

Toxic Torts

Corporate deep pockets make it hard to sue the bastards.

When he was in law school, Charles Siegel thought toxic torts looked sexy. A crusading lawyer making a big corporation pay for the damage its toxic chemicals have caused has often been a Hollywood theme.

But the reality of toxic torts is that although they can do enormous good, they're very hard cases, a panel of attorneys told a packed lecture hall at the Public Interest Environment Law Conference at the UO last month. "More and more I find myself wishing for a good old rollover or a doctor cutting off the wrong leg," Siegel, a Texas litigator, lamented.

Roy Haber, a Eugene attorney, shares the frustration. For the past 14 years, Haber has been suing Hanford contractors, including DuPont and General Electric, for down-winder health problems allegedly caused by the former nuclear weapons factory.

Haber says he has spent \$10 million on the case and the U.S. government has spent

\$70 million defending it. He says his opponents are pursuing a "scorched earth policy" in the litigation, contesting even widely held scientific facts and refusing to settle to avoid bad publicity and future limits on how much radiation can be released.

"You win or lose on your experts," Haber says. He's spent millions on experts to prove that the radiation from Hanford was capable of causing illnesses, reached his 1,000 clients in harmful doses and was a "substantial factor" in causing actual illnesses. "It's very difficult to do," Haber says of the complicated science.

A trial judge threw out most of his expert testimony, including from two Nobel Prize winners, he said. But he won on appeal and the case continues.

Siegel, the Texas attorney, is now working on a national case alleging that mercury formerly used as a preservative in vaccines caused autism in children. "Here we were injecting 49 percent mercury solution into 1-year-old brains," Siegel says.



Charles Siegel, Mike Axline and Roy Haber at the PIELC.

Siegel says the scientific evidence is on their side, but the case will still be tough with the pharmaceutical industry likely spending millions to defend their huge profits.

Another big hurdle is that court precedents now allow judges to throw out toxic tort cases before they even reach juries, according to Siegel. In the past, juries were allowed to decide for themselves whether to believe the defense or plaintiff experts in a case. But "sometimes juries socked it to corporate clients," Siegel says, and defense attorneys successfully pushed for a new legal standard. Now, judges often decide the expert disputes even before the case goes to trial.

The new process has "made it incredibly more expensive" to pursue toxic torts, Siegel says. Before, trial lawyers with serious cases could hope that a corporation might settle before expensive experts needed to be hired at trial. Now those experts need to be hired up front and many plaintiff's lawyers are deterred from risking the huge investment. "It's incredibly daunting," Siegel says.

In Texas, corporations have gone to the Republican Legislature to make toxic torts even more difficult. "They're kind of trying to peck the jury system to death," Siegel says.

Mike Axline went from being a UO environmental law professor and a founder of the

'They're kind of trying to peck the jury system to death.'
- Charles Siegel

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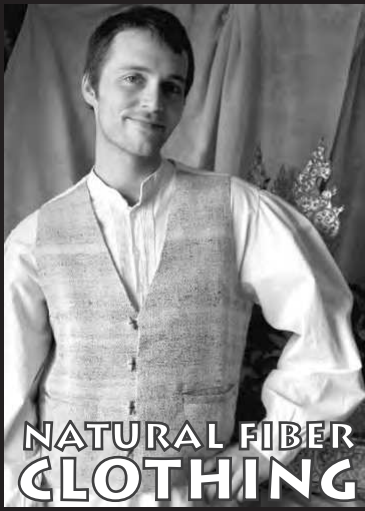
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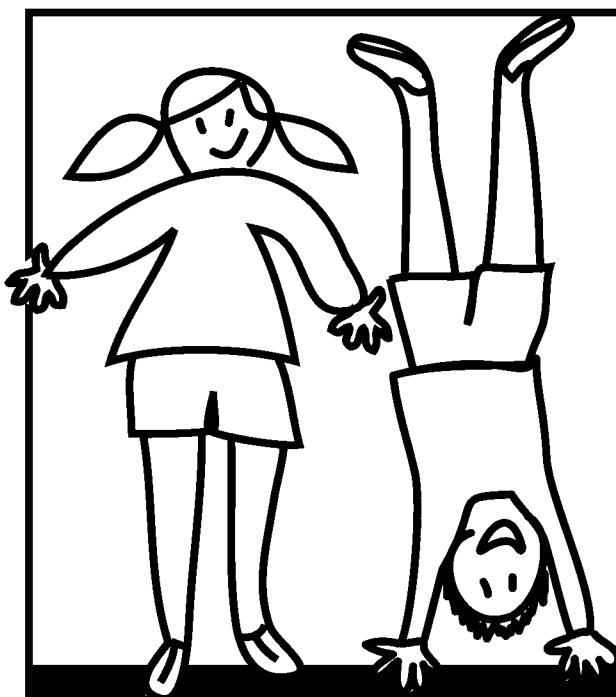


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