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## 2nd Circuit Allows Personal Injury, Property Damage Claims Against Honeywell, Saint-Gobain

The panel held that residents' allegations of elevated PFOA levels in the blood were sufficient grounds for personal injury claims, which, if proved, could entitle them to costs of medical monitoring.

By Tom McParland | May 18, 2020



**In this Jan. 21, 2016, file photo, the Hoosic River runs through the village of Hoosick Falls, New York. (AP Photo/Mike Groll, File)**

The U.S. Court of Appeals for the Second Circuit on Monday allowed residents of Hoosick Falls to proceed with a lawsuit alleging that Honeywell International Inc. and Saint-Gobain Performance Plastics Corp. contaminated their water supply with toxic chemicals from a factory in the upstate New York town.

A three-judge panel upheld ([https://www.ca2.uscourts.gov/decisions/isysquery/8470af67-9e5a-4c5e-9dcb-b1b6c7aaca65/1/doc/17-3491\\_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/8470af67-9e5a-4c5e-9dcb-b1b6c7aaca65/1/hilite/](https://www.ca2.uscourts.gov/decisions/isysquery/8470af67-9e5a-4c5e-9dcb-b1b6c7aaca65/1/doc/17-3491_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/8470af67-9e5a-4c5e-9dcb-b1b6c7aaca65/1/hilite/)) a federal judge's ruling that green-lit personal injury and property damage claims against the firms over perfluorooctanoic acid contamination of private water wells.

The panel held that residents' allegations of elevated PFOA levels in the blood were sufficient grounds for personal injury claims, which, if proved, could entitle them to costs of medical monitoring.

PFOA, also known as C8, is a toxic man-made chemical linked to serious health problems, including certain cancers.

U.S. District Judge Lawrence E. Kahn of the Northern District of New York denied motions by Honeywell and Saint-Gobain to dismiss 16 consolidated lawsuits by Hoosick Falls residents, who claimed that high levels of PFOA exposed them to increased risk of illness and caused their properties to lose value.

The companies argued on appeal that New York tort law bars personal injury claims based solely on elevated PFOA levels, with no allegations that plaintiffs are currently suffering from some disease.

"With reasonable inferences being drawn in favor of plaintiffs, the allegation that their blood shows PFOA levels that are 'elevated' also indicates that the PFOA is present to a degree that is measurable," Judge Amalya L. Kearsse wrote on behalf of the panel.

"The observable and measurable presence of that toxin in the blood clearly passes the ... threshold for what constitutes personal injury sufficient under New York law to ground a tort cause of action," Kearsse said.

She was joined in the decision by Judges Rosemary S. Pooler and Susan L. Carney.

The panel also turned away the companies' argument that because groundwater is a public resource, rather than private property, underground contamination could not form the basis of claims for negligence and strict liability. The panel also upheld claims of nuisance and trespass in the case.

Attorneys for both sides did not immediately respond to requests for comment.

The plaintiffs are represented by Stephen Schwarz of Faraci Lange in Rochester and Hunter Shkolnik and Tate Kunkle of Napoli Shkolnik.

Honeywell is represented by Michael Daneke and Elissa J. Preheim of Arnold & Porter Kaye Scholer in Washington, D.C., and Jennifer R. Kwapisz from the firm's New York office.

Saint-Gobain is represented by Mark Cheffo, Bert Wolff and Lincoln Davis Wilson of Quinn Emanuel Urquhart & Sullivan and Sheila L. Birnbaum of Dechert.

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