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## Judge Sees Forum Shopping in Class Bid to Move Pollution Case

An effort by plaintiffs to move a class action suit over alleged contamination at a former defense plant in Nassau County from federal to state court indicates forum shopping, according to a judge's ruling.

By Andrew Denney | December 19, 2017



Gov. Andrew

*Cuomo. Photo by Rick Kopstein*

An effort by plaintiffs to move a class action suit over alleged contamination at a former defense plant in Nassau County from federal to state court indicates forum shopping, according to a judge's [ruling](#) (<http://images.law.com/contrib/content/uploads/documents/389/15075/Romano-v.-Northrop-Grumman-1.pdf>).

The suit concerns the former site of Northrop Grumman's Grumman-Aerospace-Bethpage facility, which sat on 635 acres in Nassau County, and an 18-acre tract of land that the defense giant donated to the town of Oyster Bay that is now Bethpage Community Park.

Northrop and the Navy began operating (<https://projects.newsday.com/long-island/timeline-northrop-grumman-history-long-island/>) manufacturing, research and testing facilities at the site in the late 1930s; concerns about pollution from the area began as early as the late 1940s when chromium was found in the groundwater in the area.

In 1983, it was added to the list of New York State's Superfund sites.

In a suit filed in 2016 in Nassau County Supreme Court, a class of plaintiffs alleges that Northrop Grumman left behind a combination of contaminants that include trichloroethylene, tetrachloroethylene, and other volatile organic compounds, as well as polychlorinated biphenyls, arsenic, cadmium, chromium, lead and mercury.

The contaminants combined into a massive, toxic underground plume that measures 4.5 miles long and 3.5 miles wide that has caused a public health scare on Long Island and prompted Gov. Andrew Cuomo to order Northrop Grumman to open its wells (<https://www.newsday.com/long-island/nassau/environment-bethpage-water-radium-1.14655085>) on the site to the state Department of Environmental Protection for testing.

Northrop Grumman successfully moved to transfer the lawsuit to federal court, arguing that the Class Action Fairness Act (CAFA) conferred jurisdiction to the federal courts and that there is complete diversity in the case as it is defined in 28 U.S.C. §1332.

After the case was moved to the U.S. District Court for the Eastern District of New York, the plaintiffs added Oyster Bay as a defendant in the case, alleging that it should be a party because it owns and operates the park at the site, and filed a motion to remand the case to state court, arguing that the case should fall under the CAFA's exception for local controversies.

But U.S. District Judge Denis Hurley of the Eastern District of New York said it appears that adding Oyster Bay as a defendant was done for the sole purpose of triggering the local controversies exception and gives rise to a "strong suggestion of forum shopping."

Northrop Grumman is represented by Hollingsworth partners Frank Leone and Donald Fowler and Morrison & Foerster partners Grant Esposito and Jessica Kaufman. Members of the defense team did not immediately respond to requests for comment.

In an interview, Paul Napoli of Napoli Shkolnik said that while the plaintiffs felt that a state court in Nassau County was the appropriate venue for the case, he said they were "certainly fine" with presenting their case before a federal judge.

"Having been a longtime Long Island resident, it's the secret that everyone knows about, that Bethpage and the site are a contaminated mess that is causing cancer and causing everyone suffering and loss of loved ones," he said.

In addition to Napoli, the plaintiffs are represented by Napoli Shkolnik partner Hunter Shkolnik.

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