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Suffolk County Water Authority v. Dow Chemical Co.

Supreme Court, Suffolk County, New York - June 16, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 24155

Municipal water supplier brought action against manufacturer of and distributor of a chemical used by drycleaners and others, i.e., perchloroethylene (Perc or PCE), alleging toxic chemical contamination of supplier's water wells. Defendants filed motion to dismiss for failure to state a cause of action.

The Supreme Court, Suffolk County held that water supplier's allegations were sufficient to invoke market share liability.

Under market share liability of product manufacturers, the burden of identification shifts to defendants if plaintiff establishes a prima facie case on every element of the claim except for identification of the actual tortfeasor or tortfeasors, and plaintiff has joined manufacturers representing a substantial share of the relevant market.

Allegations of municipal water supplier in action against manufacturer of and distributor of a chemical used by drycleaners and others, i.e., perchloroethylene (Perc or PCE), that perc was defective from the moment of its manufacture, that it was a generically fungible product, and that it took many years from seepage into ground until it appeared in one of supplier's wells, were sufficient to invoke market share liability, for purposes of stating a cause of action against manufacturer and distributor for toxic chemical contamination of supplier's water wells.