

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: E. I. DU PONT DE  
NEMOURS AND COMPANY C-8  
PERSONAL INJURY LITIGATION,

Civil Action 2:13-md-2433  
CHIEF JUDGE EDMUND A. SARGUS, JR.  
Magistrate Judge Elizabeth Preston Deavers

This document relates to:

*Bartlett v. E. I. du Pont de Nemours and  
Company*, Case No. 2:13-CV-0170

**DISPOSITIVE MOTIONS ORDER NO. 9-A**

**Reconsideration of Defendant's Motion For Summary Judgment on Emotional Distress**

This matter came before the Court on Defendant's Motion for Partial Summary Judgment on Plaintiff Carla Marie Bartlett's Fraud and Emotional Distress Claims (ECF No. 2815), Plaintiff's Memorandum in Opposition (ECF No. 3195), and Defendant's Reply (ECF No. 3559). In Dispositive Motions Order No. 9 ("DMO 9"), this Court granted in part and denied in part that Motion. The Court *sua sponte* reconsiders a portion of that decision and **MODIFIES** it as set forth below.

**I.**

In DMO 9, the Court indicated that Ohio courts have recognized a cause of action for negligent infliction of emotional distress based on "an increased fear of developing cancer," when the plaintiff was "aware that [s]he, in fact, possesses an increased statistical likelihood of developing cancer, and, from this knowledge, springs a reasonable apprehension which manifests itself as emotional distress." *Slane v. MetaMateria Partners, L.L.C.*, 176 Ohio App.3d 459, 467

(10th Dist. Ohio Ct. App. 2008) (citation omitted); *see also Cantrell v. GAF Corp.*, 999 F.2d 1007, 1012 (6th Cir. Ohio 1993) (“Cancerphobia is a claimed present injury consisting of mental anxiety and distress over contracting cancer in the future, as opposed to risk of cancer, which is a potential physical predisposition of developing cancer in the future.”) (quoting *Lavelle v. Owens–Corning Fiberglas Corp.*, 30 Ohio Misc.2d 11 (1987)). The Court concluded that a reasonable jury could find that Mrs. Bartlett was “aware that [s]he, in fact, possesses an increased statistical likelihood of developing cancer, and, from this knowledge, spring[ ] a reasonable apprehension which manifests itself as emotional distress.” (DMO 9 at 12.)

With regard to intentional infliction of emotional distress, that claim requires proof

1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff; 2) that the actor’s conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community; 3) that the actor’s actions were the proximate cause of plaintiff’s psychic injury; and 4) that the mental anguish suffered by plaintiff is serious and of a nature that ‘no reasonable man could be expected to endure it[.]’

*Kovacs v. Bauer*, 118 Ohio App. 3d 591, 595 (8th Dist. Ohio Ct. App. 1996) (citations and quotation marks omitted); *see also Yeager v. Local Union 20, Teamsters, Chauffeurs, Warehousemen, & Helpers of Am.*, 6 Ohio St. 3d 369, 372 (1983) *abrogated in non-relevant part by Welling v. Weinfeld*, 113 Ohio St. 3d 464 (2007). The last element requires emotional injury which is both severe and debilitating. *Paugh v. Hanks*, 451 6 Ohio St.3d 72, 78 (Ohio 1983) (citing *Schultz v. Barberton Glass Co.*, 4 Ohio St.3d 131 (1983) (“Serious emotional distress can be as severe and debilitating as physical injury and is no less deserving of redress.”)). Further, “a non-exhaustive litany of some examples of serious emotional distress should include traumatically induced neurosis, psychosis, chronic depression, or phobia.” *Id.* (citation omitted).

The Court concluded that Mrs. Bartlett failed to offer evidence of severe and debilitating injury under Ohio law and had not satisfied the elements of a claim for intentional infliction of emotional distress. The Court, however, was mistaken.

Ohio courts have unequivocally held that cancerphobia constitutes serious emotional distress.

Modern tort law now recognizes a separate cause of action for serious emotional distress without a contemporaneous physical injury. *Schultz v. Barberton Glass Co.* (1983), 4 Ohio St. 3d 131, 4 OBR 376, 447 N.E. 2d 109; *Paugh v. Hanks* (1983), 6 Ohio St. 3d 72, 6 OBR 114, 451 N.E. 2d 759. Examples of serious emotional distress are traumatically induced neurosis, psychosis, chronic depression and phobia. *Paugh v. Hanks, supra*, at 78, 6 OBR at 119, 451 N.E. 2d at 765. ***Cancerphobia falls within this definition.***

*Lavelle v. Owens-Corning Fiberglas Corp.*, 30 Ohio Misc.2d 11, 14 (1987) (emphasis added).

This modification of DMO 9, however, does not change the Court's decision to grant DuPont summary judgment on Mrs. Bartlett's intentional infliction of emotion distress claim. This is because Mrs. Bartlett failed to raise any genuine issues of material fact as to whether DuPont's conduct was so extreme and outrageous as to go beyond all possible bounds of decency such that it can be considered as utterly intolerable in a civilized community. *See Yeager*, 6 Ohio St. 3d at 375. The extreme nature of the conduct required to meet this element is explained by the Ohio Supreme Court as follows:


It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

*Yeager*, 6 Ohio St. 3d 374–75 (relying on Restatement of the Law 2d, Torts (1965) 71, Section 46(1)).

Accordingly, the Court **MODIFIES** DMO 9 in accordance with this decision.

**IT IS SO ORDERD.**

10-2-2015  
**DATE**

  
EDMUND A. SARGUS, JR.  
**CHIEF UNITED STATES DISTRICT JUDGE**