

DuPont lawyer: Release of Rome PFAS deal could imperil other settlements

Lawyers for AJC, Rome newspaper urge judge to rule state law says financial terms are public record

NEWS

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Lawyers for DuPont argued in court Monday that the company paid more to settle a toxic contamination case in North Georgia than it was responsible for, and that making its settlement amount public would harm the firm as it tries to resolve a mountain of other litigation related to the chemicals it produced.

DuPont and four allied chemical companies sued to block the city of Rome from providing documents disclosing settlement terms to The Atlanta Journal-Constitution and the Rome News-Tribune related to the contamination of the city's drinking water. The companies argue information about the damages to be paid qualify as "trade secret" materials — something lawyers for the news outlets emphatically object to — and should be exempt from being made public under the Georgia Open Records Act.

Johnny Johnson, an attorney representing DuPont and the other chemical makers, said that the parties were responsible for about 10% of so-called "forever chemicals" believed to be the source of contaminants that tainted the city's water supply.

He argued the companies paid a "disproportionately high" settlement compared to their level of responsibility as determined by scientific experts, and making public such information would harm the companies in pending class action lawsuits.

"It would be very damaging to the companies for the amount we paid, specifically the amount we paid to settle the Rome litigation, to get out," Johnson said.

Rome sued dozens of flooring companies, chemical makers and the city of Dalton's public utility alleging they were responsible for contaminating the city's water with per- and polyfluoroalkyl substances, or PFAS.

The city argued that dangerous concentrations of PFAS emanating from flooring plants in the region — known as the "carpet capital of the world" — have for years spilled into the Oostanaula River, Rome's main water supply.

PFAS compounds are used in firefighting foam, nonstick and water repellant materials and other goods, and have been linked to cancer and other detrimental health and environmental impacts. The specter of new federal drinking water standards for some of the chemicals and the enormous cost needed to upgrade the

city's water system prompted Rome to file its suit.

More than 30 defendants have entered into a settlement agreement with Rome, including the five companies that sued the city, the AJC and News-Tribune. The companies — E.I. DuPont De Nemours & Co., the Chemours Co., the Chemours Co. FC LLC, DuPont De Nemours Inc. and Corteva Inc. — all previously shared common ownership.

As part of the Rome agreement, the defendants did not admit any wrongdoing or liability in the case.

The Georgia Open Records Act requires local and state government agencies in Georgia to release most public documents upon request, and governments typically release settlement agreements as a normal course of business. The law includes certain exceptions for documents, including some matters that might be deemed trade secrets.

But the AJC and News-Tribune's lawyers argued in part that "unflattering information" is an insufficient reason to "trigger" such protection.

"What they're arguing is essentially that because we say it's a trade secret, there has to be a long and prolonged and expensive inquiry into whether it amounts to a trade secret," said Tom Clyde, an attorney representing the newspapers. "And that delay is exactly what they're looking for."

DuPont reached a tentative deal this summer to settle with hundreds of towns and cities over claims that the company's PFAS chemicals polluted their water supplies. To resolve the case, the company has agreed to pay just over \$1 billion to be divvied up among eligible municipalities.

But the deal needs final sign-off from a federal judge in South Carolina, and thousands of water providers nationwide are still weighing whether to join the settlement.

On Monday, Johnson said in court that the company is concerned that the amount Rome is set to receive from DuPont and its spinoffs could disrupt the class action settlement and should remain secret.

"That's the purpose of our filing," Johnson said.

Floyd County Superior Court Judge Bryan Thomas Johnson, no relation to the DuPont attorney, said the document the plaintiffs are trying to keep sealed includes two numbers. He questioned how so little information could disrupt DuPont's business operations.

"We're not talking about a customer list or proprietary chemical formulation," the judge said. Judge Johnson said he was unsure how someone could reverse engineer legal strategy or some other secret from a dollar figure.

Clyde argued that DuPont cannot produce a court decision from anywhere that supports its argument.

Josh Belinfante, another attorney representing the five companies, argued that Georgia's trade secret exemptions from open records are unique and unsettled. He added should Judge Johnson rule against DuPont that the court allow the companies to appeal the ruling to a higher court before Rome is allowed to release records.

Once the documents are disclosed, they lose trade secret status," he said. "You can't un-ring the bell."

The judge said he expects to issue a ruling soon, potentially Tuesday. Regardless of his ruling, the decision will likely be immediately appealed.

Rome will receive at least \$233 million to address the PFAS contamination, based on the settlement terms released to the AJC so far. That includes \$75 million from materials manufacturing giant 3M and \$25 million from Dalton Utilities.

The settlement will also cover the cost of a new \$100 million water treatment plant in Rome to ensure the safety of its water system. City officials initially implemented water rate hikes to pay for the facility, but those were rolled back in June when the settlement was accepted.

Though they're fighting in Georgia, the companies themselves have a history of announcing their own settlement terms.

In June, three of the companies in this case — Chemours, DuPont and Corteva — announced they would pay \$1.19 billion to resolve the federal class action case. That same month, 3M announced it agreed to pay \$10.3 billion to settle lawsuits claiming its PFAS chemicals contaminated hundreds of water systems around the country. Neither of those figures include the Rome settlements.