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DuPont must face bellwethers over chemical cancer claims -judge

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(Reuters) - A federal judge in Ohio has rejected DuPont's bid to postpone two upcoming bellwether trials involving men who say they developed testicular cancer from exposure to a chemical leaked from one of the company's plants.

U.S. District Judge Edmund Sargus in the Southern District of Ohio on Tuesday said he was not swayed by the chemical giant's arguments against allowing the trials to move forward.

"When the court is confronted with 3,500 cases pending for 12 years in another court, the cases must be scheduled quickly and fairly," Sargus wrote. "Years of delay may appeal to DuPont, but it is fundamentally unfair in the administration of justice."

DuPont had argued allowing the bellwethers to proceed would put it at a tactical disadvantage and distract from efforts to achieve a global settlement.

The cases are part of multidistrict litigation over perfluorooctanoic acid, also known as PFOA or C-8, which DuPont used at a West Virginia plant for decades to make products such as Teflon. Plaintiffs have accused the company of continuing to use the chemical despite knowing it was toxic and had been found in nearby drinking water.

As part of its settlement of a 2001 class action over C-8 exposure brought by residents living near the plant, DuPont agreed to convene a scientific panel to determine what diseases were caused by C-8 exposure. The panel concluded there was a probable link between C-8 and six diseases, including kidney and testicular cancer.

Individual lawsuits brought by class members with those diseases were consolidated before Sargus in 2013. Six cases were picked to serve as early bellwethers, and Sargus later ordered both sides to prepare 260 cases involving plaintiffs with cancer for a series of non-bellwether trials starting in May 2017.

The first bellwether to go to trial, in 2015, resulted in a \$1.6 million verdict for a woman who had kidney cancer. The second ended in July with a \$5.6 million award for a man who said he had developed testicular cancer.

Meanwhile, plaintiffs and DuPont settled the remaining bellwether cases. In response, Sargus decided two cases from the first tranche of non-bellwethers would replace them for trials starting in November and January, respectively.

On Aug. 1, DuPont objected to Sargus' decision to move forward with the replacement bellwethers. The company said it had been given insufficient time to prepare for the two trials, noting it was also readying for the 2017 trials and appealing the 2015 verdict.

The scheduling change "shifts the playing field so dramatically that it can only be viewed as punitive," the company argued.

Plaintiffs' lead counsel said the argument was without merit and urged Sargus to deny the request.

The judge rejected DuPont's argument that it needed more time, noting its "experienced trial counsel" should already be familiar with common evidence and testimony relevant from the cases.

Sargus also called disingenuous DuPont's claim that the bellwethers would interfere with global settlement talks. In the three years since the MDL was created, the company had shown little interest in such a settlement, the judge said.

DuPont did not immediately return requests for comment, and lead plaintiffs' attorneys declined to comment.

The case is *In re E.I. Du Pont de Nemours & Co C-8 Personal Injury Litigation*, U.S. District Court for the Southern District of Ohio, No. 13-2433.

For plaintiffs: Michael London of Douglas & London, Jon Conlin of Cory Watson and Robert Bilott of Taft Stettinius & Hollister

For DuPont: Damond Mace, Stephen Fazio and Stephanie Niehaus of Squire Patton Boggs

---- **Index References** ----

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