

Class Cert. Denied In \$1B Toxins Suit Against Pratt & Whitney

By **Carolina Bolado**

Law360 (May 3, 2018, 8:52 PM EDT) -- Pratt & Whitney scored a big win Wednesday when a Florida federal judge denied a bid to certify a class of property owners claiming \$1 billion in damages from contamination from the company's rocket and aerospace testing and manufacturing plant in western Palm Beach County.

U.S. District Judge Kenneth A. Marra said the proposed 60-square-mile class area in a Palm Beach County residential community known as the Acreage was over-inclusive, because none of the property owners' experts had connected the boundaries of the proposed class area to the danger posed by the soil or water contamination from the aviation and rocket engine manufacturing facility.

The judge noted that the property owners' groundwater expert had expressed doubt that the entire class area was contaminated.

"While a definable class may, as a general proposition, be established by geographic boundaries, it is not possible to do so here because the geographic boundaries of the proposed class are not tied to exposure contours demonstrated to be dangerous to human life," Judge Marra said.

The plaintiffs had proposed the large area because they say even those property owners whose homes did not suffer direct contamination lost value because of a public fear of environmental contamination. But the judge said that is not actionable.

"The problem with this premise is that a public fear or perception of risk of environmental contamination is not an objective criteria by which to define an ascertainable class holding actionable tort claims against the alleged polluter — this follows because the claims are not actionable unless the polluter's alleged [actions] created dangerous dose exposures, measured in terms of risk to human life, to persons residing within specified geographical zones," Judge Marra said.

In addition, the judge said the property owners' claims were too individualized to make a class action the right vehicle for their claims.

The plaintiffs in the two consolidated suits are five married couples who have children who are members of a pediatric brain tumor cluster designated by the Florida Department of Health, and two individual property owners who claim their land is far less valuable now because of contamination by United Technologies Corp., which does business as Pratt & Whitney.

They claim the manufacturer sent toxic and carcinogenic chemicals into the porous underground aquifer that the properties share.

Their claims, estimated at over \$1 billion, were initially dismissed by the trial court before being reinstated in October 2014 by the Eleventh Circuit, which **ruled** that the trial court erred in demanding excessive factual proof at the dismissal stage of the litigation.

The Pratt & Whitney facility was designated as a possible Superfund site in the 1980s, but the U.S. Environmental Protection Agency stopped the evaluation process because of remediation efforts, according to court documents. The plaintiffs say those efforts were belated and insufficient.

Pratt & Whitney counsel Sean Gallagher of Bartlit Beck Herman Palenchar & Scott LLP said his client is pleased with the court's decision, and said the denial of class certification is "an important step toward the final dismissal of the unfounded claims made by these plaintiffs."

"The issues in the case were very complex, and our challenge was first to get the judge's ear and then to tell a simple story that cut through the plaintiffs' rhetoric," Gallagher said. "We got that changes in a weeklong evidentiary hearing, during which we were able to establish the flaws in their case. You see that in the court's ruling that the plaintiffs' theory is 'fundamentally flawed.'"

An attorney for the property owners could not immediately be reached for comment Thursday.

The property owners are represented by Scott P. Schlesinger and Jeffrey L. Haberman of Schlesinger Law Offices PA, Bryan S. Gowdy of Creed & Gowdy PA and Mara R. P. Hatfield of Searcy Denney Scarola Barnhart & Shipley PA.

Pratt & Whitney is represented by Sean Gallagher, Andrew C. MacNally, Daniel R. McElroy and Alex Groden of Bartlit Beck Herman Palenchar & Scott LLP and Fabienne Fahnestock, Gerard J. Curley Jr., Heather Carney Costanzo and Gregor J. Schwinghammer Jr. of Gunster.

The cases are Cotromano et al. v. United Technologies Corp. et al., case number 9:13-cv-80928, and Adinolfe et al. v. United Technologies Corp., case number 9:10-cv-80840, in the U.S. District Court for the Southern District of Florida.

--Editing by Marygrace Murphy.