

Ohio Appeals Court Issues Landmark PFAS Decision

January 03, 2024

The case of *Hardwick v. 3M*, a Per- and polyfluoroalkyl substances (PFAS) class action lawsuit filed in Ohio, has been marked as one of the most significant legal cases in recent history. The Sixth Circuit Court of Appeals granted interlocutory review of this enormously significant case on September 9, 2022. However, on November 28, 2023, the Sixth Circuit Court of Appeals dismissed the class action, holding that the lead plaintiff failed to identify which companies made the “forever chemicals” detected in his blood.

“Seldom is so ambitious a case filed on so slight a basis,” wrote Judge Raymond Kethledge in the opening sentence of a brief opinion dismissing the lawsuit by Kevin D. Hardwick against 3M, DuPont, and eight other chemical makers.

The Lawsuit

The Hardwick case, filed in 2018, was noteworthy due to the proposed scope of plaintiffs that counsel sought to include in the case. The lawsuit aimed to include any U.S. citizen with detectable levels of PFAS in their blood, which is estimated to be over 95% of the U.S. population by various sources.

Instead of seeking relief in the form of monetary damages, the suit sought to establish a medical monitoring program for affected citizens. It also sought to establish an independent science panel to study the effects of numerous PFAS on human health.

District Court Class Certification

In March 2022, the Ohio court ruled that the class of plaintiffs allowed to proceed with the lawsuit is “citizens of Ohio who have 0.05 parts per trillion (ppt) of PFOA (C-8) and at least 0.05 ppt of any other PFAS in their blood serum.” The court limited the class to citizens of Ohio instead of citizens in the United States due to the fact that numerous states do not yet recognize medical monitoring as a legal cause of action, and some states do not permit lawsuits to proceed for an increased risk of disease without any proof of actual harm.

Sixth Circuit Vacates District Court’s Class Certification

On November 27, 2023, in a strongly worded order, the Sixth Circuit vacated the district court’s class certification and remanded with instructions to dismiss for lack of jurisdiction. [*Hardwick v. 3M Co. \(In re E.I. du Pont de Nemours\)*, 2023 US App. LEXIS 31297 \(6th Cir. Nov. 27, 2023\)](#). The Sixth Circuit stated that “[s]eldom is so ambitious a case filed on so slight a basis,” acknowledging that PFAS exposure is a “fact of daily life” for

Americans, involving thousands of compounds manufactured by thousands of companies over the last 50-plus years, with human body concentration reductions varying from days to years depending on the compound type.

The Sixth Circuit held that the plaintiff lacked standing due to the absence of particular allegations about how each defendant manufactured or provided a plausible pathway that likely delivered to the plaintiff's body any one of the five detected PFAS compounds. The court found that the plaintiff pled only collective and conclusory allegations against all defendants for the trace quantities of only five PFAS compounds while not knowing which companies manufactured those five PFAS compounds, not having any current sickness or symptoms, and not knowing whether PFAS exposure may someday make him sick.

Implications

Companies with PFAS exposure may consider conducting environmental audits with the use of outside counsel to identify sources where PFAS is used either in their manufacturing process or in the parts received by suppliers. *Hardwick* is instructive for all companies facing PFAS exposure issues and provides a roadmap for building a solid defense against alleged PFAS exposure claims.

The Takeaway

Hardwick is a virtual roadmap for all companies facing alleged PFAS exposure issues, providing a step-by-step basis for attacking causation.

Related people

Michael R. Blumenthal