

EXTRAORDINARY STRUGGLE OF A LAWYER: BILLION DOLLAR "P.F.O.A." CASES THAT SHOOK DUPONT

As of August 8th, 2020, a total registered of 727.111 people died worldwide due to COVID-19, which is mentioned as the "disease of the century".

Although the precautions taken, a "disease" that the coronavirus cannot even pass nearby comparing the mortality rates, remains the nightmare of mankind. According to the World Health Organization ("WHO") 2019 data; 17 million people worldwide and around 160 thousand people in Turkey loses their lives to this disease and a total of 7.5 million people die every year in the world. As you guessed it, this disease is none other than CANCER itself.

It is stated that cancer is the cause of 1 out of every 5 deaths in our country, 1 in every 6 deaths worldwide. It is now known by everyone that the main factors of cancer are processed foods, smoking, but mostly chemicals. Many of us are aware of this and creating more careful diet and a lifestyle. However, despite all this careness, the residents of Parkersburg in United States - 35 times the size of the Pentagon, have been exposed to chemicals from their breakfast to drinking water and over 3,500 cases have been filed due to these factors. During the preparation of these cases that will last about 20 years, some plaintiffs unfortunately will not have enough lifetime to see the verdict. Well, what do you think if we tell you that you have the same grievance as the plaintiffs of these cases and you use the same tools and equipment when preparing your breakfast?

- One individual can stand up and make a huge change. -

In 1998, a farmer named **Wilbur Earl Tennant** knocked on the door of a lawyer named Robert Bilott on the grounds that the vegetation structure of the land he owned was impaired, the cattle he was breeding were affected and the only responsible was the factory located next to the river, owning a wasteland adjacent to his property. Robert Bilott, who lived in Cincinnati, was one of the promising young lawyers of the West Virginia law firm (Taft Stettinius & Hollister) practicing corporate law.

At first Bilott would not take this angry farmer serious who came with bunch of VHS tapes and lots of paperwork but will soon become a companion of a lifelong case by making radical decisions.

Bilott makes a small trip to the town of Parkersburg, West Virginia, where his grandmother lives and used to spend his summertime back in his days. Upon his grandmother's request, he goes to Tennants' Farm to see the subject of the case that will change his life in the future. Rob Bilott witnesses the production plant of the company called **DuPont (E.I. du Pont de Nemours and Company)** which provides jobs and many other opportunities for the local and surrounding town. Wilbur, who already buried about 160 cows, shows the chemicals mix into the creek which ran through the farm and indicates that unusual reactions occurred in the behavior and some body parts of the animals that were directly exposed to chemicals in drinking water. Although he complained countless times for the leakage of chemicals to the creek, he couldn't get a response for any necessary actions to be taken. The only measure taken was the height of the security fence surrounding the stream. He says that just like building "community centers" and "playgrounds" within the scope of public relations, the company has "influenced" all the veterinarians in Parkersburg, that is why the autopsy reports of his animals do not reflect the truth. In addition to this, he shows proofs of chemicals that were leaked to the creek which ran through the farm; some pebbles were bleached and there were foams flowing over the water. He adds that not only his cows were perished; deers, squirrels, rabbits and such animals that lived in the woods were reported dead.

Tennant have also tried to work with local lawyers in his town but does not receive a positive answer. Local lawyers may have been refrained from this company that would be a "potential defendant", in other words, they may have been scared a bit. Perhaps fear was created from not having enough confidence caused by lack of belief in justice.

By the year of 1999 Robert Bilott filed a federal suit against DuPont at the Southern District of West Virginia. DuPont had created a team including 6 veterinarians collaborating with the American Environmental Protection Agency (EPA) called the "Cattle Team" (6 delegates consisting of 3 veterinarians elected by the DuPont company and 3 veterinarians elected by the EPA) and presented a report stating that the animals in the Tennant Farm were perished due to malnutrition, lack of veterinary control and care, unconscious breeding etc.. However, Bilott, had witnessed the tumor parts form the corpses; he saw the decaying teeth and aggressive behavior on the spot. With the report presented by the Cattle Team, he made sure that the company DuPont was hiding something.

While the lawsuit was continuing, the phrase of "**P.F.O.A.**" attracts the attention of Bilott in the reports sent by DuPont to EPA.

"**P.F.O.A.**" (Perfluorooctanoic acid / perfluorinated carboxylic acid) or "C8" is a synthetic, human-made component. In 1947, a company called "3M - Minnesota Mining and Manufacturing Company" (*Minnesota Madencilik ve Üretim Şirketi*) discovered this component. Due to its hydrophobic nature, the water particles are not absorbed, do not stick and glide off the coating that is covered with C8. Since the defense industry gained importance after the Second World War, this component was mostly used in the coating of the armor of the tanks and military helmets. Not so much after invented, DuPont (*according to the 1987 Trade Registry Gazette, also operates in Turkey since 1984*) this chemical was first use in the production of "Teflon pans" and released as "slippery nonstick skillet" pans.

A small footnote: It is seen that the company DuPont operates in many fields and its name is mentioned in many important issues that change the course of the world. For example, hemp was used in the manufacture of many articles in terms of production and durability. Even Henry Ford, the owner of "Ford Motors Co." the leading automotive manufacturer of the period, produced a vehicle which is made of 70% hemp cellulose and consumes hemp-ethanol fuel. This vehicle was stronger and lighter than other vehicles on the market (*you can easily access the footages that Henry Ford hitting on the vehicle with a crowbar on Youtube*). But DuPont, who owned the patent of oil and coal plastic, would fully oppose hemp production and mediate decisions that would prohibit hemp cultivation (*The Green Vision of Henry Ford and George Washington Carver: Two Collaborators in the Cause of Green Industry - Quentin R. Skrabec, Jr.*).

P.F.A.S. ; "Per .." and "Polyfluoroalkyl" or as known as the "forever chemicals"; are used in many items that we use in our daily life such as Non-stick cooking tools, storage containers, waterproof and smudge-proof clothing, carpets, packaging that prolongs or protects the edibles' life. They are also used in commercial and industrial products such as the foam in fire extinguishers. These chemicals, as their name suggests, are extremely permanent and can take up to almost a thousand years to break down. Besides in nature, they also accumulate by entering the human body through various consumption ways (eating, drinking, touching and even breathing) and unfortunately, P.F.A.S. chemicals circulate in the bloodstream of almost 99% of the world population. This is a concern that all of us should be aware of because not only present, the next generations are highly under danger.

By writing a letter to EPA and simultaneously one to the Ministry of Health and the Ministry of Justice as well, Bilott requests examination of the known component C8 as known as P.F.O.A.. He states that P.F.O.A.s are highly dangerous for human health and cause various cancers and diseases (1). However, Bilott essentially states that **DuPont was aware of this danger**. Although they were well aware of the outcome by conducting various experiments on animals and having negative results, tons of hazardous waste were buried in various locations/waste pits in West Virginia and Washington.

(1) *If you want to get more detailed information on the subject, please read the book "**Exposure: Poisoned Water, Corporate Greed, and One Lawyer's Twenty-Year Battle Against DuPont**" written by Lawyer*

Robert Bilott. Unfortunately the book is not being sold in our country but with the Writer's advice you can provide it on <https://www.simonandschuster.com/books/Exposure/Robert-Bilott/9781501172816>.

By August 2000, Wilbur E. Tennant, would settle down with DuPont over a large amount by an alternative dispute resolution (*Alternatif Uyuşmazlık Çözümü*) – a process which is also being used in our country frequently. Eventhough Rob Bilott's firm was also getting paid an attorney's fee at the end of this reconciliation, only a fight was won but the war was going on. Bilott was not satisfied -in his words he was irritated- with it and would continue to strive. He sent his letter on March 6, 2001, to the relevant authorities, including the EPA executive Christie Whitman and US Attorney General John Ashcroft demanding immediate action to regulate the rate and provide clean water which was exposed of P.F.O.A. released into the town of Parkersburg and its vicinity, to those living near the factory. DuPont held his hand quick requesting a gag order in the Tennant Case, but the Federal Court dismissed this request and Bilott carried all the case to EPA.

The letter from Bilott caused DuPont a settlement with EPA in 2005, for compensation of \$ 16.5 million. This agreement would mean less than two percent of DuPont's profit that year and DuPont had not admitted that they had released various chemicals. Bilott rolled up his sleeves to start an class-action against DuPont.

He had to prove that DuPont was contaminating the certain areas of West Virginia, infiltrating P.F.O.A. to water resources. Therefore, he started a campaign resulting 70,000 West Virginia residents donating their blood \$ 400 in order to be tested. The goal was to investigate and to find the source of the diseases by testing any P.F.O.A. roaming through the veins of people received by drinking tap water. With the long and individual effort of Bilott, scientists announced in 2012 that there was a "probable link" between P.F.O.A. and kidney cancer, testicular cancer, thyroid disorder, high cholesterol and ulcerative colitis and led to new cases.

The Ohio Southern District Court ruled a woman named Carla Bartlett, who defeated kidney cancer, to be paid \$ 1.6 million as a compensation. By the year of 2015 It was announced by the authorities that there were a total of 3,535 (2) lawsuits filed against the DuPont company. It was also published in various news agencies that DuPont has settled for \$ 670 million. Considering 4 to 5 cases to be concluded every year, all cases are expected to end in 2898.

(2) The case is In re E.I. Du Pont De Nemours and Company C-8 Personal Injury Litigation, U.S. District Court for Southern Ohio, No. 13-2433

Lawyer Robert Bilott gathered his memories of these cases, may known as the "PFOA" or "Teflon Cases", in a book (*the name of the book is mentioned above*). Inspired by the book, the movie called "*The Dark Waters*" starring *Mark Ruffalo, Anne Hathaway and Tim Robbins*, was released early 2020. If you are one of those who wants to evaluate boring quarantine days by watching movies, one of the successful productions that we strongly recommend will be "The Dark Waters".

Attorney Robert Bilott writes a letter to EPA every year, insisting on controlling the rate and keeping it under specified limits of P.F.O.A. in drinking water. His fight against cancer is supported by many organizations and institutions. "*If we don't act now to reduce and restrict the use of PFAS, the scale of the problem will increase exponentially and be inherited by generations to come*" he strongly underlines.

In 2020, The Kentucky Bar Association awarded him the "Best Lawyer" award, also The "Lifetime Achievement" award by David Brower Public Benefit and Environmental Law in the same year. "The 2017 Right Livelihood Award" by the Right Livelihood Association, also described as the "Alternative Nobel Prize". In all this process, the court jury awarded Bilott a total of \$ 19.7 million in compensation. However, Bilott does not make retirement plans and continues his cases and battle.

Wilbur "Earl" Tennant, who lost his farm, animals and got cancer, passed away in May 2009, and soon his wife in 2011 of cancer. In an interview with The New York Times in 2016, Bilott says "*I think about the clients who have been waiting for this, many of whom are sick or have died while*

waiting. It's infuriating." (3). Lawyer Robert Bilott, who became the scream of Wilbur Tennant, who could not make anyone hear his voice, would cause more than 3,500 people to seek their rights. Not only that, but also to protect our blue-green planet and future generations, he started a universal fight against the elements that pose a danger to human health.

(3) **The Lawyer Who Became Dupont's Worst Nightmare:** <https://www.nytimes.com/2016/01/10/magazine/the-lawyer-who-became-duponts-worst-nightmare.html>

We hope that this strive of lawyer Robert Bilott will be an example for our colleagues who do not give up and continue their struggle despite all the pressures and difficulties.

Mr. Robert Bilott is still actively working as a lawyer. We have contacted him after reading his book, watching the movie and following the events that he has attended to. Thanks to him, he did not turn us down and answered our questions:

· *There is a belief in the world that being a lawyer in US is an expensive, formal and powerful mechanism. What does the litigation process which you have been through mean in terms of trust to the lawyers and justice?*

R.B.: I hope this story shows that the legal system can be used to affect significant change, even when there are powerful forces and significant bureaucratic road-blocks and hurdles otherwise in the way.

· *The use of "teflon" continues intensely in our country, almost in every kitchen. Why is there no prohibition order? Has the production method changed? Why is this product still being used despite the scientific facts revealed during that lawsuit process?*

R.B.: This story focuses on the chemicals used in making teflon (PFOA) - not the product itself. The product ("Teflon" brand) continues to be made but the company has switched to making it using different chemicals. Unfortunately, we are learning that some of the replacement chemicals used by industry are actually part of the same overall family of chemicals that PFOA is in (the "PFAS" family of chemicals) and scientists are now raising concerns about the potential effects of these replacement chemicals that are being used in a wide variety of consumer products currently on the market all over the world.

· *There is an extreme increase in the numbers of attorneys all around the world, lawyers is struggling with a fundamental problem: incomes. Young lawyers find it difficult to find directions. What would you recommend to young lawyers, what should they do, how should they work?*

R.B.: I hope young lawyers continue to take jobs where they are best able to use their training and skills to help their clients protect their interests and do what is "right", regardless of the position .

· *What do you feel when you look back? As far as we understand from your book and movie, you had quite a hard time. Do you have any "if only..."s?*

R.B.: I am encouraged to see this story finally making its way out to the public through the book and the movie. This is a public health threat that people need to know about. I am glad I could do my part to help raise awareness.