

FIGHTING FOR  
PUBLIC JUSTICE

Cases and Trial Lawyers  
That Made a Difference

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Trial Lawyer of the Year Award  
Finalists and Winners

*By Wesley J. Smith*  
*Foreword by Erin Brockovich*

## Toxic Injury Prevention

*E.I. DuPont de Nemours & Co. v. Castillo*

James L. Ferraro

As Donna Castillo was taking one of her daily walks in November 1989 near Miami, Florida's Pine Island Farms tomato fields, farm workers sprayed her with the fungicide Benlate. She was about seven weeks pregnant. Normally, a baby's eyes develop during the first trimester of pregnancy, but when Castillo gave birth to her son John in June 1990, he had no eyes. The newborn had sockets with small cysts where his eyes should have been.

Attorney James L. Ferraro of Ferraro & Associates in Miami, Florida, filed suit against DuPont, the manufacturer of Benlate, and Pine Island Farms. He set an important precedent by convincing a jury that the pregnant woman's exposure to Benlate caused John Castillo to be born without eyes. This is an extremely rare birth defect known as bilateral anophthalmia. It is the first case ever successfully prosecuted against a chemical company for causing a birth defect.

Ferraro endured three years of discovery, which included taking 63 depositions in four countries, reviewing tens of thousands of documents, and battling more than 60 pretrial motions. Ferraro also had the onerous task of ruling out all other potential causes of the birth defect. In addition, the trial included complex hearings on highly technical scientific issues that involved studies on rats and humans to determine the potential effects of Benlate exposure.

After a six-week trial, the Miami-Dade jury returned a \$4 million verdict against DuPont and Pine Island Farms with half the amount for pain and suffering and the other half for future medical expenses. The jury found that DuPont was 99.5 percent responsible and co-defendant Pine Island Farms was 0.5 percent responsible. This meant that DuPont's share of the damages was \$3.98 million.

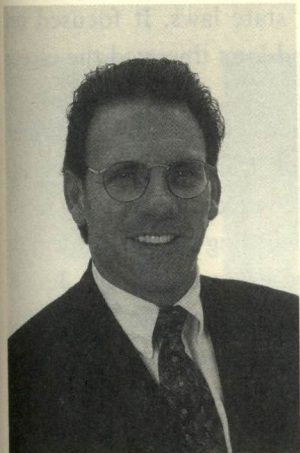
So far, this is the only successful verdict on a claim that Benlate, often associated with widespread crop damage, can cause children to be born blind. The plaintiff's victory opened the courthouse doors to many children born without eyes due to DuPont's wrongful conduct. Ferraro has since filed 12 suits on behalf of other children in similar situations.

DuPont appealed the verdict to the Florida Supreme Court, which heard oral arguments on February 6, 2001, but has not yet ruled. On April 19, 2001, DuPont announced that it would stop selling Benlate. Attorney Ferraro states,

## Civil Rights

"It is anticipated that this decision will govern science in the courtroom in Florida for the next 20 to 30 years."

The later reported decision in this case and its subsequent case history can be found at *E.I. DuPont de Nemours & Co. v. Castillo*, 748 So. 2d 1108 (Fla. Dist. Ct. App. 2000) (reversing jury verdict), *review granted* (August 31, 2000).



James L. Ferraro