



TOXICS LAW REPORTER



Reproduced with permission from Toxics Law Reporter, 26 TXLR 514, 05/05/2011. Copyright © 2011 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Vinyl Chloride

Finding Expert Manipulated Data, Court Dismisses Brain Cancer Cluster Case

A Pennsylvania trial court April 27 dismissed the lead case brought by plaintiffs alleging contamination of a small northern Illinois community's drinking water caused a brain cancer epidemic among residents (*Branham v. Rohm and Haas Co.*, Pa., Phila. Ct. Com. Pl., May Term 2006 No. 3590, 4/27/11).

Judge Allan L. Tereshko of the Philadelphia County Court of Common Pleas said that plaintiff's expert opinions are not competent to establish causation and liability against chemical company Rohm and Haas Co.

"Rohm and Haas is gratified that Judge Tereshko granted its motion to dismiss. Sound science does not support the theory that a cluster of brain tumors exists in McHenry County," Timothy N. Spreitzer, vice president of the Tierney Co., a public relations firm representing the company, told BNA. "At the same time, it continues to offer sympathy to those residents of McCullom Lake Village who suffer from serious illness."

During the 1960s and 1970s, Morton International operated a plant in Illinois. Chemical wastes, including vinyl chloride, were dumped into a pit on the property, and carcinogenic ground water allegedly migrated into McCullom Lake Village, contaminating the drinking water and the air as water evaporated.

Franklin Branham, a village resident, died of brain cancer in 2004. Two years later, his widow, Joanne Branham, sued Morton and Rohm and Haas, which bought Morton in 1999, in Pennsylvania state court, alleging his death was caused by exposure to vinyl chloride.

Thirty-one other civil actions filed against the companies alleging the contamination caused a cluster of brain cancers in the locality were combined for discovery purposes. Joanne Branham's case was chosen as the first to go to trial, in September 2010.

'Tantamount to Fraud on Court.' After five weeks of trial, plaintiff called Richard Neugebauer, a Columbia University epidemiologist, who testified that there was a cluster of brain cancers in the village. After Neugebauer was cross-examined, Judge Tereshko halted the trial and conducted a voir dire of the expert.

The judge concluded that Neugebauer manipulated or disregarded the parts of the scientific information upon which he claimed to have relied in an effort to arrive at the conclusion he intended—an increase in the ratio of observed cases of brain cancer to expected cases in a population unexposed to the carcinogen. "It is as close as I have come sitting on the bench for 20-plus years to having a report that may be tantamount to fraud on the court, and I will not allow this testimony to continue," he said.

Tereshko dismissed the jury on October 21, 2010. Plaintiff moved for a mistrial, and defendants moved for a compulsory nonsuit.

Saying he needed "some time and distance to be a little bit less passionate about the issue," Tereshko heard oral arguments on the parties' motions six months later. The court found that none of plaintiff's other experts had offered specific causation opinions in their reports, which relied on Neugebauer's conclusion that a brain cancer cluster exists.

Tereshko granted defendants' motion for a nonsuit.

Sanctions in Offing? A motion for sanctions based on the alleged misconduct of plaintiff's counsel in conjunction with his experts will be addressed by separate findings in due course, the judge said. Aaron J. Friewald of Laysner & Friewald in Philadelphia, who represents the village residents, did not respond to a request for comment.

Dow Chemical Co., which acquired Rohm and Haas as a wholly owned subsidiary in 2009, was not a named defendant in the lawsuits but a Pennsylvania appeals court ruled April 12 that it was subject to a subpoena to answer questions about issues in the case (26 TXLR 491, 4/28/11).

In 2008, a federal district court preliminarily approved a settlement agreement under which Modine Manufacturing Co., an international manufacturer of heating and cooling technology that also operated a facility in the area and allegedly released waste water containing vinyl chloride, would pay village residents up to \$2 million for medical monitoring and property damage claims (23 TXLR 199, 3/6/08).

Carl Solano and Sam Silver of Schnader Harrison Segal & Lewis LLP in Philadelphia and Kevin T. Van Wart of Kirkland & Ellis in Chicago represent Rohm and Haas.

Full text is available at <http://op.bna.com/txlr.nsf/r?Open=pqun-8ggllq>.