

The Patriot-News

Cancer victims face hurdles to compensation and solace

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Cancer and cancer deaths are always a tragedy, but the situation in Selinsgrove is especially hard when one considers the young age of many of the victims.

The fact that a number of cancer victims lived near the scene of an alleged release of hazardous substances certainly gives local residents, students, Susquehanna University and government regulators a reason to question the cause. Nevertheless, many medical, factual and legal questions will arise as the investigation continues.

Even if the state Department of Environmental Protection proves there are hazardous substances in the Selinsgrove area, it likely will be very difficult for the victims to prove their illnesses were caused by exposure to those substances. They would have to show that the legal and factual cause of their illnesses was exposure to chemicals in Selinsgrove and that there are no other likely causes.

The DEP is testing soil, air and water to see if there are harmful chemicals in the areas where the victims lived. Since some of the victims reportedly contracted cancer more than a decade ago and since, sadly, some of the victims have died, it will be impossible to conduct the kind of testing and ask the kinds of questions that would more conclusively determine the source of contaminants to which the victims might have been exposed when they lived in Selinsgrove.

Sources of airborne contaminants that might have been present when victims lived in Selinsgrove might be long gone. Contaminants in soil and water are more persistent than are airborne contaminants, so to the extent that contaminants once were released into the ground, residue might be present.

Many questions will abound, however, even if contamination is found in the soil or groundwater. When did the contamination get into the soil and groundwater? How much contamination was released? Who is responsible for the release? Were the victims exposed to it? For how long were the victims exposed to the contaminants?

The rate of cancer in the United States is alarmingly high -- approximately 25 percent. This means that one in four Americans will contract some form of cancer during the course of their lives. Cancer has many causes. Some cancers are understood to be caused by a known source -- for example, mesothelioma generally is caused by exposure to asbestos dust. Others may be from natural causes (such as radon) or viruses (such as cervical cancer). Genetics likely plays an important role in this process as well.

Also, there might be many potential causes of any particular disease. Conversely, there are many diseases that are not commonly associated with any particular substance or industry. The lack of complete understanding of the cause of a disease makes it difficult for medical professionals and government regulators to say with certainty (most of the time) that a particular hazardous substance was the "cause" of a disease.

The Patriot-News, which has performed a valuable public service by focusing attention on the plight of these individuals, has described in detail the kinds of studies that are necessary to determine what has caused a particular form of cancer and whether a "cancer cluster" exists. Needless to say, these studies are time-consuming and not necessarily conclusive.

With respect to litigation to recover damages, if a substance is present in the environment and that substance is well known to cause a particular disease, then the likelihood that the victims will be compensated by the person or company responsible for that substance is improved. The law, however, greatly favors defendants.

Under the existing Pennsylvania standard of "causation," a plaintiff will be required to show: (1) that a particular substance or occurrence attributable to a defendant's conduct was the factual cause of the plaintiff's disease and (2) that the defendant's conduct was a substantial factor in causing the plaintiff's disease. If the plaintiff fails to provide adequate proof of causation, then the defendant will prevail.

Unfortunately for the victims, medical science has not reached a point where it can determine with certainty the cause of most forms of cancer. This is especially so where the dose received was of unmeasured intensity and duration. Although a physician might be fairly sure a possibility exists that a person's cancer was caused by exposure to a particular substance, he or she probably could not testify, in accordance with the requirements of the law, that there is "a reasonable degree of scientific certainty" that the cancer was caused by that substance.

In the Selinsgrove case, many victims have different forms of cancer (The Patriot-News reported more than a dozen forms of cancer), so it will not be clear that a single substance caused all of the victims' illnesses.

Even if it is proved that there is a connection between the victims' exposure to hazardous substances and their diseases, the next issue the victims will confront is who is responsible for the injuries? Are responsible individuals alive? Are responsible companies still in existence? Are any of these individuals or companies bankrupt? Does the university or the town share in this responsibility?

Lawyers will ask whether there are other potential causes of each person's disease. Since many of the victims attended Susquehanna University, is there a connection between classes they might have taken (such as chemistry labs) and their illnesses? Did the students eat in the same cafeteria? What is the source of the water they drank? Did they take a semester abroad to the same location?

It will be a long time until the environmental investigation and health studies are completed. A longer time will pass until any litigation is resolved. Unfortunately, the victims of this tragedy might have little solace from the litigation. One hopes that individuals, government and institutions will maintain vigilance to prevent situations that might well have been preventable.

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