

**NEW YORK INN OF COURT**

**March 10, 2011**

*In re Bugacide Environmental Tort Litigation*

*a.k.a.*

*City of Springfield, et al. v. Global Chemical Corp. and Bugacide Holdings Corp.*

1. Several plaintiffs have filed suit against a manufacturer of pesticides for injuries alleged to have been caused by the defendant's disposal of toxic chemicals since 1980. Discovery proceedings have been consolidated under the supervision of Hon. Steven H. Reisberg. The parties met and conferred as required under Fed. R. Civ. P. 26(f) and submitted a joint report to the court indicating that they anticipate extensive discovery of electronically stored information. Judge Reisberg has scheduled the first pretrial conference under Fed. R. Civ. P. 16 to discuss this aspect of the parties' discovery plans in more detail. He has requested that liaison counsel for the plaintiffs and counsel for the defendant both be present with their experts on electronically stored information.
2. The plaintiffs, predominantly working class African American and Hispanic residents of Springfield, filed suit on October 3, 2009 against Global Chemical Corporation ("Global"). Also filing suit that day against Global was the City of Springfield.
3. The defendant, Global, is owner of Bugacide Holdings Corporation ("Bugacide"), a pesticide manufacturer that has operated a plant in Springfield since 1980. Bugacide is also named as a defendant.
4. Bugacide was not known for being a "good neighbor," and regularly dumped chemical waste from its manufacturing operations into unlined lagoons near a creek. It was also on the verge of bankruptcy after several years of mismanagement when it was bought by Global in January 2007. Global immediately set out to clean up the operation, literally and figuratively, by modernizing the manufacturing, business, and environmental monitoring processes with state-of-the-art information technology.
5. The area where the facility is located is a poor minority community. The homes are of poor construction, some are mobile homes, and none are worth more than \$50,000. The community is stable with relatively little turn-over. There are two churches, a grade school, and two playgrounds in the community.
6. The individual plaintiffs include current and former homeowners, tenants, and residents of Springfield going back to 1980. They are divided into two groups, but all have filed claims based on nuisance, negligence and strict liability.
  - (a) The first group ("Group A") consists of four personal injury plaintiffs, all of whom drank water from wells located down-gradient from the waste lagoons beginning no earlier than 1980. Their injuries, with date of diagnosis, are lupus (1984), breast cancer (1998), angiosarcoma of the liver (2001), and kidney cancer

(2003). Investigations are continuing to identify additional plaintiffs with cancer or other serious health problems. These plaintiffs want monetary damages including punitive damages.

- (b) The second group (“Group B”) consists of similarly-situated plaintiffs who live along the creek where the waste residue was dumped. They live anywhere from immediately adjacent to the Bugacide property line to three miles downstream and all live within 1,000 yards of the creek. They used the creek for recreation and caught fish and crawdads in the river for food. The creek would regularly flood, depositing material from the stream onto properties up to 750 yards from the stream bed. These plaintiffs allege one or more of the following injuries:
- contamination present on their property consisting of materials consistent with residue from the pesticide manufacturing activities;
  - a history of imprecise neurological problems like headaches, dizziness, lack of concentration, and poor school performance;
  - a history of upper respiratory problems including asthma; and
  - an increased risk of cancer and emotional upset about that risk, based on a report of a public health specialist.

7. The City of Springfield is suing Global and Bugacide for costs associated with cleaning up chemicals from public facilities in the area, providing medical services to residents at the municipal hospital, and providing special social services such as counseling and relocation assistance.
8. The City of Springfield is represented by experienced counsel from a well-established national law firm, who is also acting as liaison counsel for all of the plaintiffs in this consolidated discovery phase of the litigation. About half of the plaintiffs in Group B are represented by a large national class-action plaintiff firm. However, the other half of Group B, and all four plaintiffs in Group A, are represented by local attorneys in solo and small-firm practices, including a team of pro bono attorneys volunteering for a local environmental group.
9. Global and Bugacide are jointly represented by a large national defense firm with which Global has had a 30-year relationship. The firm is intimately familiar with all of Global’s operations world-wide, but has no prior relationship with the Bugacide operation.
10. In their joint report to the court following the Rule 26(f) conference, counsel listed the following four points where they were not able to reach agreement, and on which they would like the court’s assistance:
  - (a) The parties have not reached an agreement on the preservation of electronically stored information potentially subject to discovery. The plaintiffs want all of Global’s and Bugacide’s electronically stored information preserved through discovery, trial, and any possible appellate action. This includes not only

historical material, but all data related to environmental monitoring and cleanup operations on an ongoing basis. Global and Bugacide argue that this request is overbroad, burdensome, and would require reprogramming all the new IT systems to capture and preserve cumulative information these systems were not initially designed to capture and preserve.

- (b) The plaintiffs want Global to search the nearly 3,000 backup tapes of legacy data it inherited when it acquired Bugacide for electronically stored information responsive to their anticipated document requests and interrogatories. Global has identified these backup tapes as data sources that are “not reasonably accessible” under Rule 26(b)(2)(B), as they are not indexed or organized in any consistent or reliable manner, and were derived from IT systems that were retired when Global acquired Bugacide three years ago.
- (c) Of particular interest to the plaintiffs is Global’s Emergency Management Voicemail System, on which all incidents that present potential safety or environmental hazard issues are reported by staff, who have taken this responsibility very seriously over the past three years and called in several thousand incidents, mostly routine. All the data on the system is kept as digital audio files, except for a file management system that records time, date, duration of message, and source. Global states that follow-up documentation of all incidents of importance can be found elsewhere on the IT system, estimates the cost of transcribing the voice data as “astronomical,” and requests that if the plaintiffs really want this, the plaintiffs should shoulder the transcription cost.
- (d) The defendants, for their part, plan to seek discovery from the City of Springfield of property records, medical records from the municipal hospital, and records of City cleanup efforts, all of which are in electronic form. However, the City states that the electronically stored information is scattered throughout various City agencies on stand-alone computers, small LANs, and handheld devices used by both City cleanup crews and medical personnel at the municipal hospital. The City states categorically that it is “broke” and cannot access and review all the electronically stored information that the defendants anticipate requesting.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
SPRINGFIELD DIVISION

CITY OF SPRINGFIELD, *et al.*, )  
 ) No. 1:09-cv-1001 (SHR)  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 GLOBAL CHEMICAL CORP. and BUGACIDE )  
 HOLDINGS CORP. )  
 )  
 Defendants. )

**PROPOSED JOINT DISCOVERY PLAN AND  
REPORT PURSUANT TO RULE 26(f)**

1. Counsel for the parties in the above-captioned action met and conferred on February 2, 2011 pursuant to Fed. R. Civ. P. 26(f) and hereby file this Joint Discovery Plan and Report.
2. The parties have exchanged initial disclosure of individuals likely to have discoverable information pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i) and have listed those individuals in a separate memorandum attached as Exhibit A.
3. The parties have exchanged initial disclosure by category and location of documents, electronically stored information, and tangible things pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii).  
*[Editor's note: provisions relating to interrogatories, depositions, and requests for admission have been omitted in the interest of brevity]*
4. The parties have agreed to a list of factual issues relevant to the claims and defenses in this case and have set those out in a separate joint memorandum attached as Exhibit B.
5. The parties anticipate discovery of electronically stored information including email, technical reports, word-processed documents, and databases from sources described as accessible by the Defendants in Exhibit C. The parties disagree on the need for discovery from two sources identified by the Defendants as not reasonably accessible because of undue cost and burden: (1) disaster recovery backup tapes, and (2) the Emergency Management Voicemail System. Plaintiff City of Springfield has also objected to discovery from sources it describes as not reasonably accessible because of undue cost and burden in Exhibit D.

6. The parties have agreed to a proposed Protective Order, which is attached as Exhibit E. The proposed Protective Order includes provisions consistent with Fed. R. Civ. P. 26(b)(5)(B) for the assertion of privilege after the production of documents and electronically stored information, for the return or sequestering of such material by the receiving party pending determination of the privilege claim by the Court, and for limiting the distribution of discovery materials identified as Confidential by the producing party. The parties jointly request the Court's entry of the proposed Protective Order.
7. The parties agreed to the production of certain types of documents and electronically stored information in the form of .tiff images and load files containing designated metadata and searchable textual content. Plaintiffs have demanded that production of spreadsheets, databases, and film, sound, and video recordings be produced in their native formats. The parties could not reach an agreement on this issue and wish to present it to the Court for resolution.
8. The parties anticipate completion of discovery of documents and reasonably accessible electronically stored information by December 31, 2011.
9. Depositions of fact witnesses will begin on January 1, 2012 and be completed by June 30, 2012.
10. Depositions of environmental and medical experts will begin on July 1, 2012 and be completed by August 31, 2012.
11. The parties have agreed in principle to conduct discovery on the issues of accessibility noted in Paragraph 5 above through the exchange of special interrogatories and the taking of depositions of persons with knowledge of the parties' electronic information systems, and have agreed to a second meet-and-confer session to negotiate the details of this discovery within 10 days after the Rule 16(b) Pretrial Scheduling Conference.
12. The parties have not reached agreement on the scope of any preservation agreement regarding electronically stored information. The Plaintiffs have requested that Defendant Global Chemical Corporation preserve all environmental monitoring information related to the Bugacide site and the surrounding City of Springfield being generated on an ongoing basis prior to and during the pendency of this litigation. The Defendants object to this request as unduly costly, burdensome, and beyond the scope of the duty of preservation imposed by the common law.

*[Editor's note. provisions related to the scheduling of other pretrial matters have been omitted in the interest of brevity]*

Respectfully submitted this 10th day of February, 2011,

---

/s/ [counsel for all parties]

[Editor's note. Attachments and exhibits referenced in this report have been omitted in the interest of brevity]