

IN THE SUPREME COURT OF TEXAS

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No. 04-1023
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IN RE ALLIED CHEMICAL CORPORATION ET AL., RELATORS

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ON PETITION FOR WRIT OF MANDAMUS
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Argued November 16, 2005

JUSTICE WAINWRIGHT, dissenting.

The several opinions in this case cogently set forth different positions. The truth is we all agree that improper tactical gamesmanship that skews accurate outcomes in the search for justice in the courts should be halted. In extraordinary cases in which the trial court has abused its discretion and there is no adequate remedy by appeal, it should be halted by mandamus. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). The question in this case is whether relators have shown that the Court should grant relief using the vehicle of mandamus. Relators decry being put to trial with no evidence of causation to support the claims of hundreds of plaintiffs against the dozens of defendants. However, relators in this case did not tee up their no-evidence arguments in the trial court by filing either 1) a motion for summary judgment under Texas Rule of Civil Procedure 166a(c) or 166a(i) or 2) a motion under Texas Rule of Civil Procedure 215.1 to compel the claimants to provide interrogatory answers that comply with *Able Supply Company v. Moye*, 898 S.W.2d 766, 771 (Tex. 1995). If they had, and the trial court then

abused its discretion by making an erroneous legal ruling, refusing to set the motion for a hearing or refusing to timely rule, I would join the Court's opinion in this type of mass tort case. None of these things occurred. In fact, there is not even an existing trial court order about which the relators complain.

If we do not require litigants to avail themselves of the existing avenues for relief before seeking unique and extraordinary mandamus remedies, then mandamus relief will cease being extraordinary in the manner our precedents prescribe. The rules of procedure provide methods to address the complaints in this case. I depart from the Court in this case over the propriety of granting relief by mandamus.

J. Dale Wainwright
Justice

OPINION DELIVERED: June 15, 2007