

Legislation Report

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

REPORT NO. 5

February 25, 2003

A. 1923

By: M. of A. Levy

Assembly Committee: Judiciary

Effective Date: Immediately

AN ACT to amend the civil practice law and rules, in relation to time limitations for filing claims for certain injuries.

LAW AND SECTIONS REFERRED TO: CPLR § 214-c

REPORT PREPARED BY THE COMMITTEE ON CIVIL PRACTICE LAW & RULES (#3)

THE BILL IS DISAPPROVED

The proposed bill would extend the statute of limitations for personal injury and property damage from toxic causes for up to thirteen years after discovery of an injury. In the absence of detailed examples of claims barred because science failed to determine the cause of an injury within the current time (up to six years), this bill appears to go too far in trying to protect those injured by toxic substances. Even if, in principle, additional time were justified, the specific language of this bill creates significant uncertainty that would unnecessarily compound litigation.

The statute of limitations poses a balance between permitting injured people time to commence actions and society's interests in barring stale claims. Toxic torts create a substantial dilemma because the wrongful conduct that causes the injury may take place decades before the injury manifests itself and then either the injured person, in particular, or science, in general, may not know what caused the injury. It is, therefore, understandable that significant additional time is given to victims of toxic injuries to commence their actions. However, there has to be a balance between giving victims time to sue and permitting some repose for industry and insurance companies.

The current Section 214(c) substantially tolls the normal three-year statute of limitations for personal injury. The wrongful conduct in the creation of the substance that causes injury from exposure has nothing to do with triggering the statute and could have occurred years prior to injury. The statute starts to run upon discovery of the injury. Then the injured victim has three years to commence the lawsuit, or where there is insufficient medical knowledge to determine the cause of the injury, the injured victim has five years

to discover the cause the injury and one year thereafter to commence suit.

In short, a victim currently has at least three years, and possibly as many as six years from discovery of the injury to commence suit. The proposed bill would give an injured person ten years from injury to discover the cause and three years in which to commence suit or thirteen years from the discovery of the injury to commence suit. Since discovery of the injury could well be years, if not decades, after the conduct giving rise to the condition that causes the injury, society should be very careful in extending a statute of limitations that causes havoc with manufacturers and their insurers.

The current statute has been in effect since 1986. Yet the memorandum in support of the bill does not give any evidence of the need for the bill. How many, if any, suits have been barred by the statute that would have been viable if the proposed bill were law? On the other hand, what would the proposed law do to insurance rates by increasing uncertainty?

Even if the legislature wished to extend the statute of limitations, the language of this bill is not desirable. The statute starts to run not just at discovery of cause of injury, but only on the discovery of the “specific toxic etiological” cause of injury and then only after discovery of “the source of the alleged harm.” A dictionary search reveals that etiological means “assigning or seeking to assign a cause” (Merriam-Webster Collegiate Dictionary, on line at Dictionary.com). Does the added language mean discovery of the toxic cause of the injury? Is etiological redundant? What does “toxic cause of the injury” add to “cause of the injury.” The memorandum in support does not discuss this change. It seems to spawn litigation over cases where a late filing plaintiff is trying to find an excuse for his tardiness.

Similarly, allowing the additional time until the “source of the alleged harm” greatly expands the extent to which this section will be used. Many times a person may be injured by a toxic substance, but cannot discover the source of the harm because there are multiple, either actual or potential sources. For example, in asbestos, the actual manufacturer may not be known. Permitting an additional ten years in such a case can only be justified if a need is shown; the supporting memorandum contains no such justification.

For this reason, the bill is **DISAPPROVED**.

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