

**LINDA HAMMOND, et al.**

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Plaintiffs

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IN THE

vs.

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CIRCUIT COURT FOR

**TERMINIX INTERNATIONAL  
COMPANY L.P., et al.**

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BALTIMORE CITY

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Civil Case No.: 24-C-04-002664

Defendants

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**MEMORANDUM**

This case comes before this Court on separate Motions for Summary Judgment filed by Defendants Whitmire Research Laboratories Inc., Whitmire Micro-Gen Research Laboratories, Inc., S.C. Johnson & Son Inc. (“SCJ/Whitmire”) and Terminix International Company, L.P., Terminix International, Inc., Delvin Bradford and The ServiceMaster Company (“Terminix”) and the motions of plaintiffs: Plaintiff Linda Hammond’s Motion for Partial Summary Judgment Pursuant to Rule 2-501 Against the Defendants Terminix International Inc., Delvin Bradford S/H/A Delvian Bradford; Plaintiff James Chilcote’s Motion for Partial Summary Judgment Pursuant to Rule 2-501 Against the Defendants Terminix International Inc., Delvin Bradford S/H/A Delvian Bradford; and Plaintiffs’ Joint Motion for Partial Summary Judgment Pursuant to Rule 2-501 Against the Defendants Whitmire Research Laboratories Inc., Whitmire Micro-Gen Research Laboratories Inc. and SCJ Johnson, Inc. Each of these motions raises the issue of the plaintiffs’ discovery of their alleged injury from the alleged actions of the various defendants in manufacturing, distributing, labeling, and applying pesticides in the plaintiffs’ home.

The motions are fully briefed and came on for oral hearing on June 27, 2005.

Plaintiffs Linda Hammond and James Chilcote, a married couple, claim they suffer organophosphate poisoning caused by the negligent conduct of SCJ/Whitmire and Terminix (“Defendants”). Plaintiffs’ Amended Complaint and Jury Demand, ¶¶ 46-49, 87-94. Plaintiffs allege Defendant SCJ/Whitmire manufactured a defective product, an insecticide known as “Dursban,” and failed to warn that Dursban is not suitable for households or basements. *Id.* at ¶¶ 87-94. Plaintiffs allege Defendant Terminix failed to apply pesticides, PT 270 Dursban and PT 280 Orthane Acephate, properly when Terminix applied the pesticides in Plaintiffs’ basement in July, 1996; and that Terminix failed to warn of health risks and/or symptoms caused by exposure to the pesticides. *Id.* at ¶¶ 23, 46-49. Plaintiffs filed their complaint on April 5, 2004.

#### **A. Legal Standard on Summary Judgment**

In deciding a motion for summary judgment, the Court must first decide whether there is a genuine dispute as to any material fact, and if not, whether the moving party is entitled to judgment as a matter of law. Maryland Rule 5-201; *Vogel v. Touhey*, 151 Md. App. 682, 704 (2003) (citations omitted); *Okwa v. Harper*, 360 Md. 161 (2000). The moving party has the burden of setting forth facts necessary to obtain judgment as a matter of law and of showing that there is no dispute as to any material fact. *Bond v. NIBCO, Inc.* 96 Md. App. 127, 134 (1993).

In a motion for summary judgment, the Court must determine issues of law, but resolve no disputed issues of material fact. *Beatty v. Trailmaster Products*, 330 Md. 726, 737 (1993). A material fact is one the resolution of which will affect the outcome of

the case. *Vogel*, 151 Md. App. at 704 (citing *King v. Bankerd*, 303 Md. 98, 111 (1985)); *Miller v. Fairchild Indus., Inc.*, 97 Md. App. 324 (1993), *cert denied*, 333 Md. 172 (1993)). All inferences must be construed in favor of the non-moving party, assuming these inferences are reasonable. *Clea v. City of Baltimore*, 312 Md. 662, 678 (1998); *Brown v. Wheeler*, 109 Md. App. 710, 717 (1996).

### **B. Legal Standard on Statute of Limitations**

The statute of limitations for Plaintiffs' claim is three years. See Md. Cts. & Jud. Proc. § 5-101 ("A civil action at law shall be filed within three years from the date it accrues . . ."). Maryland courts have adopted the "discovery rule" for determining when a plaintiff's statutory period begins to accrue. See *Poffenberger v. Risser*, 290 Md. 631, 636 (1981) (statutory period does not begin to accrue until the plaintiff "in fact knew or reasonably should have known of the wrong").

Under the discovery rule, the statute of limitations begins to run when a plaintiff has "inquiry notice" of their claim. *Pennwalt Corp. v. Nasios*, 314 Md. 433, 448 (1986). In defining "inquiry notice," the Court in *Pennwalt* explained there are "two prongs." See *Pennwalt*, 314 Md. at 451-52. The "first prong" is when the plaintiff "has knowledge of circumstances which would cause a reasonable person in the position of the plaintiff[ ] to undertake an investigation." *Id.* at 448-49 (quoting *O'Hara v. Kovens*, 305 Md. 280, 302 (1986)). And the "second prong" is that the plaintiff's investigation, "if pursued with reasonable diligence, would have led to knowledge of the alleged [tort]." *Id.* at 449.

In defining "knowledge" as it applies in Maryland's two prong standard of "inquiry notice," the Court in *Pennwalt* held: "knowledge means express or implied knowledge

of injury, its probable cause, and probable manufacturer wrongdoing or product defect.”  
*Id.* at 457.

In deciding whether to grant Defendants’ Motions for Summary Judgment, the Court shall consider whether Plaintiffs had express or implied knowledge of their injury, its probable cause, and probable manufacturer wrongdoing or product defect prior to April 5, 2001, the “statute date” (i.e. the date three years prior to Plaintiffs filing their complaint). Particularly at issue in this case is whether Plaintiffs had express or implied knowledge of the “probable cause” of their injuries.

### **C. Procedural Background of Defendants’ Motions for Summary Judgment on Statute of Limitations Grounds**

Plaintiffs allege in their Amended Complaint that they “did not know, nor could they have known of either their injury or the cause of their injury . . . until January 10, 2002, when for the first time ever since their exposure to the Pesticide Products both the perspective injuries and the cause of same was first disclosed and determined by [Dr. Grace Ziem, M.D.]” Plaintiffs’ Amended Complaint, ¶ 41. See Plaintiff Chilcote’s Motion for Partial Summary Judgment against Defendant Terminix, Exh. D, Depo. of James Chilcote, Vol. 3, p. 435, l. 2-7 (Plaintiff Chilcote testifying he did not notice that his symptoms of headache and fatigue were aggravated by chemical exposure until January 10, 2002); see *also* Plaintiff Hammond’s Motion for Partial Summary Judgment against Defendant Terminix, Exh. D, Depo. of Linda Hammond, Vol. 3, p. 475, l. 7-10 (Plaintiff Hammond testifying she did not know she suffered from Dursban poisoning until January 10, 2002).

In Defendants' Motions for Summary Judgment, they allege Plaintiffs had inquiry notice of their claim before April 5, 2001. Defendant Terminix's Mot. for Summ. Judg. on Stat. of Lim., ¶ 3; Defendant SCJ/Whitmire' Mot. for Summ. Judg. on Stat. of Lim., ¶ 1. To support their motions, Defendants filed many exhibits including, among other evidence, excerpts from depositions and consultation notes of several physicians who met with Plaintiffs prior to April 5, 2001. Defendant SCJ/Whitmire also provided a detailed timeline of events starting with the initial application of the products in Plaintiffs' basement, through the various consultations Plaintiffs had with several physicians and an environmental expert between 1996 and 2002. See Defendant SCJ/Whitmire's Timeline.

Plaintiffs also filed timelines of consultations and events leading up to their filing suit (each Plaintiff filed their own separate timeline). These timelines are based upon previously filed deposition testimony and consultation notes of the physicians whom Plaintiffs consulted between 1996 and 2002. See Plaintiffs Chilcote and Hammond's Timelines.

The Court will summarize the timelines submitted by Plaintiffs and Defendants. No disputes of material fact exist in the timelines; only the legal effect of the facts presented therein are disputed.

#### **D. Factual Background**

Plaintiffs moved into their home in Columbia, Maryland in July, 1996. Plaintiffs noticed a problem with carpenter ants in their basement and in August, 1996 hired Terminix to apply pesticides in their basement. The Terminix employee applied two

pesticides: PT 270 Dursban Outdoor & Wood Injection Treatment, and PT 280 Orthane Acephate Insecticide. Plaintiffs' Amended Complaint, ¶¶ 23. Both pesticides were manufactured by Defendant SCJ/Whitmire. Within several months of the pesticide application, Plaintiffs began suffering headaches and fatigue. See Depo. of Linda Hammond, Vol. 1, p. 84, l. 8-11. Plaintiff Hammond and Plaintiff Chilcote had numerous individual and joint consultations with doctors.

Joint consultations:

In October, 1996, Plaintiffs hired Peter Steinmetz, a private environmental inspector, to conduct environmental testing of the air in their home. Mr. Steinmetz conducted his tests until 1998 and found no reason to suspect pesticide exposure as the cause of any harm to the plaintiffs. Plaintiffs Chilcote and Hammond's Timelines. In October, 1997, Plaintiffs met with Dr. Ramesh Khurana, M.D., a neurologist, about the headaches they were having. Defendant SCJ/Whitmire Mot. for Summ Judg. on Stat. of Lim., Exh. 8-10 (Dr. Khurana's consultation notes about each Plaintiff). In his notes, Dr. Khurana recorded that Plaintiffs mentioned they thought the pesticides were causing their headaches. *Id.* Dr. Khurana diagnosed Plaintiff Hammond with Chronic Daily Headaches and advised Plaintiffs to collect more information about their chemical exposure. *Id.* Plaintiff Hammond met again with Dr. Khurana in May, 1998 for a neurological exam and in February, 1999 for an M.R.I. In both visits the results were that Plaintiff Hammond's neurological condition was "normal." Plaintiff Hammond's Timeline.

In November, 1997, Plaintiff Chilcote obtained Material Safety Data Sheets (MSDSs) and copies of the labels for the pesticides applied by Terminix from the Maryland Department of the Environment, where Chilcote was an employee. Defendant SCJ/Whitmire Mot. for Summ. Judg. on Stat. of Lim., Exh. 23 (copy of facsimile sent by M.D.E. employee, Bob Swann, containing MSDSs and pesticides). The MSDSs and product labels list health complaints related to exposure to the pesticides. Headaches and fatigue are not listed on the product labels as a known health complaint, but headaches and fatigue are listed on the MSDSs as a possible symptom of excessive skin exposure to either chemical. *Id.*

In January, 1998, Plaintiffs met with Dr. Clifford Mitchell, M.D. of the Johns Hopkins School of Medicine. Dr. Mitchell also noted in his consultation notes that Plaintiffs thought the pesticides were causing their symptoms. *Id.* at Exh. 27. Dr. Mitchell states in his notes: “possible that chemical exposure from pesticide application has been related to symptoms, but the extent and duration of symptoms argues against this continuing to be a major factor.” *Id.*

In October, 1998, Plaintiffs met with Dr. James Keogh, M.D. of the University of Maryland School of Medicine. Dr. Keogh states in his consultation notes that he would be willing to look at the MSDSs on the pesticides and environmental data collected by Mr. Steinmetz. Dr. Keogh states no opinion regarding a connection between Plaintiffs’ symptoms and the pesticides. *See Id.* at Exh. 17 & 18. Dr. Keogh died prior to commencement of Plaintiffs’ action. *See* Plaintiff Hammond’s Response in Opposition to Defendant Terminix’s Mot. for Summ. Judg. on Stat. of Lim., p. 13-14.

At some point during 1999 Plaintiffs again hired Peter Steinmetz to conduct environmental testing in their home. Plaintiff Hammond's Timeline. In his deposition testimony, Mr. Steinmetz stated he sent air samples of Plaintiffs' home to a lab along with the MSDSs on the pesticides to determine whether the pesticide chemicals were present in Plaintiffs' home. Depo. of Peter Steinmetz, February 28, 2005, pp. 39-40. The tests results came back negative. *Id.*

Plaintiff Hammond Consultations:

Plaintiff Hammond met with her primary care physician, Dr. Elizabeth Sequiera, in February, 1999. In her consultation notes, Dr. Sequiera wrote that Hammond's headaches were worsening and that Hammond was concerned about her exposure to pesticides and found information on the internet about chlorpyrifos. Defendant SCJ/Whitmire Mot. for Summ. Judg. on Stat. of Lim., Exh. 14.

In November, 1999, Dr. Kathleen York-Jordan replaced Dr. Sequiera as Plaintiff Hammond's primary care physician. See Plaintiff Hammond's Timeline. Dr. York-Jordan testified in her deposition that during the transition of taking over Dr. Sequiera's patients, Dr. Sequiera had mentioned pesticide exposure in regards to Plaintiff Hammond's symptoms. Depo. of Kathleen York-Jordan, March 8, 2005, pp. 19-20. According to Dr. York-Jordan, Dr. Sequiera thought Plaintiff Hammond "may be right" in her suspicions about the pesticides causing her symptoms. *Id.* at p. 74, l. 16-18.

After consulting with Plaintiff Hammond, Dr. York-Jordan referred Hammond to Dr. Niru Jani, M.D., a neurologist. Plaintiff Hammond's Timeline. In November, 1999, January, 2000, and February, 2000, Dr. Jani conducted neurological tests on

Hammond. The testing found no connection between Hammond's symptoms and the pesticides. *Id.*

Plaintiff Chilcote Consultations:

In August, 2000, Plaintiff Chilcote consulted a neurologist, Dr. Mai-Chi Nguyen, M.D. In his consultation notes Dr. Nguyen states: "I am not sure what roles the exposure to insecticides four years ago has to do with the patient's overall fatigue . . . . I would be interested in finding out what the final evaluation is for patient's exposure to insecticides, i.e., if his fatigue . . . is in anyway related to the exposure." Defendant SCJ/Whitmire Mot. for Summ. Judg. on Stat. of Lim., Exh. 19.

The day after his visit with Dr. Nguyen, Plaintiff Chilcote met with Dr. Margit Bleeker, M.D., Ph.D., Director of the Center for Occupational and Environmental Neurology. Plaintiff Chilcote's Timeline. In their Motion for Summary Judgment, Defendant SCJ/Whitmire quote Dr. Bleeker's deposition testimony where Dr. Bleeker states: "[she was] sure by the time [Dr. Bleeker] saw [Chilcote], [Chilcote] was informed on what were the symptoms of organophosphate poisoning . . ." Depo. of Dr. Margit Bleeker, March 8, 2005, p. 34, l. 8-10. Dr. Bleeker also testified that her opinion at the time of her consultation with Chilcote was that Chilcote's symptoms could not "be attributed to the [pesticide] exposure." Plaintiff Chilcote's Timeline, citing Depo. of Dr. Margit Bleeker, March 8, 2005, p. 26, l. 5-14.

Starting in February, 2001 and ending in 2004, Plaintiff Chilcote consulted with Dr. Richard Kolodrubetz, M.D. Plaintiff Chilcote's Timeline. Chilcote notes in his timeline that Dr. Kolodrubetz testified that Chilcote mentioned pesticide exposure during

the consults but that Dr. Kolodrubetz could not remember when this first occurred.

Plaintiff Chilcote's Timeline.

Plaintiff Chilcote consulted with Dr. Richard Bernstein, M.D. on April 16, 2001. *Id.* Defendant SCJ/Whitmire notes in their timeline that Plaintiff Chilcote wrote on Dr. Bernstein's consultation questionnaire that he suffered from "Dursban poisoning."

Defendant SCJ/Whitmire's Timeline. Dr. Bernstein diagnosed Plaintiff Chilcote with several conditions, but not organophosphate poisoning. Plaintiff Chilcote's Timeline.

Dr. Ziem's Consultation with both Plaintiffs:

April 5, 2001 was the "statute date" according to Plaintiffs' filing date of April 5, 2004. Both Plaintiffs met with Dr. Grace Ziem on January 10, 2002. Dr. Ziem diagnosed Plaintiffs' with organophosphate poisoning. Plaintiffs allege this was the first time they became aware of their injury (organophosphate poisoning) and its alleged cause (the pesticides that were applied in August, 1996). Plaintiffs' Amended Complaint, ¶ 41. Plaintiffs filed suit on April 5, 2004.

### **Analysis**

The evidence submitted by Plaintiffs and Defendants in support and opposition to Defendants' Motions for Summary Judgment on statute of limitations grounds establishes that Plaintiffs were suspicious that the pesticides were causing their symptoms of headache and fatigue prior to April 5, 2001. Based on the consultation records from multiple physicians whom Plaintiffs met with, it is obvious that Plaintiffs were suspicious and indeed *thought* the pesticides were causing their symptoms many years before the statute date. The evidence suggests nothing more than mere

suspicion by the Plaintiffs on this point, however, and therefore, this Court cannot hold as a matter of law that Plaintiffs had inquiry notice of their claim prior to April 5, 2001. See *Helinski v. Appleton Papers*, 952 F. Supp. 266, 269 (D. Md. 1997) (“A plaintiff’s mere suspicions are not sufficient to constitute inquiry notice . . .”).

In explaining Maryland’s “two prong” standard of inquiry notice, the Court in *Pennwalt*, 314 Md. 433, cites *Knaps v. B&B Chemical Co.*, 828 F.2d 1138 (5<sup>th</sup> Cir. 1987). In *Knaps*, the plaintiff, Michael Knaps, was employed washing airplanes from 1982-83. *Knaps*, 828 F.2d at 1139. Beginning in 1982, Knaps came in contact with soap manufactured by the defendant company. Knaps soon developed a severe and permanent skin disorder. *Id.* Knaps testified that from the minute he came in contact with the soap he believed the soap was the cause of his condition. *Id.* From 1983 until June, 1986, Knaps consulted several doctors about his condition but none of them acknowledged any casual connection between the soap and his condition. *Id.* It was not until June, 1986 that a doctor diagnosed the defendant company’s soap as the cause of Knaps’s skin condition. *Id.* In holding Knaps’s claim was not barred by Louisiana’s one year statute of limitations, the U.S. Court of Appeals, Fifth Circuit explained: “we cannot say, as a matter of law, that an injured party acts unreasonably by delaying a lawsuit because the party’s doctors consistently deny that a suit would be justified.” *Id.* at 1140.

*Knaps* is cited in *Pennwalt* to illustrate that if a plaintiff has knowledge of circumstances which would cause a reasonable person to investigate a possible cause of action (i.e., first prong of the two prong standard is satisfied), and that plaintiff

conducts a reasonably diligent investigation that does not lead to knowledge of the alleged tort (i.e., second prong is *not* satisfied), then that plaintiff's claim is protected by the discovery rule.

Similar to *Knaps*, the Plaintiffs in this case thought a particular product, the pesticides, were causing their symptoms. Plaintiffs were diligent in their investigation of their symptoms and its suspected cause, consulting several doctors and an environmental expert between 1996 and 2002. Defendants provide sufficient evidence to establish that the pesticides were considered as a possible cause by practically all of the physicians whom Plaintiffs met with between 1996 and 2002. However, after looking at all of the consultation notes submitted by Defendants, it is apparent that Plaintiffs were the ones who initiated discussion of the pesticides and no expert suggested the pesticides as a possible cause prior to Dr. Ziem's diagnosis in January, 2002. Therefore, there is insufficient evidence that Plaintiffs had knowledge of the "probable cause" of their injuries before January, 2002. See *Helinski*, 952 F.Supp. at 268 (interpreting Maryland law under *Pennwalt* and holding that "being told by physicians that [a particular product] *could be the cause of . . . the symptoms [a plaintiff] was experiencing*" is sufficient to constitute knowledge of an injury's "probable cause" (emphasis added)).

Although the MSDSs state that excessive exposure to PT 270 Dursban and PT 280 Orthane Acephate may cause headaches and fatigue, this information is merely sufficient to trigger the first prong of inquiry notice, and does not satisfy the second prong. Dr. Mitchell states in his consultation notes that it was "possible . . . chemical

exposure from pesticide application” was causing Plaintiffs’ symptoms but then, in that same sentence, expresses doubt about the hypothesis. Defendant SCJ/Whitmire Motion for Summ. Judg. on Stat. of Lim. at Exh. 27. Dr. Sequiera apparently was the only physician, prior to Plaintiffs’ consultation with Dr. Ziem, who thought there may be a connection between their symptoms and the pesticides. See Depo. of Kathleen York-Jordan, March 8, 2005, pp. 19-20. Defendants presented no evidence Dr. Sequiera ever communicated this opinion to Plaintiffs though.

Defendants have not shown that Plaintiffs had knowledge of the “probable cause” of their injury prior to their consultation with Dr. Ziem. Because Plaintiffs did not have knowledge of the “probable cause” of their injury until their consultation with Dr. Ziem in January, 2002, they did not have knowledge of Defendants’ alleged tort before that date. See *Pennwalt*, 314 Md. at 457 (explaining “knowledge” as it applies in Maryland’s two-prong standard of inquiry notice requires knowledge of an injury’s probable cause). Therefore, the second prong of Maryland’s two prong standard of inquiry notice was not satisfied until January 10, 2002. Plaintiffs did not have inquiry notice prior to April 5, 2001 and their claim is not barred by the statute of limitations.

### **Conclusion**

For the foregoing reasons, this Court will deny defendants motions for summary judgment on statute of limitations grounds and grant the plaintiffs’ motions..

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Date

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Kaye A. Allison  
Judge

**LINDA HAMMOND, et al.**

Plaintiffs

vs.

**TERMINIX INTERNATIONAL  
COMPANY L.P., et al.**

Defendants

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IN THE

CIRCUIT COURT FOR

BALTIMORE CITY

Civil Case No.: 24-C-04-002664

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**ORDER**

After consideration of Defendant Whitmire Research Laboratories Inc., Whitmire Micro-Gen Research Laboratories, Inc., and S.C. Johnson & Son Inc.'s Motion for Summary Judgment; Plaintiff Linda Hammond's Motion for Partial Summary Judgment Pursuant to Rule 2-501 Against the Defendants Terminix International Inc., Delvin Bradford S/H/A Delvian Bradford; Plaintiff James Chilcote's Motion for Partial Summary Judgment Pursuant to Rule 2-501 Against the Defendants Terminix International Inc., Delvin Bradford S/H/A Bradford; and Plaintiffs' Joint Motion for Partial Summary Judgment Pursuant to Rule 2-501 Against the Defendants Whitmire Research Laboratories Inc., Whitmire Micro-Gen Research Laboratories Inc. and SC Johnson, Inc.; the oppositions and replies thereto and after oral hearing on June 27, 2005, it is this \_\_\_\_\_ day of August, 2005, by the Circuit Court for Baltimore City,

**ORDERED**, that Defendant's Motion for Summary Judgment on statute of limitations grounds is **DENIED** for the reasons stated in the foregoing Memorandum and the plaintiffs' motions on the issue of statute of limitations are **GRANTED**.

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Kaye A. Allison  
Judge

**LINDA HAMMOND, et al.**

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IN THE

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BALTIMORE CITY

Civil Case No.: 24-C-04-002664

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**ORDER**

Having considered the motions, oppositions, replies, and arguments of counsel at oral hearing, it is this \_\_\_\_\_ day of August, 2005 **ORDERED** as follows:

1) S.C. Johnson & Son, Inc.'s Motion for Summary Judgment on SCJ Shareholder Liability (Docket #179000) is **GRANTED** for the reasons set forth by the movant in its motion, in its reply (Docket 179001), and at oral arguemnt;

2) Whitmire Micro-Gen's Motion for Summary Judgment Based on Intervening Cause (Docket #181000) as joined by S.C. Johnson & Son, Inc. (Docket #180000) is **DENIED** for the reasons stated by the plaitniffs in their opposition to the motion (Docket #181001) and at oral argument;

3) Whitmore Micro-Gen's Motion for Summary Judgment Based on Federal Preemption (Docket #182000) and S.C. Johnson & Son, Inc.'s Motion to Join Whitmire Micro-Gen's Motions for Summary Judgment (Docket #180000) is **DENIED** for the reason that after the filing of the defendants' motions the Supreme Court in Bates, et al. v. Dow Agrosciences LLC, 544 U.S. \_\_\_\_\_ (2005), No. 03-388, expressly rejected the premise of their motions, i.e. that the Federal Insecticide, Fungicide and Rodenticide

Act preempts state law tort claims. In addition, disputes of material fact exist as to the defendants' compliance with labeling requirements, and the product's design, which disputes also preclude the entry of summary judgment.

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Kaye A. Allison  
Judge