

PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET

CONTROL NUMBER: 10041014 (RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

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ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
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May Term, 2006
 Month Year
 No. 03590

BRAHAM VS ROHM&HAAS CO ETAL

Name of Filing Party:
JOANNE BRANHAM-PDTX

INDICATE NATURE OF DOCUMENT FILED:
 Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
 Is another petition/motion pending? Yes No
 If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (see list on reverse side) MOTION/PETITION REPLY FILED	PETITION/MOTION CODE (see list on reverse side) REPLM
ANSWER / RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding): MTLIM - MOTION IN LIMINE	
I. CASE PROGRAM DAY FORWARD/MAJOR JURY PROGRAM Court Type: <u>JUDGE ALLAN TERESHKO</u> Applicable Petition/Motion Deadline: <u>N/A</u> Has deadline been previously extended by the Court: <u>N/A</u>	II. PARTIES (required for proof of service) (Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.) AARON J FREIWALD 1500 WALNUT STREET 18TH FLOOR , PHILADELPHIA PA 19102 DENNIS R SUPLEE SUITE 3600 1600 MARKET STREET , PHILADELPHIA PA 19103 JULIE E RANDOLPH 1600 MARKET STREET SUITE 3600 , PHILADELPHIA PA 19103 THOMAS W HAZLETT SCHNADER HARRISON SEGAL & LEWI 1600 MARKET ST., SUITE 3600 , PHILADELPHIA PA 19103 NILAM AJIT SANGHVI SCHNADER HARRISON SEGAL & LEWIS LLP 1600 MARKET ST., STE. 3600 , PHILADELPHIA PA 19103
III. OTHER	

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

 (Attorney Signature/Unrepresented Party) April 30, 2010 AARON J. FREIWALD _____
 (Date) (Print Name) (Attorney I.D. No.)

The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.

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as the Administratrix of the Estate of	:	COURT OF COMMON PLEAS
FRANKLIN DELANO BRANHAM	:	OF PHILADELPHIA COUNTY
	:	
Plaintiffs	:	MAY TERM, 2006
	:	
	:	NO. 3590
	:	
v.	:	
	:	
ROHM AND HAAS COMPANY, ET AL.	:	
Defendants	:	

**PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO PRECLUDE
EPIDEMIOLOGY STUDIES BY MCHENRY COUNTY AND STATE OF ILLINOIS**

Among the many inaccuracies is Defendants' Brief in Opposition, three points stand out.

1. The County and State studies are admittedly irrelevant

No matter how Defendants strain, they cannot make the county and state studies relevant to the question of brain cancer rates in McCullom Lake.

The County's inquiry into brain cancer rates in the zip code that includes McCullom Lake tells nothing about brain cancer rates in McCullom Lake. The State's inquiry into rates of brain cancer in McHenry County, likewise, tells nothing about rates of brain cancer in McCullom Lake. The CDC did no original or independent review, but merely verified the math calculations in the county and state analyses. We might just as well wonder about rates of brain cancer in Illinois overall, or in the Midwest region of our country, or in the United States, or in North America, and so on. None of these inquiries would tell us anything about brain cancer rates in McCullom Lake.

Defendants are flat out wrong in saying that "no one has 'conceded' that Ms. Gallas' epidemiology study 'provides no relevant or meaningful information about the rate or incidence of brain cancer in McCullom Lake.'" Def. Resp., ¶ 17. Ms. Gallas herself has conceded as much. Plaintiff quoted directly from Ms. Gallas' deposition as she explained that she had limited data and that her analysis left her unable to comment on brain cancer rates in McCullom Lake itself. "I wasn't able to make any conclusions regarding brain cancers in McCullom Lake," she testified candidly. *See* Deposition of Sherrie Gallas, p. 180, attached as Exhibit C to Plaintiff's Motion.

Defendants' spin on the meaning of Ms. Gallas' testimony is incredible. The County's inquiry more than failed to show "a significant increase in cancer rates that would demonstrate the presence of a cancer cluster," as Defendants claim. Def. Mem. at 4. Ms. Gallas' inquiry failed to show anything about McCullom Lake.

If this case somehow was about cancer rates in the 60050 zip code, then Ms. Gallas' analysis might well be relevant. Based on her concession, however, such evidence must be seen as irrelevant to any issue in the case. If the County's inquiry fails to inform on the question of brain cancer rates in McCullom Lake – again as the County's own epidemiologist has admitted under oath – then the State's analysis of cancer rates in McHenry County falls with an even louder thud.

There will be enough epidemiology evidence in this trial as is. Defendants' brief is a fine example of how basic epidemiology can be misused and how such evidence can tend to create confusion. As they have done in their papers to the Court on this issue, at trial Defendants would like to hold up the County's and the State's analysis of brain cancer rates in the zip code and the county as some kind of official endorsement of the Defendants' position on the question of a brain cancer cluster in McCullom Lake. For the reasons noted, these studies simply do not prove what Defendants claim they prove. The studies are not relevant evidence and should be precluded.

2. County and State studies did fail to find evidence of a brain cancer cluster in McCullom Lake – with good reason.

If I take a sample of groundwater and test it for chemicals A, B and C, but not D, then I cannot later claim that tests on the groundwater sample failed to find evidence of chemical D. By the same reasoning, it simply is not the case that the zip code analysis by the county epidemiologist and the county analysis by the state epidemiologist “all have concluded that there is no evidence of a statistically significant elevation of brain cancers in the area around and including McCullom Lake Village.” Def. Mem. at 1.

McCullom Lake is included in the State of Illinois. If I did an analysis of brain cancer rates throughout the state and found no statistically significant difference in rates as compared to the country as a whole, one could not credibly claim that such a study failed to find a brain cancer cluster in McCullom Lake. McCullom Lake is also part of the United States of America. It is part of the western hemisphere as well.

The fallacy of Defendants' reasoning may show better in the following: Let us assume that there was a statistically significant increase in brain cancer rates in McHenry County as compared to the rest of Illinois. Then suppose Plaintiff sought to introduce that analysis as evidence that there is a brain cancer cluster in McCullom Lake. Would Defendants object? Of course they would and rightly so.

3. Plaintiff's expert did look at McCullom Lake brain cancer rates – and continues to do so.

Dr. Richard Neugebauer, Plaintiff's expert in epidemiology, did what neither the county or state government staff did: He looked at brain cancer rates in McCullom Lake using rationally-defined zones of interest. His report, which was the subject of Defendants' previously unsuccessful motions to preclude, outlines his findings regarding brain cancer rates in McCullom Lake.

Moreover, Dr. Neugebauer applied to the Illinois Cancer Registry to receive cancer incidence data in smaller population sets than are generally made available to the public. In order to do this, Dr. Neugebauer prepared a protocol for the use of this data, had that protocol approved by the Illinois authorities and the Western Institutional Review Board. The Illinois Cancer Registry has recently provided Dr. Neugebauer with the data he requested, finally.

Plaintiff has advised Defendants' counsel that Dr. Neugebauer now has this data and will shortly provide a supplemental report. The point is that the county and state officials could well have obtained the same data Dr. Neugebauer has obtained. For that matter, Defendants could have applied for access to this data, as Dr. Neugebauer did, or could have requested that they be considered co-applicants so as to receive the same data.

Respectfully submitted,

LAYSER & FREIWALD, P.C.

By:



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DATED: 4/30/10

CERTIFICATE OF SERVICE

I, AARON J. FREIWALD, ESQUIRE, hereby certify that service of a true and correct copy of Plaintiff's Reply in Support of Motion to Preclude Epidemiology Studies by McHenry County and State of Illinois was served upon the following on this date, via United States First Class Mail, Postage Prepaid, as follows:

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DATED: 4/20/10