

THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS

BRANHAM

vs.

ROHM & HAAS CO., et al.

: TRIAL DIVISION- CIVIL
: MAY TERM, 2006
: No. 3590 (Lead Case)
:
: Control# 09123181
: Defendants Motion in Limine
: To Exclude Evidence of
: Other Cancers

DOCKETED
FEB 4 2010
S. LONERGAN

Braham Vs Rohm&Haas Co Etal-ORDER



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FINDINGS and ORDER

NOW, pending before this Court is Defendant Rohm & Haas, et al's Motion to Exclude Evidence of Other Cancers in the Trial of these consolidated matters beginning with the *Branham* matter which is the lead captioned case.

Briefly stated, these cases involve Plaintiffs' claim that over the course of many years, Defendants had storage facilities that were negligently maintained, such that certain toxic chemicals were allowed to be released into the environment.

Plaintiffs claim that these chemicals migrated via ground and air conduits into the area which enveloped McCullom Lake Village and then into their bodies to circulate into their bloodstreams. Plaintiffs go on to allege that the chemical molecules were neuropathogenic in nature, resulting in distinct forms of brain cancers which were suffered by residents or functional residents of the McCullom Lake Village Community.

In support of their respective claims, Plaintiffs produced Experts who offered opinions on exposure and causation using their respective disciplines which are epidemiology, toxicology and neuropathology.

Central to the analysis of the Experts, is the number of cases of brain cancer in

this defined community and the commonality of the causal mechanisms which are encapsulated here following:

Migration by Air and Water

Plaintiffs' Expert opines that vc (vinyl chloride) by-products, found in liquid waste generated by Defendants' plant, were stored in an outdoor storage facility (lagoon), which introduced the vc molecule into the air and groundwater, which provided the pathway to the subject community.

Neuropathology

Plaintiffs' Expert opines that the vc molecule was absorbed by the numerous Plaintiffs and caused a genetic mutation commonly experienced by Plaintiffs which resulted in distinct forms of brain cancer.

Epidemiology

Plaintiffs' Expert opines that the incidence of brain cancers present in the community, in the released vc molecule exposure zone, were significantly elevated and that the probability that such increase would be due to non-random factors, was sufficiently elevated to allow a causal inference to be reasonably determined.

As can be readily observed, the gravamen of this Complaint is of a piece of the consolidated action which alleges substantially the same harm to multiple persons from the same source via the same mechanism of exposure.

If granted, Defendant's Motion to Preclude Evidence of these other cancers which actually form this textualized claim, would be a deconstruction of the tort and would be severely prejudicial to the Plaintiff in his individual claim and to all common Plaintiffs in their respective claims.

Defendant's argument that evidence of the incidence of the other cancers common to the Plaintiffs would unfairly prejudice the Defendants, finds no purchase here. This is because the alleged harm is to these Plaintiffs collectively only, manifested by these individual claims. In other words, the harm is common to all from a common source. This is how the evidence must be allowed to be presented.

Defendant's evidence would be to establish that it did no harm or that the harm it did, did not cause the Plaintiff's injury. If successful, it would be applicable to the

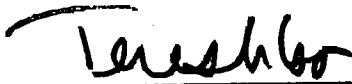
individual and therefore the group, because the rejection of the individual elements of the causal harm would be a rejection of the common harm.

Defendant's course of action would be necessitated by this and executed at trial by vigorous cross-examination of the Plaintiff's evidence and the advancement of its own evidence to counter that of the Plaintiff.

Considering this and the record as a whole, Defendant's Motion in Limine to Exclude (and substitute) Evidence of Other Cancers is Denied.

BY THE COURT:

February 4th 2010
DATE


ALLAN L. TERESHKO, J.

cc:

Dennis R. Suplee, Esq.
Aaron J. Freiwald, Esq.

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