

Tainted water suit can partially continue

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GOSHEN – Six plaintiffs who sued Newburgh for property damage and health problems they blame on years of using water contaminated with a toxic chemical can continue part of their case against the city, an Orange County judge has ruled.

Judge Catherine Bartlett sided with the city in dismissing claims for property damage brought by Diane and Ronald Hebrank; Michael Gorenstein; and Maribel and Roy Hamilton and their minor child.

The six were among 30 residents who filed a lawsuit in September 2017 that accused Newburgh of negligence and failing to warn residents about the dangers of perfluorooctane sulfonate in Washington Lake, the primary water supply the city closed on May 2, 2016.

While 24 of the plaintiffs withdrew from the case, Bartlett rejected Newburgh's contention that the Gorensteins, Hamiltons and Hebranks had not filed timely personal injury claims under state law or had illnesses directly tied to PFOS exposure.

"Defendants have not established conclusively that Plaintiffs have no cause of action," Bartlett ruled on May 14.

New York City-based Napoli Shkolnik first filed the lawsuit on Sept. 27, 2017, on behalf of people who have lived or worked in Newburgh, or have private wells contaminated with PFOS.

Each plaintiff claimed elevated levels of PFOS and associated health problems, including testicular cancer, ulcerative colitis and high cholesterol.

The firm was also seeking class-action status that would cover anyone who ingested PFOS through Newburgh's water or owned property that has lost value because of the "stigma" associated with the chemical.

Two and a half months before the suit was filed, in a July 6, 2017, decision, Bartlett denied the law firm's request to allow dozens of residents to file late notices of claim against Newburgh.

State law requires that claims against a municipality be filed within 90 days of when the claim "arises."

Citing her July ruling, Bartlett rejected property damage claims in the September lawsuit, concluding that the 90-day clock for property claims started ticking no later than August 2016, when the state publicly declared that the Stewart Air National Guard Base was a Superfund site and responsible for the contamination. But she rejected Newburgh's claim that the 90-day window for personal injury claims began in November 2016, when the state Department of Health announced the start of a program to test residents for PFOS levels.

The state mailed blood testing results to the Gorensteins, Hamiltons and Hebranks on March 22 and April 28, 2017, and they filed claims with the city between June 13 and June 18, 2017.

Newburgh had also argued that the plaintiffs' health problems could stem from a "variety of factors completely unrelated to the alleged exposure."

"Defendant's fallback position that Plaintiff's personal injury claims arose upon the offer of blood testing in November 2016 is arbitrary and irrational, as it implies Plaintiff's obligation to serve a Notice of Claim without awaiting the results of such testing," Bartlett wrote.

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