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Litigation Against Rohm & Haas Over Cancer Cluster Proceeds

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In the wake of a merger between two chemical giants, litigation is pending in Philadelphia Common Pleas Court in which plaintiffs allege a chemical made by Rohm & Haas Co. caused their brain cancer and brain tumors.

Meanwhile, Dow Chemical Co., the new corporate parent of Rohm & Haas, is fighting a plaintiffs' motion to require Dow corporate designees to testify about how an epidemiology study examining the link between the vinyl chloride chemical and cancer was conducted. The plaintiffs allege that instances of Dow employees working with the carcinogenic chemical, and who later died of brain cancer or tumors, were not reported to the independent scientific team conducting the epidemiology study.

Thirty-one plaintiffs from one small northern Illinois lakeside village are alleging in Philadelphia Common Pleas Court that their brain cancer and tumors were caused by exposure to the vinyl chloride manufactured by a Rohm & Haas plant in northern Illinois. The first case, *Branham v. Rohm & Haas Co.*, is set to go to trial

Sept. 20.

Dow, which is not a party to *Branham*, is asking the Superior Court to reverse Philadelphia Common Pleas Judge Allan L. Tereshko's decision last month to let the plaintiffs in *Branham* subpoena a Dow corporate designee to testify in a deposition.

Rohm & Haas, which is headquartered in Philadelphia, is the named defendant in the case. Dow, which is headquartered in Midland, Mich., bought Rohm & Haas in April 2009.

The judge found that Dow is a resident of Pennsylvania because it has corporate offices, corporate officers, employees and plants in the state because of its acquisition of Rohm & Haas.

Plaintiff Franklin Delano Branham, who died in 2004, was one of three next-door neighbors diagnosed with a rare form of brain cancer in the same year, Tereshko wrote. Branham and the other plaintiffs from McCullom Lake, Ill., allege in the litigation that their brain cancer or brain tumors were caused by exposure to groundwater and air contaminated by vinyl chloride. The plaintiffs also allege that the vinyl chloride got into the groundwater and air because of leaks from an eight-acre lagoon at the plant.

Rohm & Haas acquired the plant with its acquisition of Morton Chemical Co. in 1999.

The decision on the Dow testimony could affect key evidence in the litigation.

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The plaintiffs' theory is that the cases of between 15 and 20 employees working with vinyl chloride for Dow or other companies, and who had brain cancer or brain tumors, were not reported to the team conducting the study in an attempt to affect the study results, plaintiffs' attorney Aaron J. Freiwald of Layser & Freiwald in Philadelphia said. The evidence was developed through discovery, Freiwald said.

Freiwald said the addition of just 15 or 20 cases would have made a difference in the study results. The study, conducted by Dr. Kenneth Mundt and published in 2000, identified a cohort of 10,000 employees working with vinyl chloride between 1942 and 1972, Freiwald said. Thirty-six were found to have died of brain cancer or tumors, which showed a statistically inconclusive correlation between exposure to vinyl chloride and brain tumors or cancer, Freiwald said.

However, the addition of just a few more cases likely would have shown a statistically significant correlation, Freiwald argued.

The Mundt study is being used by the Rohm & Haas defense, Freiwald said.

"A lot of the evidence is going to come down to what is the science of vinyl chloride and cancer," Freiwald said.

Rohm & Haas defense attorney Kevin Van Wart, of Kirkland & Ellis in Chicago, said the plaintiffs are trying to redo long-standing epidemiological studies. Van Wart said he was not representing Dow on the issue but was familiar with the issue.

Van Wart argued there is a consistent body of literature that has failed to find an association between brain cancer and vinyl chloride and there is no relationship between the plaintiffs' conditions and the Rohm & Haas plant.

There is no evidence of exposure to vinyl chloride, he said.

"This is all designed for the courtroom. This is not science. This is just courtroom melodrama," Van Wart said.

Freiwald said the "real issue" is that the plaintiffs want to get at the evidence held by Dow while Dow does not want the plaintiffs to have that evidence.

Dow argued that the plaintiff's subpoena should be quashed because a Pennsylvania state court does not have jurisdiction over it, Tereshko said.

Van Wart said that Rohm & Haas and Dow are legally distinct entities and both are represented separately in the litigation.

Van Wart, as well as Philadelphia counsel Samuel W. Silver of Schnader Harrison Segal & Lewis, are representing Rohm & Haas. Howard M. Klein of Conrad O'Brien is representing Dow. Klein declined comment.

Dow and at least 13 other chemical companies participated in a cancer epidemiological study from the 1970s to the 1990s, Tereshko said.

The plaintiffs served the subpoena on Dow in order to compel the appearance of a corporate designee to testify about why the deaths of Dow employees were not reported to Mundt, who conducted an industrywide epidemiological study of vinyl chloride workers based upon self-reported data supplied by the companies, Tereshko said.

Tereshko said the Mundt study was the only study that did not show a statistically significant excess of brain cancers among chemical industry employees working with vinyl chloride.

Dow argued that it is not a resident of Pennsylvania and its residence is exclusively in Delaware, the state of its incorporation.

Tereshko reasoned that Dow is a resident of Pennsylvania because of its acquisition of Rohm & Haas.

"The law would not intend such a ridiculous result as having such a corporation subject to service of process in this commonwealth and county, but not subject to our subpoena powers. Thus it is clear that the commonwealth of Pennsylvania and Philadelphia County have subpoena power over Dow," Tereshko wrote.

The Superior Court is hearing the *Branham* case on an expedited appeal.

Modine Manufacturing, which operates a condenser-manufacturing plant next to the Rohm & Haas facility, reached a confidential settlement with plaintiffs and also agreed to pay \$1.4 million toward a medical monitoring program, according to a news release. •



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