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Rail Co. Hit With Wrongful Death Suit Over Cancer Cluster

By **Clark Mindock**

Law360 (August 24, 2020, 7:34 PM EDT) -- Over a dozen Houston families are suing the Union Pacific Railroad Co., alleging historic and ongoing pollution that they say caused a cancer cluster and the deaths of their loved ones.

The families and other victims of the alleged contamination filed suit in Texas state court Friday claiming that the company has knowingly allowed contamination of the potentially carcinogenic wood preservative known as creosote to persist in water, air and soil in the Fifth Ward and Kashmere Gardens neighborhoods of the city.

The petition alleges wrongful death and negligence by the company for the contamination, which the families say occurred primarily from 1950 through 1985, when millions of gallons of coal tar creosote was heated in open-air vats and ditches and then dumped on Union Pacific's 33-acre site.

In the years since, the company has failed to clean up the contamination and has consistently failed to warn residents about the true dangers of the contamination despite mounting evidence, including a recent study showing a cancer cluster in the area, that the chemical harms health and property values, the plaintiffs said.

"Defendants' conduct illustrates not only an attitude of conscious indifference for the rights, safety and welfare of others, but also shows defendants' actual and subjective awareness of the dangers of such conduct," the plaintiffs said.

The plaintiffs are seeking a jury trial and an undisclosed amount in damages.

The site of the alleged pollution is northeast of the city where Union Pacific, formerly South Pacific Transportation Company, used creosote for wood treatment from 1950 until 1985. The use included heating millions of gallons of coal tar creosote in open air vats at the facility, which residents said would create a distinct odor surrounding the rail yard. After heavy rains, oily water and coal tar would wash through the ditches and up from the ground, according to the petition.

The wood treated with creosote was then used as rail ties and as telephone poles. Creosote is a mixture of chemicals that includes pentachlorophenol, benzene, toluene, dioxin and polycyclic aromatic hydrocarbons. It has been linked to a range of diseases including birth defects and cancers of the larynx, esophagus and nose, myeloid leukemia and others.

Since the 1980s, when the creosote processing ended, the company has failed to clean up the chemicals, which has left millions of gallons of creosote remaining at the site, according to the complaint. That's even though Union Pacific has applied for cleanup permits through the Texas Commission on Environmental Quality, according to the petition.

The families say that an ongoing plume of contamination has seeped into the ground near the rail yard and that the company failed to put up signs or fences to warn people away from the potentially contaminated lands.

The plaintiffs include the families of at least 19 people who died of diseases that the suit claims are

linked to the contamination, and numerous others who have either become sick or endured property damage as a result of the contamination. A lawyer for the plaintiffs said that the case includes "hundreds" of potential victims.

Union Pacific did not respond to a request for comment.

The plaintiffs are represented by Jason A. Gibson and Casey L. Gibson of The Gibson Law Firm; Bill Voss of The Voss Law Firm PC; and Nomaan Husain of Husain Law Associates PC.

The case is Elizabeth Phillips et al. v. Union Pacific Railroad Co. et al, case number 2020-50604, in the 189th District Court in Harris County, Texas.

--Editing by Peter Rozovsky.

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