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Toxic Exposure Claims Likely to Spike in Alabama

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In a surprising about-face, the Alabama Supreme Court recognized a “new accrual rule [in] toxic-substance-exposure cases” on Friday, January 25, 2008. *Griffin v. Unocal Corp.*, No. 1061214 at p. 5 (Ala.). For the last twenty-nine years, since the Alabama Supreme Court’s decision in *Garrett v. Raytheon Co.*, the courts of Alabama have held that the statute of limitations in toxic exposure cases begins to run on the date of last exposure. Over the last three decades, the date-of-last-exposure rule had been challenged at least thirteen times and was reaffirmed on every occasion. Yet, when addressing the legal issue presented on appeal in *Griffin*—whether the date of last exposure rule [is] still the law in Alabama—the Alabama Supreme Court answered with a resounding ‘no’, expressly overruling *Garrett* and its progeny. *Griffin v. Unocal Corp.*, No. 1061214 at p. 5.

In a 5-4 decision that adopted Justice Harwood’s dissenting opinion in *Cline v. Ashland, Inc.*, a similar case decided by the Alabama Supreme Court last year, the Alabama Supreme Court held that “a cause of action accrues only when there has occurred a manifest, present injury.” *Griffin v. Unocal Corp.*, No. 1061214 at p. 5 (emphasis in original). The Court’s decision further defines the term “manifest” to mean “an injury manifested by observable signs or symptoms or the existence of which is medically identifiable.” *Id.* at 51. The Court also clarified that “manifest” does not mean “that the injured person must be personally aware of the injury or must know its cause or origin. All that is required is that there be in fact a physical injury manifested, even if the injured person is ignorant of it for some period after its development.” *Id.* A chorus of discord from the four dissenting justices called for the court to reaffirm the date-of-last-exposure rule and to defer to the Alabama legislature for further action on this issue. Nonetheless, the majority’s new rule carried

the day and, but for the plaintiff in this case who will benefit presently from the Court’s change of course, Alabama’s new accrual rule in toxic exposure cases will act prospectively only.

The accrual date in toxic exposure cases is particularly critical because often the effects of such exposure are only seen after a prolonged period. In its *Griffin* decision, the Alabama Supreme Court acknowledged such situations noting that “there are cases where the defendant’s act does not cause a contemporaneous injury to the plaintiff, but an injury later manifests as a result of, and in furtherance and subsequent development of, the defendant’s act.” *Id.* at 44. Finding that the date-of-last-exposure rule coupled with a delayed injury left plaintiffs with a “classic Catch-22” such that a claim was either filed before any actual injury or after the limitation period had already expired, the Alabama Supreme Court held that the date-of-last-exposure rule was “confounded” and unworthy of “blind obedience” in the name of stare decisis.

While the new accrual rule’s practical impact will be seen in the coming months, abandonment of the date-of-last-exposure rule will likely significantly increase the number of filings of toxic exposure claims in Alabama. Many claims that would have been time barred under the old rule will now likely be viable because the new rule takes into consideration the latency period associated with many injuries. In practical terms, the Court’s decision is likely to prompt filings.





If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings Atlanta lawyers:

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