

**THE STATE OF NEW HAMPSHIRE
SUPREME COURT**

NO. 2022-0132

KEVIN BROWN, ET AL.

v.

**SAINT-GOBAIN PERFORMANCE PLASTICS CORPORATION,
ET AL.**

RULE 34 CERTIFIED QUESTION FROM USDC-NH

BRIEF ON BEHALF OF *AMICUS CURIAE*

NEW HAMPSHIRE ASSOCIATION FOR JUSTICE

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INTEREST OF *AMICUS CURIAE*

The amicus is a statewide professional association of trial attorneys working to ensure injured persons have a fair chance to receive justice through the legal system when they have been harmed by the negligence of others.

Exposure to toxic chemicals is a growing threat to citizens of this State. The State has recognized as much, recently initiating statewide environmental contamination lawsuits against the manufacturers of polychlorinated biphenyls (PCBs) and per- and polyfluoroalkyl substances (PFAS). *See New Hampshire v. Monsanto Co.*, 217-2020-CV-00573 (Merrimack Cty. Super. Ct.); *New Hampshire v. 3M Co.*, 216-2019-CV-00445 (Merrimack Cty. Super. Ct.). Exposure to toxic substances like PCBs and PFAS may cause human health impacts years after exposure and, in order for citizens of this state to receive fair justice for these exposures and exposure to other dangerous substances, the State's common law recognizes, or should

recognize, the right of exposed persons to recover the cost of diagnostic testing.

Amicus has a vested interest in protecting this right because its membership frequently encounters citizens of this State who have been exposed to toxic substances but have not yet developed—or are not yet aware of—harmful medical conditions caused by their exposure. This case involves many such citizens, who have consumed drinking water contaminated with a harmful substance, PFOA, and wish to obtain regular diagnostic testing to detect health conditions caused by this exposure. Accordingly, this brief focuses on the availability of diagnostic testing under long-standing principles of New Hampshire tort law and the policy rationale for imposing the cost of such testing on the tortfeasor rather than injured plaintiffs, the State, medical professionals, or the health insurance industry.

INTRODUCTION

This Court has never expressly ruled whether New Hampshire tort law recognizes a claim for the costs of medical monitoring as a remedy for plaintiffs exposed to a toxic substance through a defendant's negligence.¹ Under long-standing principles of state common law, however, this Court should rule that a plaintiff exposed to such substances as a result of a defendant's tortious conduct may recover the necessary costs of diagnostic testing to determine whether and to what extent that exposure resulted in physical harm.

Plaintiffs are current or former residents of Merrimack, Bedford, and Litchfield who owned or occupied residential

¹ The instant matter presents two questions for this Court's review. This brief focuses on the first question, namely: "Does New Hampshire recognize a claim for the costs of medical monitoring as a remedy or as a cause of action in the context of plaintiffs who were tortiously exposed to a toxic substance?" The Court should answer this question in the affirmative and find that New Hampshire recognizes a claim for the costs of medical monitoring as a remedy for plaintiffs who were tortiously exposed to a toxic substance.

properties near a large fiberglass-coating facility owned by Defendant Saint-Gobain Performance Plastics Corporation (“Saint-Gobain”). For years, Saint-Gobain emitted the toxic, manmade chemical perfluorooctanoic acid (PFOA) from its smokestacks as part of its manufacturing process. After it was emitted from the facility, PFOA was dispersed across the surrounding community before it ultimately settled onto residents’ homes and lawns, and was embedded in the soil.

Over time, PFOA deposited across the community migrated to the groundwater, where it impacted the municipal drinking water source as well as numerous private drinking water wells owned by members of the community. Unwitting residents, including Plaintiffs, consumed contaminated water from their taps, bathed in contaminated water released from their showerheads, and watered their gardens with contaminated water from their garden hoses. In 2016, the State learned that drinking water sources around the Saint-

Gobain facility were contaminated with PFOA and immediately began taking efforts to protect residents from continuing exposure to this dangerous chemical. By that time, residents had likely been consuming contaminated water for years if not decades.

SUMMARY OF ARGUMENT

New Hampshire tort law has long provided that “one who suffers an injury to his person or property because of the negligent act of another has a right of action in tort.” *Smith v. Cote*, 128 N.H. 231, 239-40 (1986). This fundamental principle entitles those exposed to toxic substances to diagnostic testing capable of detecting disease, disease process, or other injury at cellular or subcellular level. Such an entitlement is consistent with, and compelled by, decisions from this Court recognizing the right of an injured party to obtain testing to understand the scope of injuries sustained. It is also consistent with the principles set forth in the Restatement (Second) of Torts,

upon which this Court has historically relied as persuasive authority.

Not only does New Hampshire recognize the right of an exposed plaintiff to diagnostic testing, but permitting exposed plaintiffs to pursue such testing is also sound policy. Diagnostic testing allows for early detection of disease and illness, which facilitates better medical outcomes at less cost. Further, requiring a negligent tortfeasor to assume the cost of such testing comports with state common law principles to allocate to the wrongdoer the cost of its wrongful conduct, while relieving innocent plaintiffs, the State, medical providers, and the health insurance industry of such costs.

ARGUMENT

I. INDIVIDUALS EXPOSED TO TOXIC SUBSTANCES SUCH AS PFAS ARE ENTITLED TO DIAGNOSTIC TESTING UNDER LONG-STANDING PRINCIPLES OF NEW HAMPSHIRE COMMON LAW.

A. PFAS Are Toxic, Man-Made Chemicals That Bioaccumulate In Human Bodies And Cause Numerous Harmful Health Conditions.

Through no fault of their own, Plaintiffs were exposed to toxic, man-made PFAS—specifically, PFOA—that contaminated their drinking water as a result of Defendant’s factory emissions. PFAS are a family of perfluorinated compounds known to harmful to humans.² Due to their chemical structures, PFAS are biologically and chemically stable in the environment and resistant to environmental degradation.³ Even after short-term exposure, PFAS may persist in the human body for years.⁴ Additional exposures are likely to increase the human body burden.

There are numerous health risks associated with exposure to PFAS, including PFOA. The Science Advisory Board of the United

² See New Hampshire Department of Health & Human Services, *Poly- and Per-Fluoroalkyl Substances*, available at <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf> (last visited May 23, 2022).

³ See Agency for Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls* at 2 (May 2021), available at <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf> (last visited May 23, 2022).

⁴ See New York State Department of Health, *How Long it Might Take for PFOA Blood Levels to Decline*, available at <https://www.health.ny.gov/environmental/investigations/hoosick/docs/qandabloodtestingshort.pdf> (last visited May 23, 2022).

States Environmental Protection Agency (EPA) recently recommended that the EPA designate PFOA a “likely carcinogen.”⁵ The EPA has further determined that PFOA is associated with increased risk in humans of testicular cancer, kidney cancer, liver function abnormalities, immunotoxicity, endocrine disruption, and conditions such as thyroid disease, ulcerative colitis, and high cholesterol.⁶ In January 2022, the EPA proposed to designate PFOA and another PFAS, perfluorooctane sulfonate (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).⁷ In short, exposure to PFAS is hazardous to human health and causes an array of harmful health conditions.

⁵ See Science Advisory Board, *Review of EPA’s Analyses to Support EPA’s National Primary Drinking Water Rulemaking for PFAS*, available at https://sab.epa.gov/ords/sab/f?p=100:18:16490947993:::RP,18:P18_ID:2601#draft (last visited May 23, 2022).

⁶ See EPA Drinking Water Health Advisories for PFOA and PFOS, available at <https://www.epa.gov/ground-water-and-drinking-water/drinking-water-health-advisories-pfoa-and-pfos> (last visited May 23, 2022).

⁷ See EPA Actions to Address PFAS, available at <https://www.epa.gov/pfas/epa-actions-address-pfas> (last visited May 23, 2022).

B. New Hampshire Common Law Recognizes the Right to Regular Diagnostic Testing for Individuals Exposed to Toxic Substances Such as PFAS.

A claim for “medical monitoring” relief amounts to a request for a court to award the cost of diagnostic testing for the early detection of disease, disease process, or other injury, the need for which is caused by wrongful exposure to a toxic substance. Medical monitoring relief seeks recovery of a cost for harm that is caused by the tortious acts of another. This Court has long recognized that purpose of the state’s tort law is to “restore” one injured by another “as nearly as possible to the position he would have been in if the wrong had not been committed.” *Smith v. Cote*, 128 N.H. 231, 243 (1986). For those exposed to toxic substances, diagnostic testing serves this purpose.

“In general, at common law, one who suffers an injury to his person or property because of the negligent act of another has a right of action in tort.” *Id.* at 239-40. “Recovery on an action for

negligence requires that there be a duty and a breach thereof, with this breach causing damages." *Wright v. Dunn*, 134 N.H. 669, 672 (1991). This Court has described the "first principles" of the state's common law of negligence as: "to deter negligent conduct, and to compensate the victims of those who act unreasonably." *Smith*, 128 N.H. at 242.

Where a party's negligent conduct exposes innocent plaintiffs to toxic substances, the need arises to incur the cost of diagnostic testing for the early detection of illnesses relating to those substances, thus constituting an "injury" under state law. Indeed, an "injury" occurs when there is an "invasion of any legally protected interest of another." *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 7(1) (1965)).

This Court has recognized that certain cognizable tort claims do not involve a physical injury. *See, e.g., id.* at 242 (recognizing that common law encompasses claim for wrongful birth, which does not

“aris[e] from physical injury,” but is “instead based on a negligent invasion of the parent right to decide whether to avoid the birth of a child with congenital defects”); *see also* *Silva v. Warden, N.H. State Prison*, 150 N.H. 372, 374 (2003) (“We recognize damages that do *not* have physical manifestations” (emphasis added)). The Court’s recognition that an injury need not take the form of physical harm is consistent with principles articulated by the Restatement (Second) of Torts, and New Hampshire courts often look to the Restatement for guidance in interpreting state tort law. *See, e.g., Clipper Affiliates, Inc. v. Checovich*, 138 N.H. 271, 274-75 (1994); *Smith*, 128 N.H. at 248. The Restatement, like New Hampshire common law, defines “injury” to mean “the invasion of any legally protected interest of another.” RESTATEMENT (SECOND) OF TORTS § 7(1) (1965). This invasion need not consist of physical harm; indeed, the Restatement separately defines “physical harm” to mean “the physical impairment of the human body, or of land or chattels.” *Id.* at § 7(3). According to the

Restatement, if an “injury” is “the legal consequence of a tortious act,” it “entitle[s] the person suffering the invasion to maintain an action in tort.” *Id.* at § 7 cmt. a.

The Restatement further makes clear that “bodily harm,” as opposed to physical harm, “is any physical impairment of the condition of another’s body, or physical pain or illness.” *Id.* at § 15.

The commentary further explains,

There is an impairment of the physical condition of another’s body if the structure or function of any part of the other’s body is altered to any extent even though the alteration causes no other harm. A contact which causes no bodily harm may be actionable as a violation as the right to freedom from the intentional infliction of offensive bodily contacts.

Id. at § 15 cmt. a. Exposure to toxic substances, including PFAS, clearly alters the structure or function of the human body even if such alteration is not immediately observable, thus constituting bodily harm under the Restatement.

Under both state common law and Restatement principles, then, it is clear that a party's negligent conduct that results in a plaintiff's exposure to a toxic chemical gives rise to the need to incur the costs of diagnostic testing, which constitutes an "injury." Such an exposure, though it may not cause immediate and obvious "physical harm," is an invasion of the legally protected interest to be free from harmful contacts and, pursuant to both state law and the Restatement, gives rise to an actionable tort claim. *See, e.g., Smith*, 128 N.H. at 248 ("injury" gives rise to cause of action against responsible party); RESTATEMENT (SECOND) OF TORTS § 7 cmt. a (1965) ("injury" entitles "person suffering the invasion to maintain an action in tort").

New Hampshire common law recognizes that a plaintiff injured by the tort of another may seek all damages that are the "natural and foreseeable consequence of the injury." *Smith*, 128 N.H. at 243; *see also* RESTATEMENT (SECOND) OF TORTS § 910 ("One injured

by the tort of another is entitled to recover damages from the other for all harm, past, present and prospective, legally caused by the tort.”). This includes damages to cover the cost of current and future medical expenses where future treatment is likely. *See, e.g., Fitzgerald v. Sargent*, 117 N.H. 104, 106 (1977); *Hanlon v. Pomeroy*, 102 N.H. 407, 407-09 (1960); *see also* RESTATEMENT (SECOND) OF TORTS § 910 cmt. a (“the injured person is entitled to recover damages for all harm suffered before the suit was brought, for harm suffered after the beginning of suit and before trial and also for harm that at the time of trial it appears will be suffered in the future”).

The fundamental need for the recovery of the cost of diagnostic testing is inherent in the nature of the harm: the disease, disease process, or injury occurs as a chemical reaction inside the body, and so occurs at the cellular or subcellular level. As a result, the disease, disease process, or injury is latent, often not recognizable without diagnostic testing tailored to the toxic process

the exposure initiates, or not recognizable because the disease process is mislabeled or misunderstood without the proper diagnostic protocol.

In a seminal case recognizing the need for such diagnostic testing for toxic exposures, the District of Columbia Circuit Court of Appeals described how compensable damages can arise prior to the emergence of a physical injury:

Jones is knocked down by a motorbike which Smith is riding through a red light. Jones lands on his head with some force. Understandably shaken, Jones enters a hospital where doctors recommend that he undergo a battery of tests to determine whether he has suffered any internal head injuries. The tests prove negative, but Jones sues Smith solely for what turns out to be the substantial cost of the diagnostic examinations.

Friends for All Children, Inc. v. Lockheed Aircraft Corp., 746 F.2d 816, 825 (D.C. Cir. 1984). In such circumstances,

[i]t is clear that even in the absence of physical injury Jones ought to be able to recover the cost for the various diagnostic examinations proximately caused by Smith's negligent action. . . . The motorbike rider, through his negligence, caused the plaintiff, in the opinion of medical

experts, to need specific medical services—a cost that is neither inconsequential nor of a kind the community generally accepts as part of the wear and tear of daily life. Under these principles of tort law, the motorbiker should pay.

Id.

What Plaintiffs seek here is no different: damages sufficient to obtain the necessary diagnostic examinations to determine if a tortious exposure has caused the equivalent of internal head injuries.

As another state appellate court has explained,

[i]f a defendant's breach of duty makes it necessary for a plaintiff to incur expenses to determine if he or she has been physically injured, [there is] no reason why the expense of such an examination is any less a present injury compensable in a tort action than the medical expenses that might be incurred to treat an actual physical injury caused by such a breach of duty.

Lewis v. Lead Indus. Ass'n, Inc., 793 N.E.2d 869, 874 (Ill. App. Ct. 1st Dist. 2003).

Indeed, this Court has previously recognized that an injured party may be awarded the cost of future testing to determine the

scope of a wrongdoer's tortious conduct. In *State v. Exxon Mobil Corp.*, the State sued Exxon for the widespread contamination of groundwater wells with the chemical methyl tertiary butyl ether (MTBE). 168 N.H. 211, 218 (2015). Among other damages, the State sought—and was awarded by a jury—the cost of testing private wells for possible MTBE contamination and a fund to treat those wells if contamination were found. *Id.* at 262-63. This Court affirmed the jury's verdict and the trial court's determination that such damages were cognizable under New Hampshire law because “the injury causing the future harm has already occurred.” *Id.* at 261 (quoting trial court decision). In other words, once a toxic substance, MTBE, entered the State's waters through Exxon's negligence, “[t]he State's claim for future damages merely seeks to measure the extent of the harm caused, which New Hampshire law allows.” *Id.* So too here. Once an individual is exposed to toxic substances by virtue of a defendant's tortious conduct, she should be permitted to seek the

costs necessary to understand the scope of the harm caused. This is no different than the pedestrian hit by a motorbike who must incur the cost of an x-ray to discern the scope of her bodily harm. This Court has recognized the availability of such testing in other, analogous contexts and should also do so in the instant matter.

The above reading of existing New Hampshire common law comports with the holdings of several neighboring states, which permit plaintiffs exposed to toxic substances to seek the necessary costs of diagnostic testing. *See, e.g., Sullivan v. Saint-Gobain Performance Plastics Corp.*, 431 F. Supp. 3d 448, 466 (D. Vt. 2019) (explaining that “Vermont decisional law will follow cases permitting proof of the elements of a medical monitoring remedy”); *Donovan v. Philip Morris USA, Inc.*, 914 N.E.2d 891, 901 (Mass. 2009) (holding that Massachusetts law allows exposed plaintiffs to seek damages for diagnostic testing to detect cellular and subcellular changes); *Redland Soccer Club, Inc. v. Dep’t of the Army & Dep’t of*

Defense of the United States, 696 A.2d 137, 146-47 (Pa. 1997) (recognizing right to damages for diagnostic testing under Pennsylvania law); *Askey v. Occidental Chem. Co.*, 102 A.D.2d 130, 137 (N.Y. App. Div. 1984) (under New York law, “medical monitoring could be a recoverable consequential damage provided that plaintiffs can establish with a reasonable degree of medical certainty that such expenditures are ‘reasonably anticipated’ to be incurred”), affirmed by *Caronia v. Philip Morris USA, Inc.*, 5 N.E.3d 11, 15-16 (N.Y. 2013); see also *Dougan v. Sikorsky Aircraft Corp.*, 251 A.3d 583, 592 (Conn. 2020) (assuming, without deciding, that Connecticut law recognizes a claim for subclinical cellular injury that substantially increases plaintiff’s risk of cancer).

In sum, New Hampshire common law recognizes that plaintiffs exposed to a toxic substance through the negligence of another may seek the costs necessary to obtain diagnostic medical testing as compensation for their injury. This law is consistent with

both the Restatement and the common law of New Hampshire's sister states.

II. EARLY DETECTION OF DISEASE HAS OBVIOUS BENEFITS AND THE COST OF DIAGNOSTIC TESTING SHOULD BE BORNE BY THE TORTFEASOR AS OPPOSED TO EXPOSED PLAINTIFFS, THE STATE, THE MEDICAL SYSTEM, OR THE INSURANCE SYSTEM.

Early detection is a critical benefit that no party can credibly dispute. For the exposed plaintiff, early detection of disease or disease processes facilitates not only the discovery of physical harm, but the opportunity to expeditiously seek treatment tailored to the medical harm at issue. This, in turn, allows the plaintiff and her providers to intervene before a condition advances to a stage where the harm is more severe or irreparable. Early intervention likely reduces the medical expenses that an exposed plaintiff must ultimately incur, as early intervention is typically less costly. In addition, early intervention allows the plaintiff to seek specialists for the harm caused rather than a generalist who may not understand

the root cause of the disease. Where a disease is more advanced, the exposed plaintiff who learns this information has the opportunity to order their life around treatment that is necessitated by the exposure. Any delay in detection likely leads to greater expense, more complicated treatment, and potentially a lesser likelihood of survival or care.

The benefits of detecting disease early also extend far beyond the exposed plaintiff. Early detection reduces the burden on the medical system, particularly where the exposed plaintiff is not insured. It also allocates the cost of exposure more appropriately, placing the burden on the person or entity that caused the exposure rather than unassociated insurance carriers, doctors, or hospitals. This also likely reduces the expenses for which the tortfeasor may ultimately be responsible.

In recognizing an entitlement to the costs of diagnostic testing, the New Jersey Supreme Court described the benefits of early detection as consistent with policies of state tort law:

The availability of a substantial remedy before the consequences of the plaintiffs' exposure are manifest may also have the beneficial effect of preventing or mitigating serious future illnesses and thus reduce the overall costs to the responsible parties. . . . It is inequitable for an individual, wrongfully exposed to dangerous toxic chemicals but unable to prove that disease is likely, to have to pay his own expenses when medical intervention is clearly reasonable and necessary.

Ayers v. Jackson, 525 A.2d 287, 312 (N.J. 1987). New Hampshire tort law is consistent with these policies. See *Smith*, 128 N.H. at 240-43; *Estate of Cargill v. Rochester*, 119 N.H. 661, 666 (1979) (“[T]ort liability acts as an incentive for persons engaged in various activities to take steps to reduce the risk of injuries.”); see also *Siciliano v. Capitol City Shows*, 124 N.H. 719, 725 (1984) (public policy considerations help dictate whether to impose tort liability).

The New Hampshire Department of Health and Human Services (DHHS) recognizes and touts the benefits of early detection methods such as biomonitoring to “understand which chemicals are getting into people’s bodies and at what levels (how much) from environmental sources such as air, water, food, and even everyday products.”⁸ According to DHHS, biomonitoring can “help evaluate and make changes to public health policy and interventions (like treatment or removing products from our homes or work) so we can better protect you, your family, and your community’s health.”⁹ In other words, the state’s health agency recognizes that biomonitoring provides precisely the sort of benefit exposed plaintiffs seek to obtain from a tortfeasor whose negligence causes harmful chemicals to infiltrate exposed plaintiffs’ bodies.

⁸ See New Hampshire Department of Health & Human Services, <https://www.dhhs.nh.gov/programs-services/population-health/public-health-laboratories/biomonitoring> (last visited May 23, 2022).

⁹ *Id.*

New Hampshire state health authorities also widely recognize the benefits of early screening and detection for disease. New Hampshire Healthy Families, a non-profit organization active in the State, recommends early breast and cervical cancer screening for women, and early colon cancer screening for both males and females.¹⁰ DHHS echoes these recommendations, urging state residents to obtain early colorectal screening, mammograms, and tests to detect heart disease, among many others.¹¹ The benefits of early intervention are simply beyond dispute, especially where individuals are exposed to a known, harmful substance.

Given the undisputed benefits of early disease detection, especially for those exposed to a toxic substance, it is incumbent upon the tort system to allocate the cost of early detection to the

¹⁰ See New Hampshire Health Families, *available at* <https://www.nhhealthyfamilies.com/members/medicaid/resources/medical-screenings.html> (last visited May 23, 2022).

¹¹ <https://www.dhhs.nh.gov/programs-services/disease-prevention/chronic-disease-prevention-and-screening> (last visited May 23, 2022).

tortious wrongdoer rather than innocent plaintiffs, the State, medical professionals, or the insurance industry. Indeed, tort law in many states, including New Hampshire, allocates cost to the wrongdoer, even when the harm is latent, as is often the case with toxic exposure. *See Meyer ex rel. Coplin v. Fluor Corp.*, 220 S.W.3d 712, 716 (Mo. 2007). In addition, courts have explained that it is inequitable to require victims to incur expensive diagnostic examinations before bringing a claim for recovery. *See Petito v. A.H. Robins Co., Inc.*, 750 So.2d 103, 105 (Fla. 1999). Such an outcome would foreclose economically disadvantaged individuals from receiving the medical supervision they need to successfully prevent or diminish the harm that may accompany future disease or illness. *See id.* An exposed plaintiff should not be thwarted from attempting to mitigate their damages—a principle New Hampshire common law has long enshrined. *See Anglin v. Kleeman*, 140 N.H. 257, 262-63 (1995).

The Restatement, which this Court typically follows, further echoes these principles, describing one of the primary purposes of tort law as providing “compensation, indemnity or restitution for harms,” and “punish[ing] wrongdoers.” RESTATEMENT (SECOND) OF TORTS § 901 (1979). The Restatement explains that “the law of torts attempts primarily to put an injured person in a position as nearly as possible equivalent to his position prior to the tort.” *Id.* § 901 cmt. a. By requiring the defendant to cover the cost of diagnostic testing, New Hampshire law will adhere to these principles, endeavoring to put the exposed plaintiff as nearly as possible in the position she occupied prior to the tortious exposure.

Early detection of disease will also have the added benefit of limiting the potential liability of a defendant, as it will lessen the damage that a plaintiff will ultimately suffer. *See Petito*, 750 So.2d at 106 (explaining that “[p]ublic policy actually favors this result since the potential liability of a defendant is likely to be limited . . . as

early detection will lessen the damages that a plaintiff will ultimately suffer"). Recovery for the cost of diagnostic testing is thus "in harmony with 'the important public health interest in fostering access to medical testing for individuals whose exposure to toxic chemical creates an enhanced risk of disease.'" *Redland Soccer Club*, 696 A.2d at 145 (quoting *Ayers*, 525 A.2d at 311).

The *amicus* urges this Court to recognize what many other courts across the country have: delay of the remedy of diagnostic testing is elimination of that remedy, placing unfair costs on the exposed plaintiff, the State, medical providers, and the insurance industry. It is the tortfeasor that causes these toxic exposures and it is the tortfeasor that should bear these costs.

