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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Ketchum, J., dissenting:

**WEST VIRGINIA CANNOT AFFORD TO BE A DUMPING GROUND FOR
FOREIGN LAWSUITS.**

West Virginia has very few trial judges and limited judicial resources. Nevertheless, the majority opinion will allow non-West Virginia residents, who suffered an injury in another state, to file their lawsuit in West Virginia.

In the present case, a North Carolina resident suffered an injury that occurred in North Carolina. The resulting lawsuit is barred under North Carolina law. Consequently, the North Carolina resident filed the lawsuit in West Virginia where the lawsuit would not be prohibited. If North Carolina law bars a North Carolina resident's lawsuit then why should West Virginia entertain the matter? We should worry about West Virginia residents and torts that occur in West Virginia, rather than injuries suffered by a North Carolina resident that occurred in North Carolina.

The facts of this case are straightforward: a North Carolina doctor prescribed a defective medical patch to a North Carolina resident. The patch was not made or used in West Virginia. The North Carolina resident who used the defective patch died in North Carolina. The North Carolina statute of limitations bars the suit in North Carolina. The

North Carolina resident therefore brought the suit in West Virginia because the lawsuit is not barred under our statute of limitations.

This lawsuit “would be more properly heard in a forum outside this state,” i.e. North Carolina. *W.Va. Code* § 56-1-1a. We should not protect tort claims by North Carolina residents when the North Carolina legislature and judiciary have seen fit to prohibit these claims. We should protect West Virginia residents from defective products and let North Carolina deal with injuries suffered by North Carolina residents that occur in North Carolina.