Catch-22"*

WASHINGTON -- The Alabama Supreme Court violated the constitutional rights of countless toxic tort victims in Alabama when it denied them the right to sue for their injuries, according to a petition for review filed today with the U.S. Supreme Court by Public Justice, a Washington-based public interest law firm, and the Environmental Litigation Group of Birmingham, Alabama.

Jack Cline, whose case was dismissed in a manner *The New York Times* called "Kafkaesque," died in January from acute myelogenous leukemia, a disease his doctor blamed on long and continuous on-the-job exposure to benzene. Less than two years after he was diagnosed with leukemia in 1999, Mr. Cline filed a personal injury claim against Ashland, Inc., Chevron Phillips Chemical LP, and ExxonMobil Corporation, manufacturers and suppliers of the benzene.

But the Alabama Supreme Court, without issuing a majority opinion, threw out the case because Mr. Cline did not file his lawsuit within two years of his *exposure* to the benzene, as required by a rule created by the Alabama Supreme Court. Another court-created rule requires injury victims like Mr. Cline to sue *only after* they become sick, which in this case did not occur until many years later when Mr. Cline developed leukemia.

As a result of these conflicting court-created rules, which are contrary to a specific statute enacted by the Alabama legislature, toxic exposure victims like Mr. Cline are barred from filing lawsuits before they are ever authorized to do so. As four of the dissenting justices in the Alabama Supreme Court observed, the ruling creates an insurmountable "Catch-22" in which toxic tort victims – whose injuries usually do not manifest until years after their exposure – have literally *no* time in which to file suit. "No matter when the person attempts to file the action, it is either too soon or too late," the dissent read.

"Alabama is the only state in the country with so arbitrary and contradictory a law – one that deprives toxic tort victims of any right to justice unless they happen to get sick quickly," said Leslie Brueckner, lead counsel in the petition and Public Justice staff attorney. "We are asking the Supreme Court of the United States to address this Catch-22 and restore Mr. Cline's constitutional right to seek justice."

=more=

The Public Justice petition for a writ of *certiorari* shows that the Alabama Supreme Court's decision conflicts with more than a century of U.S. Supreme Court, U.S. Court of Appeals and state high court decisions holding that a statute of limitations violates the Due Process Clause of the U.S. Constitution if it does not provide a "reasonable" time period in which to file suit.

"The Alabama Supreme Court has been unresponsive to the fact that its own contradictory rulings insure that it is almost always either too soon or too late for a toxic tort victim to file a lawsuit," said Robert Leslie Palmer, co-counsel in the petition and lead counsel in the case below. "In its decision in Jack's case, the Alabama Supreme Court has shown its contempt for due process of law by referring to that fundamental right as a mere 'competing policy' concern. We hope the United States Supreme Court will correct this perversion of justice by the Alabama Supreme Court."

The Alabama Supreme Court affirmed summary judgment shortly before Mr. Cline died tragically on January 17 of this year. "Mr. Cline, who says God has kept him alive so he can challenge the unfairness of Alabama's law, told his lawyer...to keep fighting," wrote *The New York Times'* Adam Cohen in a January 14 column.

The brief filed yesterday was co-authored by Brueckner, Palmer and Amy Radon, Goldberg, Waters & Kraus Fellow at Public Justice, with assistance from Arthur Bryant, executive director of Public Justice.

To read the petition for writ of *certiorari* filed by Public Justice and the Environmental Litigation Group, go to [http://www.tlpj.org/briefs/cline\\_petition\\_040207.pdf](http://www.tlpj.org/briefs/cline_petition_040207.pdf)

To read *The New York Times* opinion piece, "They Say We Have Too Many Lawsuits? Tell it To Jack Cline," go to <http://www.nytimes.com/2007/01/14/opinion/14sun2.html?ei=5088&en=71686419207e245...>

###