Judge Throws out Injury Cases against DuPont

VICKI SMITH, Associated Press

MORGANTOWN, W.Va. (AP) — A judge has dismissed a personal injury lawsuit that 14 West Virginia families brought against DuPont over a former zinc smelting operation, saying they failed to produce evidence that toxins from the plant made them sick.

The plaintiffs were among thousands who won a class-action lawsuit against DuPont in 2007. They then pursued a separate case, claiming that long-term exposure to arsenic, cadmium and lead had caused ailments ranging from rashes to cancer.

They sued without help from an attorney, and Harrison County Circuit Judge Thomas Bedell gave them several chances to produce evidence independent of the class-action case. But last week, he ruled that they'd failed to produce expert testimony or any other scientific evidence to support their claims.

"Plaintiffs have submitted no evidence whatsoever on these crucial issues that would lead a rational trier of fact to rule in their favor," the judge wrote. "... Although the court recognizes that the plaintiffs made a good faith effort, they did not obtain such evidence."

Lead plaintiff Rebecca Morlock didn't immediately return messages Tuesday so it's unclear whether they will appeal. DuPont, however, said it was pleased with the outcome.

"The ruling confirms that the plaintiffs lacked sufficient evidence to proceed with their claims," spokesman Dan Turner said.

DuPont's smelter in north-central West Virginia produced more than 4 billion pounds of slab zinc and 400 million pounds of zinc dust for use in rustproofing products, paint pigments and battery anodes. By 1971, a toxic waste pile stood 100 feet tall and covered nearly half of the 112-acre site.

The plant closed in 2001, and DuPont worked with state regulators to demolish buildings and cap the site.

But nearly five years ago, a jury ruled DuPont was negligent in creating the waste pile, and that it had deliberately lied to its neighbors and downplayed possible health threats. It awarded $380 million in punitive damages — an amount the state Supreme Court later cut to $196 million.

The high court affirmed that thousands of residents were entitled to a 40-year medical monitoring program and a cleanup fund for private properties.

Those verdicts were later wiped out when DuPont dropped its appeal and offered a

$70 million settlement that included $4 million to be set aside for cash payments to people who are eligible for medical monitoring program that began in November.

Bedell said he gave the plaintiffs in the personal injury case nearly a year of extensions to gather new evidence. Instead, they rehashed material used in the class-action case "alongside speculative and, ultimately, conclusory statements."

DuPont called the litigation frivolous and asked for sanctions in its motion for summary judgment.

But Bedell rejected that, saying he doubts their conduct "stemmed from any ill intent."

"Ultimately, the court recognizes that, in a very realistic and pragmatic vein, the plaintiffs have understandable concerns regarding their health," he wrote. "The court further understands that the legal process is oftentimes daunting and complicated."

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