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DuPont Ordered to Pay Damages Of \$78.3 Million in Benlate Case

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By Milo Geyelin Staff Reporter of The Wall Street Journal

Updated Aug. 13, 2001 12:01 am ET

A Florida jury in Miami ordered DuPont Co. to pay \$78.3 million to two plant nurseries in Costa Rica that claimed devastating losses after using the company's recently discontinued Benlate DF fungicide.

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The verdict, late Friday, came in the first Benlate case to go to trial against DuPont alleging violations of Florida's Racketeer Influenced and Corrupt Organizations Act, a statute modeled in many states after a federal law that allows plaintiffs to recover treble damages in

civil suits where they can prove a continuing pattern of fraud. The verdict and the damage award capped six years of litigation and a three-week trial before Dade County Circuit Judge Amy Steele Donner.

DuPont, based in Wilmington, Del., said in a statement it would appeal, calling the verdict "an absurdity" and the trial "based on a smear campaign and pseudo-science." The company criticized pretrial rulings by Judge Donner excluding evidence and testimony that it contends the jury should have been allowed to hear.

"This verdict was the result of a seriously flawed proceeding, and we look forward to a higher court's review of the several and substantial grounds we will raise on appeal," DuPont said.

The jury found the fungicide applied by the two plant nurseries, Palmas y Bambu and Productura de Semillas, defective and DuPont liable for negligence, fraud and racketeering. It awarded Palmus \$15 million and Productura \$14 million, trebled the combined amount under Florida's racketeering statute and discounted the total by 10% to account for the growers' portion of fault. It ordered DuPont to pay as yet undetermined attorneys' fees but declined to award punitive damages.

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"We're very happy we finally had the opportunity to present this case to a jury, and we're pleased by the result," said lead plaintiffs lawyer Adam Moskowitz, with the Miami firm Kozyak, Tropin & Throckmorton.

DuPont has faced Benlate issues since 1991 when growers and farmers first complained that it ravaged fruit orchards, vegetable

crops and ornamental plant nurseries nationwide because of a suspected contaminate. The company initially paid more than \$500 million to cover growers' losses, then abruptly denied any problem with the fungicide in 1992 after conducting a yearlong battery of field tests that it contended proved the product safe. The result was hundreds of lawsuits.

Since then, the company has been reprimanded five times by courts around the country for abusive litigation tactics and misconduct, including concealing evidence that supported the growers' claims. During the trial in Miami, jurors heard evidence for the first time that DuPont conducted secret Benlate tests at a private nursery in Costa Rica in 1992, then destroyed dead and dying plants, mislabeled documents and produced illegible records in an effort to withhold the results. The company contended the plants were damaged and diseased by growing conditions in Costa Rica.

DuPont discontinued Benlate in April, citing high litigation costs. The company has paid \$1.3 billion in settlements and legal costs since 1991 and has 120 claims pending, including one by Tico Frut in San Carlos, Costa Rica, the largest producer of orange juice in Central and South America. That case, seeking \$100 million in damages, is also before Judge Donner in Miami.

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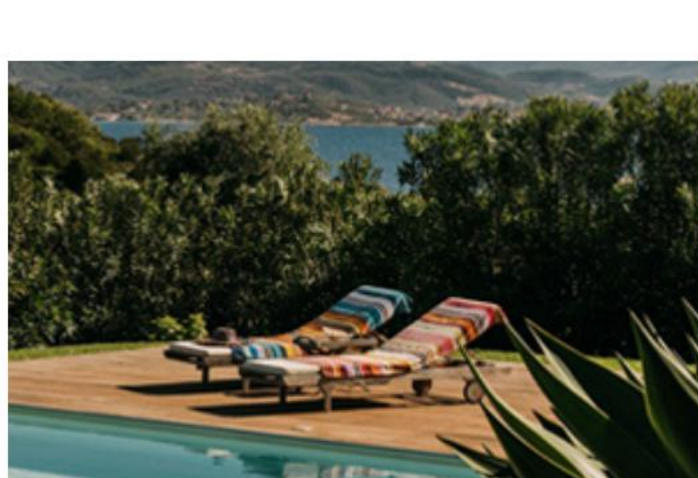
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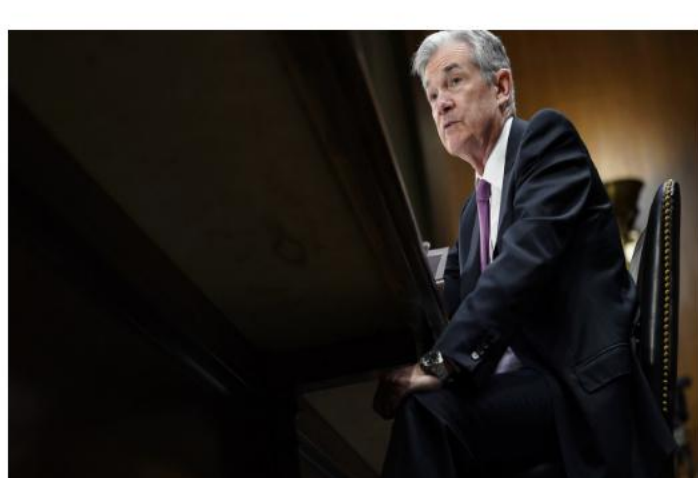
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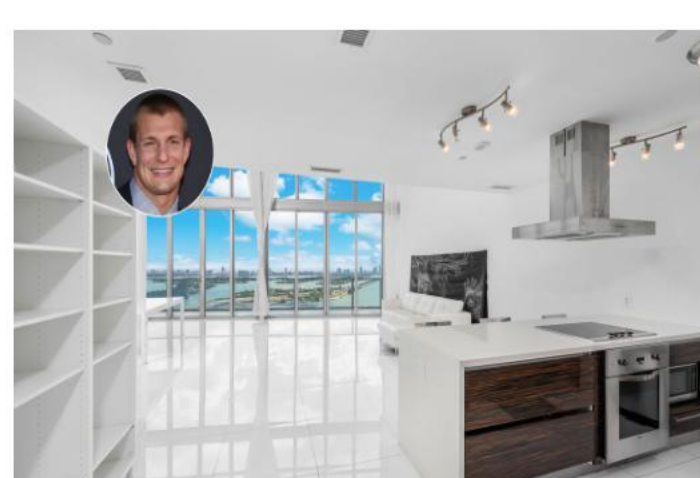
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