

LAW

DuPont, Atlanta Law Firm Agree to Pay Nearly \$11.3 Million in Benlate Matter

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DuPont Co. and an Atlanta law firm agreed to pay nearly \$11.3 million to resolve allegations that they withheld critical evidence from a group of commercial growers during the trial of a lawsuit involving the company's Benlate DF fungicide five years ago.

In return, U.S. District Judge Hugh Lawson in Macon, Ga., and federal prosecutors closed an investigation the judge ordered in November to determine whether the company and defense lawyers at the Atlanta firm Alston & Bird should be charged criminally with contempt of court.

In a five-page order issued Thursday, Judge Lawson said DuPont agreed to pay \$2.5 million to each of four Georgia law schools to endow department chairs "devoted to fostering and teaching professionalism and ethics in the practice of law." The company also agreed to pay \$1 million to endow an annual symposium on professionalism and legal ethics that will rotate among the schools.

Alston & Bird, meanwhile, agreed to pay \$250,000 to the Georgia Supreme Court's committee on professionalism, the state bar's arm for promoting legal ethics. That money also is to be used "for furthering the goals of enhancing the professionalism of the practicing bar of Georgia," Judge Lawson ruled.

The ruling ends DuPont's legal battle in Georgia over allegations that it withheld pertinent scientific test data and other evidence from five plaintiffs during the 1993 trial of the first of hundreds of suits claiming that soil treated with Benlate DF destroyed growers' plants and crops.

The case, known as Bush Ranch after the lead plaintiff, settled out of court after an environmental consultant hired by DuPont testified — without disclosing all the company's test data — that soil samples taken from the plaintiffs' properties were free of the specific contaminant at issue in the case. The settlement, for far less than the Bush Ranch plaintiffs had sought, prompted hundreds of other growers to settle, too.

In Wilmington, Del., DuPont said in a statement that it was "pleased the parties

have reached a civil resolution" over the matter. Alston & Bird attorney Dow Kirkpatrick, who was lead defense counsel in the case, declined to comment. The firm, according to Judge Lawson's order, denied any misconduct but acknowledged "a fundamental misunderstanding" over what evidence it was required to disclose to plaintiffs.

DuPont's handling of Benlate litigation nationwide and the federal trial of the Bush Ranch case in Columbus, Ga., was the subject of a page one article in *The Wall Street Journal* in May 1995. DuPont discontinued Benlate DF in 1991 amid mounting concerns that it was the cause of hundreds of millions of dollars in damage claims by farmers and growers nationwide.

Like the claims pending elsewhere, the Bush Ranch case focused on whether plaintiff soil treated with Benlate DF had become contaminated by an ultratoxic class of herbicides manufactured by DuPont known as sulphonylureas, or SUs. Relying on a summary of test data provided by DuPont and its lawyers, the company consultant testified that plaintiffs' soil samples showed no contamination. Underlying data that plaintiffs contend supported their claims were withheld.

In a ruling two years ago, U.S. District Judge Robert Elliott, who presided over the trial, fined DuPont \$115 million as a civil sanction for not turning over the data. That ruling was overturned and Judge Elliott was removed from the case by a federal appeals court a year ago. The size of the fine, the court ruled, constituted a criminal penalty for what was a civil offense and was thus not permissible.

DuPont has maintained that it did nothing wrong. But its conduct in Benlate DF litigation elsewhere has led to other claims of misconduct, including a suit on behalf of 10 Florida growers now pending in state court in Miami alleging a pattern of racketeering. A Dade County Circuit judge in Miami refused to dismiss the case last month.

In resolving the Bush Ranch allegations, DuPont agreed to endow law school ethics chairs at the University of Georgia, Georgia State, Emory University and Mercer University.