

Judge Warns He May Toss DuPont Lawsuits

Vicki Smith, Associated Press

MORGANTOWN, W.Va. (AP) — Fourteen families who blame ailments ranging from rashes to cancer on long-term exposure to a former DuPont zinc-smelting plant have until March 15 to produce new evidence or risk seeing the case thrown out.

Harrison County Circuit Court Judge Thomas Bedell warned in a ruling last week that he is likely to grant DuPont's motion for summary judgment and dismissal if the plaintiffs can't produce more substantial evidence or testimony from an expert witness who says their injuries were caused by pollution from the plant.

Bedell wrote that he's been generous with his time because the plaintiffs are representing themselves and he "wants to afford every opportunity ... to seek justice." But he says the new March 15 deadline is final.

Rebecca Morlock and her fellow plaintiffs were among thousands who won a class-action lawsuit over pollution from the former Spelter smelter in 2007.

They're now pursuing a separate personal-injury case claiming arsenic, cadmium and lead made them sick. But Bedell won't let them rely on evidence from the class-action case and wrote that "rehashing" information from that case is not enough.

"We are working vigorously to prove our cases and are confident we have what we need to prove our cases," Morlock said in an email Monday. "It's a shame that just because someone does not have thousands of dollars for an expert, justice might not be served. We believe where there is a will, there's a way, and we will not give up."

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 four 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.

But those verdicts were later wiped out when DuPont dropped its appeal and

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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.

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