

# CORPORATE CRIMINAL LIABILITY

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON CRIME  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
NINETY-SIXTH CONGRESS  
FIRST AND SECOND SESSION  
ON  
**H.R. 4973**  
Corporate Criminal Liability

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*These are  
documentary additions  
to his testimony at  
the hearings  
on Nov. 15.*

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[From the Washington Post, July 15, 1979]

## DU PONT'S RECORD IN BUSINESS ETHICS: ANOTHER VIEW

(By Barry I. Castleman)

The "Five-Part Quiz on Corporate Ethics" offered to readers of Outlook two weeks ago by the DuPont public affairs office contended that critics of business morality have failed to appreciate the complexities of the ethical problems that face business executive. A fuller understanding of such issues, the article suggested, would vindicate the actions of DuPont, for one.

At least one of the examples cited in this article deserves further discussion. This was an account of DuPont's discovery in the 1930s that workers manufacturing dyes using an intermediate called Beta-naphthylamine were developing cancer. Whereupon, "We made full disclosure in the medical journals, cleaned up the process, and took care of employes to the best of medical science's ability."

The cancer hazard in dye making was brought to the attention of the DuPonts by the late Dr. Wilhelm C. Hueper, who is widely regarded as the father of environmental cancer prevention. Fortunately, Dr. Hueper and others who were involved in this struggle in the 1930s and '40s have left the account of industrial history and ethics which follows. This story will even be informative to the DuPont public relations writers, whose "Mobil ad" view of past events was as incorrect as it was self-serving.

Dr. Hueper had emigrated from Germany and was working under the tutelage of a physician at the University of Pennsylvania in the early 1930s. This gentleman was also the personal physician of Irene DuPont. One day old DuPont had a cold and Hueper came along for the house call. Dr. Hueper asked to see the DuPont Company's dye works, and this was arranged within a short time. He was horrified to find dyes being made with benzidine and beta-naphthylamine, with absolutely no industrial hygiene precautions taken. White, powdery dust was everywhere, and the work areas where the deadly amines were handled were in no way cordoned off from the large chemical works. Hueper noted that it had been known since the turn of the century in Europe that these conditions led to a very high incidence of cancer of the bladder. Hadn't DuPont had that experience, too? The quick answer was "No," but within a few months there were 23 cases of bladder cancer noticed among past and present workers.

A few years later Hueper was working for DuPont Company, and someone seriously suggested that maybe they should just hire people for two years apiece in the dangerous areas and then lay them off. Hueper explained that if they did that, they would be mass-producing cancer. Meanwhile, Swiss dye chemists found other routes of dye synthesis that obviated the need for Beta-naphthylamine, which was abandoned in Switzerland in 1938.

Hueper's most brilliant research was done while he was at DuPont. For 40 years, it had been known that workers exposed to Beta were getting bladder cancer, but when the substance was tested on rats it produced no effect. Dr. Hueper tested Beta on dogs, and it produced numerous bladder tumors. He theorized that there were species-specific metabolic pathways for this substance, which itself was not carcinogenic. However, in some species Beta was metabolized into an active form, which accumulated at high concentration in the urine. The dog "digested" the chemical much the way man did, but the rat was able to pass it off without chemically converting the Beta to its deadly form. Hueper even identified the carcinogenic metabolite in the urine of his dogs.

Word soon got around that the head of the DuPont research labs had announced to the local papers that he had made this discovery. Hueper, enraged, went to see the editor, saying that the big dog had never set foot in his laboratory. "I call that theft," fumed Hueper. The editor calmed him down and called the lab director, who admitted that the work was not his after all. "By then, I knew my days at DuPont were counted," Hueper told me. The scientific report was published in 1938, around the time Hueper left DuPont. After that time, Hueper said, DuPont toxicological research that was bad for business was treated as a trade secret and withheld from publication.

Wrote Hueper in 1943:

"Industrial concerns are in general not particularly anxious to have the occurrence of occupational cancers among their employes or of environmental cancers among the consumers of their products made a matter of public records. Such publicity might reflect unfavorably upon their business activities and oblige them to undertake extensive and expensive technical and sanitary changes in their production methods and in the types of products manufactured. There is, moreover, the

distinct possibility of becoming involved in compensation suits with extravagant financial claims by the injured parties. It is, therefore, not an uncommon practice that some pressure is exerted by the parties financially interested in such matters to keep information on the occurrence of industrial cancer well under cover."

In this paper, Hueper called upon industry to find substitutes for carcinogenic substances such as secondary aromatic amines and asbestos.

DuPont finally stopped using Beta in 1955. But Beta's chemical cousin, benzidine, persisted as a mainstay in the manufacture of numerous dyes for cotton, paper and leather. Hueper had told DuPont that benzidine was carcinogenic in 1936, but benzidine proved to be not so easily substituted as Beta.

An important international medical congress was held in London in 1948, at which the chief medical officer of the DuPont Company presented a paper to show that benzidine was not a cause of industrial cancer, and that all the cases of bladder cancer in his factories could be laid at the door of Beta, whose use he said was being abandoned.

In the early months of 1949 the medical officer to the Imperial Chemical Industries Dyestuffs Division visited the DuPont Chambers Works dye plant. This man, the late Dr. Michael Williams, was accompanied by another British researcher, and they were shown around by the corporate medical director who had given the paper at the London medical congress. After the plant tour, he drove Dr. Williams and his colleague to their next destination, quite a long drive. Dr. Williams, who often recounted the story, noticed that his companion in the back of the car had his eyes closed, and said to the DuPont doctor, "Look, you are a company man, and I am a company man, and Dr. So-and-So is asleep. Can you explain to me why, after the records and so on that you have shown to us today, you are so certain that benzidine is not causing any of the trouble?"

He got the reply, witnessed by the other Briton, who was in fact not asleep but thinking, "We here know very well that benzidine is causing bladder cancer, but it is company policy to incriminate only the one substance, Beta-naphthylamine."

Dr. Williams had only recently joined the giant Imperial Chemical firm, where he later became known as an ardent campaigner against occupational cancer hazards. DuPont did not withdraw from the benzidine dye business until 1973. According to company records, there were 339 known cases of urinary bladder cancer ascribed to benzidine and Beta among DuPont workmen during the years 1956-1971. Even accounting for the 20-25-year lapsed period between onset of exposure and development of cancer, it is obvious that this continuing epidemic of cancer was both foreseen and preventable.

The DuPont public relations department was not content to merely rewrite history, but went on to lecture The Post's readers about morality, of all things. The writer admonished that "we give up the Moral Rectitude Race. If we consider the possibility that most people in business have pretty much the same base of values as most of their critics \* \* \* I could well imagine Dr. Hueper's reaction to the suggestion that he was the moral equivalent of the DuPont executives and their medical minions.

He called them chiselers, the callous businessmen who saved a few thousand dollars on industrial hygiene engineering. He railed at them for suppressing the deadly truth from their workers, with their "flexible" front-men in medicine, law and public relations. Bill Hueper learned about business ethics and occupational cancer from the people who wrote the book. "The only thing they understand is jail and bad publicity."

The public's fears and suspicions of business will only be allayed when outfits like DuPont, Velsicol (Tris), Firestone (Radial 500 tires), Ford (Pintos), Hooker Chemical (Love Canal) and their ilk stop giving business a bad name. Until then, sanctimonious varnish over criminal business conduct serves only to warn us that the danger persists.

CHESTER BEATTY RESEARCH INSTITUTE,  
London, England, July 30, 1979.

EDITOR,  
Washington Post,  
Washington, D.C.

DEAR SIR, Although now retired due to ill-health, I feel obliged to write to you about two articles on the Business Ethics of DuPonts which have been brought to my notice and which I have now seen for myself.

A few days ago I was astonished, and not best pleased, to receive a telephone call from a representative of DuPonts, who had somehow identified me as someone referred to in the second of your articles (which I had, of course, not seen), and who

had also managed to ferret out my retirement address with telephone number. The reason for the call was to ask if I could remember an incident referred to by Barry Castleman, and to ask me to confirm or deny it. I am writing this letter in the hopes that if I make my reply public, and also state such relevant facts as I know about the subject being discussed, I will be spared further inquisition by either party to the dispute or by any other people who may feel involved, for there is then no more for me to add.

The incident described related to a conversation between the then Medical Director (now dead) of DuPonts and the late Dr. Williams, a medical officer at I.C.I.Ltd. The conversation took place in the presence of a British scientist, who was thought to be dozing in the back of the car, and related to the state of scientific knowledge about the power of benzidine to cause cancer of the bladder in 1948. Since I was the "dozy Brit" referred to, I informed the man from DuPonts that the tale as recounted was absolutely true, and that the Medical Director of DuPonts had stated that he and the company were aware that benzidine was a carcinogenic hazard to work-people.

The two articles that you published give two somewhat differing versions of the dates at which DuPonts became aware that beta naphthylamine and benzidine were thought by a large body of responsible people to cause cancer in human beings. In my view neither account is accurate. Since this very topic of awareness of this type of risk was crucial to an important lawsuit by two workmen against I.C.I.Ltd in England in 1970-71 the Judgement in that case has passages that are important in relation to the argument between your contributors Carl B. Kaufmann of Duponts and Barry Castleman, I feel that I should quote extracts of the salient points: Mr. Justice O'Connor, in his lengthy Judgement said "By 1914 it was appreciated in Germany and Switzerland that men employed in the synthetic dyestuffs industry were exposed to a definite cancer hazard." In 1921 the International Labour Office in Geneva published "Cancer of the Bladder among workers in Aniline Factories". I quote three passages from that paper.

"In 1912 Luenberger published a very interesting study dealing with 18 cases observed among the workers at Basle handling Aniline dyes. From that moment the existence of a very close connection between the manipulation of aromatic bases and tumours of the bladder among workers was proved."

Among the conclusions at page 22, the following are found—

"(4) It is not possible to determine the substance capable of engendering tumours. At present one can go no further than to incriminate the amino compounds, and particularly benzidine and beta naphthylamine."

"(7) It is, therefore absolutely necessary that in factories in which workers are exposed to the dangerous action of aromatic bases, the most rigorous application of hygienic precautions should be required."

A little later in his Judgement Mr. Justice O'Connor continues with the history as it relates to DuPonts, quoting from unpublished company reports made available to the Court by one of the defendants. He says "In 1933 Dupont sent a medico-technical team to Europe visiting England, Germany and Switzerland. They made individual reports and recommendations and also some joint recommendations. . . . I quote from Dr. Gehrman's recommendations. . . .

9. We should consider aniline, beta naphthylamine and benzidine as the causative materials and take immediate steps to construct all operations so that there shall be absolutely no dust, no fumes nor any skin contacts."

Their joint report opens with an interesting piece of information when it is remembered that Dupont did not go into the production of synthetic dyestuffs until 1915 or 1916 "approximately two years ago we began to experience a few cases of bladder tumours among our workmen at the Dyeworks. . . . This is the most serious occupational disease that we have ever encountered".

According to information that I collected during my visit to DuPonts in 1949, when the car conversation incident occurred, the manufacture and use of the suspected aromatic amines started in 1930 and the first cases of confirmed bladder tumours occurred in 1929. By 1948 there had been 139 cases, 115 at the Chambers works and 44 at Carrollville.

After some exchange of information about my own researches and researches at the Haskell Laboratories during 1949, Dr. Gerhmann informed me in a letter dated 30 December 1949 that owing to legal difficulties it would not be possible to send me information that had been promised or new information that might arise. However, Kauffman's own statement about information being given to persons inside or outside the Company in relation to health and safety removes any scruples that I might otherwise have felt about making public this hitherto undissemiated information.

All this may be summarized as follows:—From about the time that DuPonts entered the synthetic dyestuff field the Company had, or should have had, an awareness of the dangers attendant on such manufactures. It must surely be idle to pretend that such a company would not be expected to be aware of the German and Swiss publications about the hazard, even before the factory was built. Still less could it be claimed that they could reasonably be excused for not knowing of the International Labour Office publication of 1921.

Duponts themselves were experiencing the first wave of casualties by 1929, and by 1933 they were made aware, by their own investigating team, that both beta naphthylamine and benzidine were almost certainly the main culprits.

That Dr. Gerhmann should, in 1948, present a paper at the ninth International Congress on Industrial Medicine (I was present) claiming that benzidine was not one of the bladder carcinogens would not in itself be scientifically unacceptable, for as the late Lancelot Hogben once said "it is by no means to the discredit of any philosopher to say that he has changed his views in the course of a prolific career", if the evidence derived from a study of the epidemiology of the disease at DuPonts had warranted such a *volte face*. However, the car conversation renders this explanation untenable and lends support to some of Barry Castleman's strictures on Carl Kaufmann's description of business ethics.

May I reiterate my plea that now I have "revealed all" I am left in peace until I rest therein!

ROBERT A. M. CASE, M.D., Ph. D., F. I. Biol.,  
Professor Emeritus (Ret.), University of London.

CORRESPONDENCE BETWEEN ASBESTOS COMPANIES AND TRADE MAGAZINE  
"ASBESTOS"

"ASBESTOS"  
Philadelphia, Pa., September 25, 1935.

Mr. SUMNER SIMPSON,  
President, Raybestos-Manhattan, Inc.,  
Bridgeport, Conn.

DEAR SIR: You may recall that we have written you on several occasions concerning the publishing of information, or discussion of, asbestosis and the work which has been, and is being done, to eliminate or at least reduce it.

Always you have requested that for certain obvious reasons we publish nothing, and, naturally your wishes have been respected.

Possibly by this time, however, the reasons for your objection to publicity on this subject have been eliminated, and if so, we would like very much to review the whole matter in "Asbestos".

Our thought is that we could either prepare from data which we have in our files, or obtain from Mr. W. A. Godfrey of the Cape Asbestos Company, London, who is much interested in the subject, an article on the work done in England and then follow it with an article written by someone in your organization, as to the work done here.

We understand from Mr. Stover that your North Charleston plant, contains very complete dust control equipment and a description of such equipment, if you approve, would make a very interesting part of the article. Possibly even you could supply a photograph or two showing some part of this dust control equipment.

We await with much interest your reply. If there is no serious objection it would seem to be a most interesting subject for the pages of "Asbestos", and possibly a discussion of it in "Asbestos" along the right lines, would serve to combat some of the rather undesirable publicity given to it in current newspaper.

Very truly yours,

R. S. ROSSITER.

BRIDGEPORT, CONN., Oct. 1, 1935.

Mr. VANDIVER BROWN,  
Attorney, Johns Manville Corp.,  
New York City.

MY DEAR MR. BROWN: Enclosed is copy of a letter received from Miss Rossiter, of "Asbestos."

As I see it personally, we would be just as well off to say nothing about it until our survey is complete. I think the less said about asbestos, the better off we are. But at the same time, we cannot lose track of the fact that there have been a number of articles on asbestos dust control and asbestosis in the British trade