

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ANAJAI CALCAÑO PALLANO,)
Individually, and as Parent and)
Natural Guardian of MAXIMILIANO)
CALCAÑO; MARIBEL)
MERCEDES, Individually, and as)
personal representative of the Estate)
of “BABY MERCEDES;”)
MARIBEL ANDUJAR MEDINA,)
Individually, and as Parent and)
Natural Guardian of ISABEL)
ALTAGRACIA ANDUJAR; ROSA)
MARIE ANDUJAR, Individually,)
and as personal representative of the)
Estate of “BABY OLMOS;” MARIA)
VIRGEN DEOGRACIA, Individually)
and as Parent and Natural Guardian)
of ESTANLYN GARCIA)
DEOGRACIA; and AMPARO)
ANDUJAR,)

Plaintiffs,)

v.)

THE AES CORPORATION, AES)
ATLANTIS, INC., AES PUERTO)
RICO, LP, AES PUERTO RICO,)
INC., and AES PUERTO RICO)
SERVICES, INC.,)

Defendants.)

C.A. No. N09C-11-021 JRJ

Date Submitted: February 14, 2012

Date Decided: May 11, 2012

*Upon Defendants’ Partial Motion to Dismiss Plaintiffs’ Second Amended
Complaint: **DENIED in part, GRANTED in part.***

Ian Connor Bifferato, Esq., David W. deBruin, Esq., Kevin G. Collins, Esq., and J. Zachary Haupt, Esq., Bifferato LLC, 800 N. King Street, Plaza Level, Wilmington, DE 19801, Diane Paolicelli, Esq. (argued), *pro hac vice*, and Philip Monier III, Esq., *pro hac vice*, Levy Phillips & Konigsberg, LLP, 800 Third Avenue, 11th Floor, New York, New York, 10022, Attorneys for the Plaintiffs.

Timothy J. Houseal, Esq. and William E. Gamgort, Esq., Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Christopher R. Hart, Esq., *pro hac vice*, R. Hackney Wiegmann, Esq., *pro hac vice*, John M. McNichols, Esq. (argued), *pro hac vice*, and Dane H. Butswinkas, Esq., *pro hac vice*, Williams and Connolly LLP, 725 Twelfth Street, N.W., Washington, D.C. 20005, Attorneys for the Defendants.

Jurden, J.

I. INTRODUCTION

The background of this case is set forth in the Court's July 15, 2011 35 page opinion granting in part and denying in part Defendants' Motion to Dismiss Plaintiffs' Complaints for Failure to State a Claim Upon Which Relief Can Be Granted.¹ In that Opinion, the Court held, *inter alia*, that Dominican law applies and Plaintiffs' sufficiently pled allegations to support four causes of action under Dominican law.²

Specifically, the Court found that Plaintiffs' allegations were sufficient to state cognizable claims under Articles 1382, 1383 and 1384 of the Dominican Civil Code, and Dominican General Law 64-00 ("Law 64-00").³ The Plaintiffs, as instructed, then amended their complaint to specifically plead those four causes of action.⁴ The defendants then deposed Professor Rosenn in September, 2011.

Defendants have now moved to dismiss Plaintiffs' claim under Law 64-00. For the reasons set forth below, and those stated in the Court's July 15, 2011 opinion, the Motion to Dismiss is **DENIED in part and GRANTED in part.**

¹ *Pallano v. AES Corp.*, 2011 WL 2803365 (Del. Super.).

² Before rendering that decision, the Court hired its own Dominican law expert pursuant to D.R.E. 706. That Court-appointed expert, Professor Keith Rosenn, issued a report dated April 15, 2011, upon which the Court relied in deciding the first motion to dismiss. The Court felt it necessary to appoint its own Dominican Law expert when it became apparent that the plaintiffs' and defendants' experts disagreed on the proper interpretation of Dominican Law. *See id.* at *3; *see also* Order Appointing Dominican Law Expert (Trans. ID. No. 35525065); *Pallano v. AES Corp.*, 2011 WL 291097 (Del. Super.) (ORDER) (appointing Professor Rosenn as an independent expert pursuant to Delaware Rule of Evidence 706 to assist the Court on issues of Dominican law);

³ *Id.* at *10.

⁴ *Id.* Defendants did not file a Motion for Reargument of the Court's July 15, 2011 Opinion.

II. DISCUSSION

A. Defendants' Arguments in Support of Dismissal of Claim Under Law 64-00.

First, Defendants argue this Court has no subject matter jurisdiction over a claim under Law 64-00.⁵ Second, Defendants argue that because a claim under Law 64-00 requires a showing of harm to the Dominican Republic, and because the Dominican Republic has declared that no such harm occurred, Plaintiffs cannot state a claim.⁶ Third, Defendants maintain that because Law 64-00 is a regulatory and penal statute enacted to serve public, not private, interest, United States Courts will not enforce it.⁷ Fourth, Defendants claim that because no court in the Dominican Republic has ever applied Law 64-00, and thus its requisite elements are unknown, “for reasons of comity ... and fundamental fairness,” this Court should dismiss the claim.⁸

1. Subject Matter Jurisdiction

Before addressing Defendants’ subject matter jurisdiction argument, it is important to note that according to Court-appointed expert Professor Rosenn, and as this Court previously held:

⁵ Opening Brief in Support of Defendants’ Partial Motion to Dismiss Plaintiffs’ Second Amended Complaint (“Op. Br.”) (Trans. ID. No. 40732196) at 4 (“...a claim under Law 64-00 is expressly committed to the exclusive subject matter jurisdiction of the Dominican court where the environmental harm allegedly occurred.”)

⁶ Op. Br. at 4.

⁷ *Id.* (“it is well-settled that U.S. Courts will not enforce the public laws of foreign countries.”)

⁸ *Id.* at 5.

Article 178 of Law 64-00 permits ‘every person or association of citizens’ to bring an action pursuant to Law 64-00, and it is not necessary for there to be a related criminal action pending in order for plaintiffs to bring a civil claim under Law 64-00...Plaintiffs have sufficiently pled a claim for strict liability under Law 64-00.⁹

While Defendants characterize Law 64-00 as a regulatory law, they do not define that term, and offer no case law defining that term.¹⁰ And, in his expert report, Professor Rosenn clearly states that Article 178 of Law 64-00 confers standing upon “every *person*”¹¹ Apparently, Defendants did not ask Professor Rosenn about that statement in his report,¹² but they did ask him whether Law 64-00 was a “regulatory statute.”¹³ At the conclusion of his deposition, Professor Rosenn did not retract the portion of his opinion in which he stated plaintiffs had a cognizable claim under Law 64-00.¹⁴

Defendants argue that Law 64-00 confers exclusive jurisdiction of Plaintiffs’ Law 64-00 claim in a specific territorial court in the Dominican Republic, and that

⁹ *Pallano*, 2011 WL 2803365, at *10. (other citations omitted).

¹⁰ *Op. Br.* at 4.

¹¹ *Pallano*, 2011 WL 2803365, at *10 (citing Professor Rosenn’s Report (“R. Report”) at ¶ 21 (April 15, 2011). *See also* Plaintiffs’ Answering Brief in Opposition to Defendants’ Partial Motion to Dismiss Plaintiffs Second Amended Complaint (“Pl. Ans. Br.”) (Trans. ID. No. 41913331) at Exhibit E, at ¶ 21.

¹² *See Pl. Ans. Br.* at 6.

¹³ *Pl. Ans. Br.* at Exhibit D, p. 66.

¹⁴ *See* Transcript of Oral Argument (“Trans. of Oral Argument”) (Trans. ID. No. 42487554) at 33. (“First of all, I want to note just what’s perhaps the obvious but I want to say, which is that Professor Rosenn opined in his report that Your Honor relied upon, that 64-00 is a compensable claim for the plaintiffs in this case, and on that basis we amended our complaint, although we had alleged 64-00 as part of a negligence per se count in our original papers. But Professor Rosenn at the end of his deposition did not retract from his view. In fact, he didn’t retract from any of his views in his original opinion.”).

such court, and no other, is empowered to impose the remedies provided by Law 64-00.¹⁵ In so arguing, Defendants rely upon Article 177 of Law 64-00. Article 177 provides: “The tribunals of the first instance in the corresponding jurisdiction will be those competent to judge in the first degree the violations of this law.” Defendants also point to testimony from Professor Rosenn in support of their argument:

Q: And is it your understanding that no other Dominican Courts are provided with jurisdiction to adjudicate violations of Law 64-00, for example, probate courts or courts in other territorial jurisdictions?

A: Correct.¹⁶

The Court is not persuaded by Defendants’ argument on this point. They attempt to equate the inability of *any other Dominican Courts* to adjudicate these claims with the inability of *any Court outside of the Dominican Republic* to adjudicate these claims. Professor Rosenn’s responses and Article 177 establish that when commencing an action based on Law 64-00 in the Dominican Republic, it must be brought in the court of first instance in the jurisdiction where the environmental damage occurred, and not in “probate courts or courts in other territorial

¹⁵ Op. Br. at 8.

¹⁶ *Id.*

jurisdictions.”¹⁷ The Court agrees with Plaintiffs that this appears to be an issue of venue rather than of “exclusive jurisdiction.”

Moreover, seriously undercutting Defendants’ argument is the fact that the government of the Dominican Republic itself has recognized that U.S. Courts can properly maintain subject matter jurisdiction over Law 64-00 claims. The government of the Dominican Republic filed suit against three of the defendants here¹⁸ in the U.S. District Court for the Eastern District of Virginia which asserted claims under Law 64-00. The Eastern District of Virginia held in that case that Law 64-00 provided for a cognizable cause of action in tort.¹⁹

It does not appear that the Defendants in that case raised a subject matter jurisdiction argument when the Dominican Republic government cited law 64-00 as a basis for its common law claims. And as Plaintiffs here point out, that none of the “numerous expert opinions...noted a jurisdictional problem with adjudication of a civil strict liability claim based on Law 64-00.”²⁰

¹⁷ *Id*

¹⁸ The AES Corporation, AES Atlantis, Inc., and AES Puerto Rico, L.P.

¹⁹ *Dom. Rep. v. AES Corp.*, 466 F.Supp.2d 680, 694 (E.D. Va. 2006) (“Article 167 of the General Law of the Environment and Natural Resources, Law 64-00 ... allows the Government of the Dominican Republic itself to claim damages independent of penal actions.”).

²⁰ Pl. Ans. Br. at 9, n. 3.

In sum, the Court is not persuaded that the Dominican Republic has vested jurisdiction over Law 64-00 claims exclusively in its own courts. The Court is satisfied it has subject matter jurisdiction over this claim.

2. The Previous “Harm to the Environment” Determination is Inconsequential

Defendants next argue that the Act of State Doctrine²¹ bars Plaintiffs’ Law 64-00 claims because the government of the Dominican Republic “has determined that its environment suffered no harm” from the coal ash deposits in Samaná.²² Defendants maintain that whether there was harm to the Dominican Republic environment – a necessary element of a law 64-00 claim – is “a matter involving its own sovereign territory that is uniquely within its competence,” and the Dominican Republic government has expressly denied any harm to its environment.²³ According to Defendants, to “second guess” the Dominican Republic government’s determination would violate the Act of State Doctrine.²⁴ The Court does not agree for several reasons.

²¹ The Act of State Doctrine prevents courts in one country from interfering with the acts of another country done within their own territory. See *D’Anegelo v. Petroleos Mexicanos*, 398 F.Supp. 72, 76 (D. Del. 1975) (citing *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897) (“Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. ReDominican Republicness of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.”))).

²² Op. Br. at 11.

²³ *Id.*; Defendants’ Reply Brief in Support of their Partial Motion to Dismiss the Second Amended Complaint (“Reply Br.”) (Trans. ID. No. 42173334) at 8.

²⁴ Op. Br. at 11.

First, one of the elements of liability under Law 64-00 is a showing of “damage to the environment or natural resources.”²⁵ Defendants rely on a stipulation signed by the government of the Dominican Republic in connection with a settlement of its claims against Dominican Republic which stated that the coal ash was not harmful. The court is not persuaded that the statement, which was made in connection with a multi-million dollar settlement paid by Defendants to the Dominican Republic in connection with the Dominican Republic’s lawsuit for environmental damage, implicates the Act of State doctrine. This is particularly so given statements seemingly to the contrary issued by the Dominican Republic Secretariat of State for the Environment and Natural Resources.²⁶ The Secretariat stated, among other things,

the improper manner in which this ... Ash was disposed of in the country makes it easy for its possible negative effects to be transmitted to other receiving bodies, causing pollution of the environment and natural resources (land, soil, water and air) located in the affected ecosystems;²⁷

with the introduction and disposal in the country of the ... Ash, the administrative rules and procedures established by the environmental legislation that is in force, as well as other provisions or environmental legal system, were violated.²⁸

²⁵ See Law 64-00, Articles 169 and 178 (Appendix C to Rosenn’s Report); Op. Br. at Ex. 3, pp. 70-71.

²⁶ Plaintiffs’ Answering Brief in Opposition to Defendants’ Partial Motion to Dismiss the Complaint (Trans. ID. No. 30118427) at Exhibit 2, Resolution No. 11/2004.

²⁷ *Id.*

²⁸ *Id.*

all laboratory studies agree in identifying this ... Ash as waste containing CADMIUM, BERYLLIUM, ARSENIC AND VANADIUM, toxic elements that are among those prohibited by ... the Basel Convention ... and in certain concentrations, they produce Toxic Substances (with delayed or chronic effects). When inhaled or consumed or when they penetrate the skin, these substances or waste can cause delayed or chronic effects, including cancer.²⁹

Defendants characterize Plaintiffs' argument on this point as asking this Court to "not credit the Dominican Government's denial of environmental harm."³⁰ By so doing, Defendants miss the point. It is not a matter of "crediting" or "not crediting" a statement made by the Dominican Republic government. It is a matter of whether Plaintiffs' allegations, accepted as true at this point in the proceedings, are sufficient to put Defendants on notice of Plaintiffs' claims. The well pleaded allegations of the second amended complaint set forth a claim under Law 64-00.³¹

Second, the Court notes that none of the Plaintiffs here were a party to the Dominican Republic Government's action, and none can be bound by the terms of its settlement.³² Third, the Dominican Republic government's current view on

²⁹ *Id.* at 4.

³⁰ Reply Br. at 9.

³¹ See Plaintiffs' Second Amended Complaint (Trans. ID. No. 40099941) at ¶¶ 42-64; see e.g. Law 64-00, Articles 153 and 169 (Appendix C to Rosenn's Report); see also Pl. Ans. Br. at Exhibit E, at ¶¶ 20-42.

³² See, e.g., *LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 192 (Del. 2009) (discussing the elements of *res judicata*, stating that it "operates to bar a claim where the following five-part test is satisfied: (1) the original court had jurisdiction over the subject matter and the parties; (2) the parties to the original action were the same as those parties, or in privity, in the case at bar; (3) the original cause of action or the issues decided was the same as the case at bar; (4) the issues in the prior action must have been decided adversely to the appellants in the case at bar; and (5) the decree in the prior action was a final decree." Plaintiffs here were not a party to the original action between AES and the DOMINICAN REPUBLIC, nor were Plaintiffs in privity with the DOMINICAN REPUBLIC Government) (citing *Dover Historical Society, Inc. v. City of Dover Planning Commission*, 902 A.2d 1084, 1092 (Del.2006));

toxicity of the material and whether the settlement stipulation contained a declaration that the coal ash was not hazardous, in addition to not being binding on Plaintiffs, is not an impediment to the instigation of an action by an individual under Law 64-00. This Court adopted Professor Rosenn’s opinion that Article 178 of Law 64-00 permits “every person or association of citizens” to bring an action pursuant to Law 64-00, and that no corresponding criminal action is required.³³ The Court also adopted Professor Rosenn’s opinion “that plaintiffs have sufficiently pled a claim for strict liability under Law 64-00.”³⁴

3. Law 64-00 Provides a Private Cause of Action for Strict Liability

According to Defendants, the Court may not hear claims based on the tort provisions of Law 64-00 because no United States court may enforce public foreign law. This Court held in its July 15, 2011 Opinion that law 64-00 provides a private cause of action for strict liability.³⁵ Defendants conflate the civil remedy of Law 64-00 with the penal sanction provisions. As Plaintiffs note, all known authorities on Law 64-00 have found that the civil remedy exists independently of any penal sanctions. Professor Rosenn confirms this in his report:

Kossol v. Ashton Condominium Ass’n, 1994 WL 10861, at *2 (Del.) (“Under Delaware law, *res judicata* bars litigation between *the same parties* if the claims in the later litigation arose from the same transaction that forms the basis of the previous adjudication.”) (emphasis added).

³³ Pl. Ans. Br. at Exhibit E, at ¶ 21.

³⁴ *Pallano*, 2011 WL 2803365, at *10; *see also* Pl. Ans. Br. at Exhibit E, ¶ 39.

³⁵ *Id.*

Although Law 64-00 provides for criminal prosecution of certain actions causing environmental damages, nothing in the statute requires that a civil action for damages be brought only in connection with a criminal prosecution Indeed, the Government of the Dominican Republic and its Attorney General interpreted law 64-00 to permit institution of an independent action for civil damages without initiating a criminal prosecution when they sued AES Defendants for dumping this same coal ash in a suit filed in federal court in the Eastern District of Virginia, 466 F.Supp.2d 680 (2006).³⁶

Moreover, the Attorney General of the Dominican Republic stated under oath that civil actions for damages may be brought under Law 64-00 before a civil court even if the penal action is abandoned or an administrative penalty is imposed.³⁷ A civil cause of action under Law 64-00 is separate and distinct from any potential criminal or administrative action that could arise under law 64-00. Accordingly, Defendants' argument that Law 64-00 is an unenforceable foreign penal law is unavailing.

4. The Application and Elements of Law 64-00

Defendants also argue that this Court should not apply Law 64-00 because it has never been applied by any Dominican Republic court and its elements are indeterminate.³⁸ Professor Rosenn noted that no Dominican Republic court has articulated the elements of a Law 64-00 claim and thus there is "no guidance" for

³⁶ Pl. Ans. Br. at Exhibit E, at ¶ 22.

³⁷ *Dom. Rep.*, 466 F.Supp.2d at 694.

³⁸ Op. Br. at 16. ("Even assuming subject matter jurisdiction exists, this Court should dismiss Plaintiffs' Law 64-00 claim because the statute is too indefinite to allow a potential defendant to conform its conduct to the law.").

the Court to follow.³⁹ The fact that no Dominican Republic court has applied Law 64-00 does not constrain this Court from doing so. It is not unusual for Courts to “wrestle with open questions of law or sister states or foreign countries.”⁴⁰ In fact, this Court wrestles often with such issues.⁴¹ This is not the first time (nor is it probably the last) that this Court has faced such a predicament in applying foreign law. In *Saudi Basic Indus. v. Mobil Yanbu Petrochemical Co.*,⁴² the Court was required to determine the proper elements of a claim for “*ghasb*” under Saudi law without the aid of any precedent.⁴³

The Court is also not persuaded that Law 64-00 is so indefinite that a potential defendant cannot conform its conduct to the law. The Court is confident, based on the language of Law 64-00 and, if needed, Professor Rosenn’s assistance, that it can craft a proper and understandable jury instruction on the necessary elements of a Law 64-00 claim. This task is not as difficult as Defendants make it

³⁹ Op. Br. at Ex. 3, pp. 71, 74.

⁴⁰ *Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1200 (Del. 1997).

⁴¹ See, e.g., *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co.*, 2003 WL 22016843, at *1 (Del. Super.) (“[T]he circumstances under which *ghasb* (usurpation) damages are available under Saudi law *are not well known, much less defined*, because Saudi law is not based on precedent or *stare decisis* . . . one cannot simply consult a statute book or a case reporter to find the elements of, or damages available for, the Saudi law tort of *ghasb*.”), *aff’d*, 866 A.2d 1 (Del. 2005) (emphasis added); see also *Candlewood Timber Group LLC v. Pan Am. Energy LLC*, 2006 WL 1382246 (Del. Super.) (applying Argentinean law); *Pena v. Cooper Tire & Rubber Co.*, 2009 WL 847414 (Del. Super.) (applying Mexican law).

⁴² *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co.*, 2003 WL 22016864, at *2 (Del. Super.).

⁴³ *Id.* at *2. The legal system in the Kingdom of Saudi Arabia does not rely on precedent and there were no written decisions from any Saudi Court setting forth the elements of the tort of *ghasb*. And, like here, the law experts retained by the parties disagreed, necessitating appointment by the Court of its own expert pursuant to D.R.E. 706. *Id.*

out to be, given the fact that Law 64-00 imposes *strict liability* on those who cause environmental damage.⁴⁴ The Court is similarly not persuaded by Defendants' void for vagueness argument. The Court, aided by additional research, will be able to determine whether certain facts, if found by a preponderance of the evidence by the jury, would preclude Plaintiffs' recovery under Law 64-00.⁴⁵

B. Plaintiffs' Medical Monitoring Claims

Defendants argue that Plaintiffs' claims for medical monitoring expenses are speculative and hypothetical. Under Dominican Republic law, to be recoverable, damage must "exist or have existed . . . [and] founded in facts that are precise and not hypothetical."⁴⁶ Plaintiffs' claims for medical monitoring damages are set forth in paragraph 74 of their Second Amended Complaint:

As a direct result of the aforesaid wrongful exposures, each of the living Plaintiffs is at a highly elevated risk for development of one or more of the following diseases: lung cancer, bladder cancer, kidney cancer, skin cancer, respiratory ailments and other disorders, which may occur in the future. For each of these conditions there now exist medical monitoring techniques to identify the onset of the disease at an early state and materially improve prospects to cure these conditions and/or mitigate their affects. Accordingly, as a consequence of Defendants' misconduct, all living Plaintiffs require a program or periodic medical examinations.

⁴⁴ Op. Br. at Ex. 3, pp. 70-71. See also Law 64-00, Art. 178.

⁴⁵ For example, Defendants argue 64-00 is vague because Professor Rosenn could not answer whether the Dominican Republic government's alleged approval of an issuance of permits for the importation of the ash would vitiate plaintiff's 64-00 claim. (Rosenn Dep. at 72).

⁴⁶ Op. Br. at Ex. 3, p. 106, quoting from and affirming correctness of Jorge A. Subero Isa (author and sitting president of the Supreme Court of the Dominican Republic), *Tratado Practico de Responsabilidad Civil Dominicana* 164 (1st ed. 1992).

Defendants argue that, “When you are awarding medical monitoring claims *on the basis of exposure only* you are allowing a claim for a non-existent injury, a hypothetical injury only.”⁴⁷ As Defendants note, the claimed medical monitoring expenses “are not premised on any actual diseases or maladies that have manifestly and *currently afflict Plaintiffs*.”⁴⁸ Indeed, the allegations in paragraph 74 expressly state Plaintiffs are “at a highly elevated risk *for the development of . . .*”⁴⁹

Defendants also note that Plaintiffs have not cited a Dominican Republic case, any Dominican Republic authority, or an affidavit from their Dominican law expert suggesting that medical monitoring expenses are recoverable under Dominican Republic law. The parties’ law experts did not opine on this issue, and thus, Professor Rosenn was not asked by the Court for an opinion on this specific damages claim.⁵⁰ Plaintiffs have the burden to establish that this claim is cognizable under Dominican Republic law. They have not met that burden.⁵¹ Because Plaintiffs have failed to establish that Dominican Republic law recognizes claims for medical monitoring, this claim is **DISMISSED**.

⁴⁷ Trans. of Oral Argument at 56 (emphasis added).

⁴⁸ Op. Br. at 19 (emphasis added).

⁴⁹ Plaintiffs’ Second Amended Complaint (Trans. ID. No. 40099941) at ¶ 74 (emphasis added).

⁵⁰ Because there were no conflicting expert legal opinions on this issue, the Court had no need to ask Professor Rosenn for an opinion.

⁵¹ In its Order, the Court did not ask Professor Rosenn to opine on Plaintiffs’ potential future medical monitoring expenses, and Plaintiffs did not question him on this issue at his deposition.

III. CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss Plaintiffs' Law 64-00 claim is **DENIED**, and their Motion to Dismiss Plaintiffs' medical monitoring claims is **GRANTED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

cc: Prothonotary - Original