SETTLEMENT REACHED BETWEEN FARM WORKERS AND PESTICIDE MAKER

Guzman v. Amvac Chem. Corp.

Trial Lawyers for Public Justice has announced a settlement between farm workers who say they were poisoned by the pesticide Phosdrin and the manufacturer of the pesticide, Amvac Chemical Corp. Guzman et al. v. Amvac Chemical Corp., No. 98-35088, settlement announced (9th Cir., May 14, 2002); see Toxic Chemicals LR, Oct. 6, 2000, P. 7.

In July 1993 the farm workers — Ricardo Guzman, Martin Martinez and Miguel Farias — were treated for organophosphate poisoning as a result of working with Phosdrin.

The next month, the Washington State Department of Agriculture temporarily suspended Phosdrin's further use in fruit tree orchards.

Shortly after Guzman, Martinez, Farias and 23 other farm workers in Washington were poisoned, the U.S. Environmental Protection Agency issued an order effective July 1, 1994, canceling the registration of Phosdrin and all other pesticides containing mevinphos. As a result, Phosdrin can no longer be sold in the United States, but it continues to be manufactured in countries that have not banned its use.

The plaintiffs filed suit in Washington state court against Amvac and its distributor in September 1995, but the case was removed to federal court. Trial Lawyers for Public Justice discovered that Amvac knew of Phosdrin's dangers long before the EPA took action.

The suit brought to light that Amvac knew in 1992 that California was preparing to prohibit the use of Phosdrin because it was poisoning hundreds of farm workers. Despite extensive safety regulations and aggressive worker training, Phosdrin poisonings in California were occurring at rates five to 10 times higher than those involving any other pesticide. Aware of these facts, Amvac still urged Washington state regulators to endorse a pilot program using Phosdrin in the 1993 apple growing season, without disclosing the injuries taking place in California or its own research showing that Phosdrin could not be safely mixed in open systems or applied with air sprayers.

Amvac provided Washington state regulators with training materials and a video in English and Spanish that it said would be used as part of the program. In fact, however, when the proposed program was approved, Amvac never used the training manual or distributed the video. Moreover, after farm workers in Washington were poisoned and the Guzman case was filed, Amvac blamed the farm workers' injuries on the farm workers, their employers and the state of Washington for not having stronger regulations.

The lawsuit charged that Phosdrin was so unsafe and defectively designed that it should never have been sold at all. It also alleged that the farm workers had not been properly trained to use it. On the eve of a scheduled trial in October 1997, however, the federal district court district dismissed the case based on the Federal Insecticide, Fungicide, and Rodenticide Act and its interpretation of Washington state law.

On appeal, the U.S. Court of Appeals for the Ninth Circuit certified two questions of law to the Washington Supreme Court.
The first question was whether a plaintiff may rely on an alternative product to prove a design defect under the ‘risk-utility’ test of Washington product liability law. The second was whether a pesticide can be an ‘unavoidably unsafe product’ as described in comment k to the Restatement (Second) of Torts § 402A.

As urged by the plaintiffs, Washington’s high court answered the first question affirmatively. The court ruled that ‘a plaintiff may satisfy the requirement of showing an adequate alternative design by showing that other products can more safely serve the same function as the challenged product.’

On the second question, the state high court held that a pesticide can be an unavoidably unsafe product, but only if its utility greatly outweighs the risks. Based on those answers, the Ninth Circuit reversed and remanded the district court’s grant of summary judgment for Amvac on one of the plaintiffs’ design defect claims. As the trial was about to start, the case settled.