

Is the Sterigenics Settlement The First of Many Ethylene Oxide Settlements or is it Aberrational?

Article By:

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As discussed in prior postings, a number of companies across the country convert ethylene oxide into a gas in order to sterilize medical equipment and supplies (as well as other items). One such company, Sterigenics, operated a large facility, Willowbrook, in Illinois to perform this work.

In February 2019, the state of Illinois issued a seal order which had the practical effect of shutting down the Willowbrook plant because Sterigenics ultimately determined that it was not practical to reopen the plant in the face of uncertain legislative and regulatory dictates. In the meantime, hundreds of personal injury lawsuits were filed against the company on the basis that ethylene oxide emissions had caused nearby residents to contract various types of cancer.

Trial History

The first ethylene oxide trial went to verdict in September 2022, and a Cook County (Illinois) jury awarded \$363 million to a plaintiff who alleged that she developed breast cancer as a result of ethylene oxide emissions from the Sterigenics Willowbrook plant. This was the Kamuda case and was the first ethylene oxide personal injury case to go to trial. It was followed by a second trial involving the same defendant and in the same court though with a different type of cancer at issue. That trial, Fornek, resulted in a defense verdict. A third trial, Schumacher, again with Sterigenics as the defendant, was scheduled to start trial this week. That trial did not happen for the reason explained below.

Sterigenics Settlement

On January 9, 2023, Sterigenics, the defendant in the three trials noted above and in another 870 or so cases arising from the Willowbrook plant, announced a settlement of its pending cases in the amount of \$408 million. The cases were pending in state and federal court in Illinois. In a press release announcing the settlement, parent company of Sterigenics, Sotera Health, denied that the Willowbrook plant was a safety risk to the local community and cited the Fornek trial for support that the scientific evidence did not support the allegations. The company also cited “biased” media coverage and the cost of posting a bond to appeal the Kamuda verdict, as well as the time and expense involved in defending the hundreds of other suits arising from the Willowbrook plant.

Analysis

With this sizeable settlement, Sterigenics avoids the risk, at least for the time being, of another outsize verdict as seen in the Kamuda case. It also avoids litigation costs and negative publicity. On the other hand, it would seem likely that additional cases will be filed against Sterigenics and other similar companies now that plaintiffs know that they may be able to reach a favorable settlement without having to go to trial, or that they can go to trial and potentially be awarded millions of dollars.

We do not anticipate that the ethylene oxide litigation will end with this settlement. It will end for the 870 or so current plaintiffs claiming injury from ethylene oxide emissions from the Willowbrook plant (assuming that they accept the terms of the settlement), but surely there will be more plaintiffs in the next wave who will claim injury from that plant and others across the country. Inevitably, plaintiff firms will recruit new clients who allege some type of cancer as a result of residing in the vicinity of an ethylene oxide plant. How long will it be until we see television advertisements run by plaintiff firms seeking new plaintiffs? We've seen this in asbestos, talc, contaminated water, defective earplugs, and other types of litigation. It is not far-fetched to think we will see this with ethylene oxide at some point in the near future.

Accordingly, our advice set out in prior postings still holds true: the best litigation is no litigation. If you operate a plant utilizing ethylene oxide, continually ensure that any emissions are within state and federal guidelines and that every possible precaution is taken to reduce emissions. If you do business with a plant that utilizes ethylene oxide, make sure that as a contractual matter you cannot be held liable for emissions from the plant. Consulting with a law firm experienced in advising businesses as to how to avoid litigation is recommended, and if litigation is unavoidable you will want to a law firm that has experience in the area of toxic torts.

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