



December 29, 2009

## Court tosses out DuPont judgment

### Trial judge erred in consolidating 27 Benlate fungicide claims, panel rules

By *ANDREW EDER*  
*The News Journal*

A Florida appeals court has thrown out a \$24 million judgment against DuPont Co. in a case alleging plant damage caused by the fungicide Benlate.

In an opinion filed earlier this month, a three-judge panel from the Third District Court of Appeals found that a trial court made numerous errors in its handling of claims brought by 27 Costa Rican fern growers.

Most notably, the trial court consolidated the growers' claims into a single trial in spite of different circumstances among the different companies, all of which grew an ornamental crop known as the leatherleaf fern.

The plaintiffs alleged that their plants were damaged through exposure to Benlate. But consolidating the cases "resulted in a hopelessly confused jury and was inappropriate," according to the appeals court's opinion.

"The ruling confirms that DuPont was denied a fair trial and that the trial court committed several errors including ordering a single, consolidated trial of the claims raised by all 27 plaintiffs," DuPont spokesman Dan Turner said.

The appeals court ordered the cases to be sent back to the trial court for new individual trials. In doing so, the court reversed the monetary judgment against DuPont. The court also affirmed verdicts in DuPont's favor with respect to seven plaintiffs.

The decision marks a victory for DuPont in a sprawling series of product liability cases that date back nearly two decades. DuPont first began receiving claims of Benlate-related damage from crop growers in 1991.

The company has since been hit with thousands of lawsuits alleging crop damage and other issues including securities fraud, birth defects and shrimp killed by runoff from banana plantations.

DuPont, which stopped making Benlate in 2001, has settled or otherwise disposed of most of the cases. The company faced 13 open Benlate-related cases as of Sept. 30, according to a financial filing.

DuPont had incurred Benlate litigation costs of about \$2 billion and recovered about \$275 million through insurance, according to the filing.

---