DuPont payoff to end Ga. case

By Bill Rankin
STAFF WRITER

Faced with a possible criminal prosecution, DuPont agreed Thursday to pay $11 million to settle allegations that the company and its lawyers had withheld critical evidence during a high-stakes product liability trial in Columbus involving the DuPont fungicide Benlate.

The Atlanta law firm of Alston & Bird, which represented DuPont during the Benlate litigation, also agreed to pay $250,000 as part of an agreement reached with the U.S. attorney's office in Macon.

The settlement was approved by U.S. District Judge Hugh Lawson, who ordered the criminal investigation.

While neither DuPont nor Alston & Bird admitted wrongdoing, the settlement resonated through the legal community.

"The judge is certainly trying to send a message about legal ethics and professionalism, even if Alston & Bird denies any wrongdoing," said George Cohen, a legal ethics professor at the University of Virginia. He called the settlement "remarkable."

"It is very unusual," Atlanta lawyer Craig Gillen, a former federal prosecutor, said of the settlement. "It sounds like a very creative resolution to a very, very complicated and sensitive problem."

Law schools at the University of Georgia, Emory University, Georgia State University and Mercer University each will receive $2.5 million of DuPont's payout..

Howard Hunter, dean of Emory's law school, called the donation "a great Christmas present."

The remaining $1 million of DuPont's settlement will sponsor an annual symposium on professionalism and ethics in law. Alston & Bird's $250,000 payout will go to the Georgia Supreme Court's Commission on Professionalism.

The Benlate litigation in Georgia began in 1992 when four nursery operators sued DuPont in federal court in Columbus, alleging that the fungicide Benlate was contaminated, resulting in the destruction of their crops. They initially sought $430 million in damages, but settled for $4.25 million while the trial jury deliberated.

When critical test data — which proved unfavorable to DuPont and was never turned over to the plaintiffs' attorneys — was disclosed in a Hawaii case months after the Georgia settlement, three of the growers sought sanctions against DuPont and Alston & Bird. Growers Bush Ranch Inc., Yellow River Growers and C. Raker & Sons Inc. argued that the trial judge had ordered DuPont to disclose all such information.

U.S. District Judge Robert Elliott, who presided over the 1993 trial, held hearings on the new petition and imposed $115 million in civil penalties against the company.

But DuPont appealed and in 1996 the 11th U.S. Circuit Court of Appeals vacated Elliott's ruling,

➤ Please see DUPONT, A15

DuPont: Atlanta law firm 'pleased' Benlate case over

➤ Continued from A1

saying it was more criminal than civil in nature. The appeals court also said Elliott had abused his discretion, and the court reassigned the case to Lawson.

Lawson, after reviewing the record, sent shock waves through DuPont and Alston & Bird on Nov. 4 by issuing a show-cause order to federal prosecutors in Macon, instructing them to let him know within 60 days why DuPont and other, unspecified parties should not be prosecuted for criminal contempt and obstructing justice.

"The court requests that the United States Attorney for the Middle District of Georgia investigate and prosecute this matter on the court's behalf," Lawson ordered.

By resolving the case with the civil settlement, Lawson terminated his show-cause order for the criminal investigation.

DuPont expressed relief Thursday that the long-running dispute had ended.

"DuPont is pleased that the parties have been able to reach a civil resolution of Bush Ranch proceedings in Georgia federal court," DuPont spokesman Mike Ricciuto said.

As part of the settlement, DuPont also agreed to pay a confidential sum to the growers for their costs and attorneys' fees in bringing the petition for sanctions.

"The petitioners are satisfied with the resolution," said C. Neal Pope, the Columbus lawyer for the plaintiffs who has pursued the Benlate litigation for most of this decade.

In his consent order, Lawson said Alston & Bird "acknowledges for itself a fundamental misunderstanding" of the intent of Elliott's discovery orders in the initial Benlate litigation.

"We are pleased that the matter has now been brought to an end," said Alston & Bird lawyer John Train.

Georgia law schools win $2.5 million in odd twist

By Rhonda Cook
STAFF WRITER

A federal court settlement giving millions to four Georgia law schools and $250,000 to a state commission that trains lawyers was an appropriate, though unusual, punishment for allegations that attorneys hid evidence, legal experts said.

On Thursday, the DuPont Co. agreed to pay $11 million, with $2.5 million going to the law schools at the University of Georgia, Emory University, Georgia State University Law School and Mercer University. The other $1 million will finance an annual symposium on legal ethics that will rotate among the schools.

In addition, $250,000 paid by DuPont's lawyers from Alston & Bird, one of Atlanta's largest and most prestigious firms, will go to the Georgia Supreme Court's Chief Justice's Commission on Professionalism, which trains and offers classes for lawyers.

"It's very unusual," said Emory Law School Dean Howard Hunter. "Maybe something like this has happened before, but I'm not aware of it. It's an interesting way of handling it. The money will be used for further education and to study the question of ethics."

Part of the $1million going to the Supreme Court commission will be used for training lawyers.

Created in 1989, the first of its kind in the country, the Chief Justice's Commission on Professionalism focuses on continuing legal education, preparing articles for the State Bar Journal and sponsoring a mentoring program for law students and new lawyers.

Ray Patterson, a University of Georgia law professor and an expert on legal ethics, agreed that the deal was unusual.

"Someone was engaged in some creative thinking," Patterson said. "Think of the value this contribution will have for legal education for Georgia as opposed to a $10 million fine for the state of Georgia. I can see where, in this instance, it seems to be particularly appropriate."