

Products Liability Law Daily Wrap Up, JURY VERDICTS—CHEMICAL PRODUCTS—S.D. Ohio: Ohio jury levies \$5.1 M verdict against DuPont for toxic contamination of West Virginia water supply, (Jul. 7, 2016)

By Pamela C. Maloney, J.D.

In a bellwether case involving the dumping of toxic chemicals by E.I. du Pont de Nemours at its manufacturing facility in Wood County, West Virginia, a federal jury in Ohio awarded \$5.1 million dollars to a resident who allegedly developed testicular cancer as a result of his exposure to the toxic chemicals commonly referred to as PFOA and C-8. According to the verdict, there was substantial evidence that DuPont acted with actual malice in causing the harm, laying the groundwork for an award of punitive damages in the next phase of the trial ([Freeman v. E.I. du Pont de Nemours and Co.](#), July 6, 2016, Sargus, E.).

According to the resident's [complaint](#), DuPont negligently, intentionally, maliciously, knowingly, and recklessly contaminated the drinking water supplies in the Little Hocking PSD water district where he lived by allowing perfluorooctanoic acid (PFOA) and/or ammonium perfluorooctanoate (a/k/a C-8/APFO/PFOA) to be discharged, vented, and/or otherwise released in connection with its manufacturing operations at the plant. The complaint charged that the dumping of these chemicals began as early as the 1950s and that DuPont knew as early as 1954 that there were concerns about the potential toxicity of C-8. The complaint provided a detailed history of the studies done on human blood samples and female employees, along with other available data, all of which suggested that there was a causal connection between occupational exposure to C-8 and various health and pregnancy issues.

The complaint went on to state that in 1988, DuPont was aware of at least one toxicity study that revealed a link between C-8 exposure and certain types of cancer, including testicular cancer. Despite its knowledge of the potential toxicity of C-8, including the confirmed carcinogenic nature of C-8 to animals, DuPont continued throughout the 1980s and into the early 2000s to increase the amount of C-8 waste discharged from the plant into the air, the Ohio River, and unlined non-hazardous waste landfills in the vicinity of the plant, as well as into the underlying water table and nearby surface waters. In addition, DuPont failed to disclose that massive amounts of C-8 were present in the public and private drinking water supplies in the vicinity of the plant until the company was ordered to produce all of its C-8 documents as part of federal litigation. The company continued to falsely and misleadingly represent information intended for public dissemination that C-8 was not hazardous to health and that there was no scientific evidence that low levels of exposure could adversely affect human health.

Causes of action. The resident's complaint set forth several causes of action including one sounding in negligence for failure to exercise reasonable care in DuPont's ownership, maintenance, management, operation and/or control of the plant, including a duty to assure that the plant did not or would not create a nuisance or condition. Another cause of action focused on strict liability design defect and failure to warn, and on the company's conspiracy with independent testing organizations. Finally, the complaint set forth counts sounding in concealment, misrepresentation, fraud, unfair and deceptive practices in violation of West Virginia law, past and continuing trespass and battery, and negligence per se. The remaining counts set forth causes of action for the negligent, intentional, and reckless infliction of emotional distress, and for punitive damages.

The case is No. 2:13-cv-1103.

Attorneys: Aaron L. Harrah (Hill, Peterson, Carper, Bee & Deitzler, PLLC) for David Freeman.

Companies: E.I. du Pont de Nemours and Co.

Cases: CourtDecisions JuryVerdictsNewsStory WarningsNews DamagesNews ChemicalNews OhioNews