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NEW YORK STATE

Group asks UAlbany to investigate 'wrongful retaliatory action' against PCB researcher

Complaint by environmental group contends Dr. David O. Carpenter was subjected to 'conduct that has restricted his academic freedom and freedom of expression'

Brendan J. Lyons
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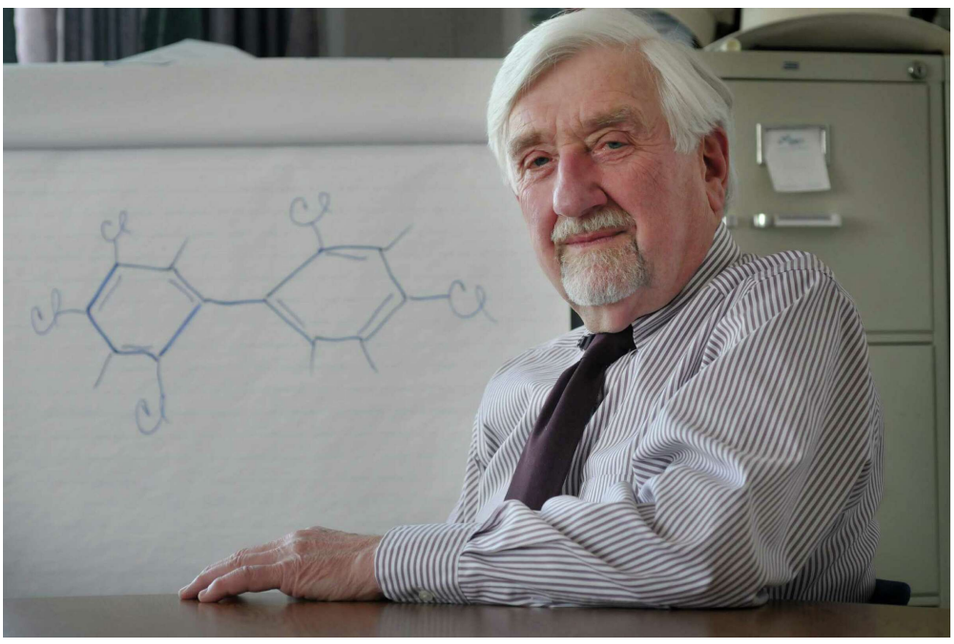
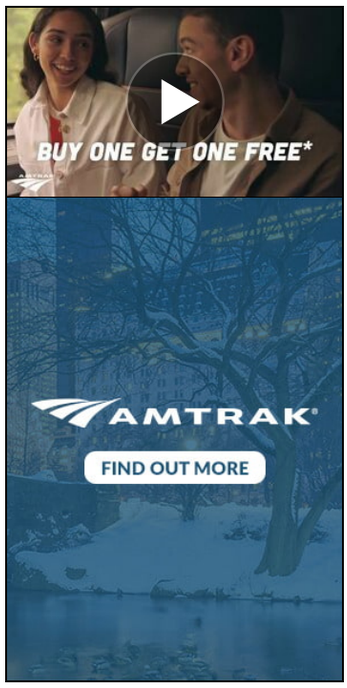


Dr. David Carpenter, director, Institute for Health and the Environment University at Albany poses at his office on Thursday, Feb. 6, 2014 in Rensselaer, NY. On the large drawing pad in the background is a drawing of a PCB molecule. Dr. Carpenter has been studying PCB exposure and the health effects to humans for years. (Paul Buckowski / Times Union)
Paul Buckowski



ALBANY — A group that promotes environmental integrity among public employees filed a complaint with the state University at Albany on Tuesday urging the school's Senate to investigate what it called "wrongful retaliatory actions" against Dr. David O. Carpenter, the longtime director of UAlbany's Institute for Health and the Environment.

The complaint filed by the Maryland-based Public Employees for Environmental Responsibility contends Carpenter was subjected by university officials to "conduct that has restricted his academic freedom and freedom of expression."

The Times Union first reported on Feb. 5 that Carpenter had been quietly placed on "alternate assignment" nine months ago, a status under which he was instructed to not visit any campuses and to perform his duties from home as the school investigated his extensive work testifying as an expert witness in toxic pollution cases.

The disciplinary investigation was prompted by a Freedom of Information Law request filed a year ago by an attorney with Shook Hardy & Bacon, a Missouri law firm that represents Monsanto Company in toxic pollution cases it has faced across the nation. Carpenter, who said he donates the money he receives from his expert testimony to Ph.D. students and the university's research program, has testified against Monsanto in numerous "toxic tort" cases — in which plaintiffs allege injuries from toxic substances — that have yielded multi-million-dollar verdicts against the company.

"Dr. Carpenter's work has drawn the ire of chemical companies because it provides scientific evidence of the toxicity and health impacts of their products and supports compensation for those who have been injured," the environmental group's complaint states. "It appears that the actions taken against Dr. Carpenter make the university complicit in an effort to silence him and undermine the credibility of his research and expert testimony regarding the health impacts of toxic chemicals."

The group is seeking an investigation by the university's Committee on Academic Freedom, Freedom of Expression, and Community Responsibility "to investigate the wrongful retaliatory actions by the university against Dr. Carpenter in violation of University at Albany's academic and expressive freedom guarantees."

"The university's actions in preventing Dr. Carpenter from carrying out the duties essential to his academic freedom of teaching classes and being

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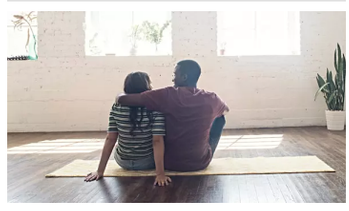
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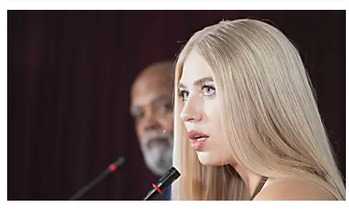
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available to consult with his doctoral and master students at his office have damaged his academic career and professional standing to a substantial degree," the complaint added.

After the Times Union's first story on the matter was published earlier this month, attorneys for Monsanto Company filed an emergency motion asking a Missouri judge to let them reopen discovery in a pollution contamination case brought by the Saint Regis Mohawk Tribe so they can learn more about the ongoing disciplinary investigation of Carpenter.

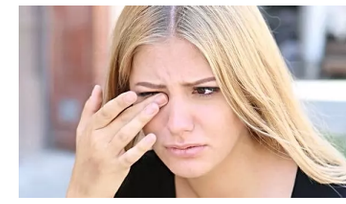
Carpenter, who is serving as an expert witness in numerous cases against Monsanto and other companies, is a key witness in the case in which the tribe is suing the company and its corporate successors, including Solutia, Inc., and Pharmacia LLC. The tribe alleges its members have an increased risk of cancer and other diseases due to PCB exposure from eating fish taken from contaminated waters. The pollution is alleged to have come from Superfund sites adjacent to the sprawling Akwesasne tribal lands that straddle the U.S.-Canadian border in northern New York.

Attorneys for the Saint Regis Mohawk Tribe responded with a motion filed last week in the case asking for Monsanto's request to be rejected and noting the case is scheduled for trial in less than six weeks.

"Defendants should not be allowed to reopen discovery just because their interest was piqued by a newspaper article," the tribe's attorneys wrote in their motion. "Deadlines would be meaningless if every time opposing parties 'dug up' something on an opposing expert or witness prior to trial the parties were entitled to take another deposition."

They also cast the information the company is seeking about the 86-year-old public health physician as "immaterial" and asserted that his placement on "alternate assignment" is not considered discipline. However, the university's letter to Carpenter last May informing him he was being placed on alternate assignment noted that it was in connection with "a disciplinary investigation."

A day after the Times Union's story was published, Carpenter and his attorney met with UAlbany officials who they said told them that he could resume his full duties as a faculty member — but that the university wanted him agree to restrictions that they said would effectively require him to discontinue work as an expert witness in order to remain a member of the faculty. Carpenter and his attorney, Robert T. Schofield of Albany, said they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BY: PROJECT-MANAGEMENT.COM did not agree to that request, and the matter remains in limbo.

"They have not told me that I can resume my duties, but have given me until March 1 to agree to a list of restrictions, some of which are unacceptable," Carpenter said previously. "One is that I'm not to be allowed to pay my students with funds obtained from expert witness work. I'm not to use any university facilities or state time for expert witness-related activities even if I'm not accepting any funds personally."

Bayer, which acquired Monsanto in 2018 for $66 billion, issued a statement to the Times Union two weeks ago alleging the revelations about the disciplinary investigation of Carpenter raised questions because they contend he was using money from his testimony as an expert witness to support research programs at UAlbany — something the university has been aware of for years and that Carpenter has disclosed in prior testimony.

Jordan Carleo-Evangelist, a spokesman for UAlbany, said "faculty are permitted to testify as expert witnesses consistent with applicable laws, regulations and policies."

"The university has an obligation, however, to ensure that all research centers and other entities affiliated with it are operating consistent with state and federal laws and regulations, as well as SUNY and Research Foundation policies and procedures," he added. "This is a matter of compliance and is wholly independent of the content of the testimony, the parties to the litigation or the work being performed."

Carpenter has for decades conducted extensive research on PCB contamination from a General Motors Foundry Site in Massena, St. Lawrence County, that closed in 2009. The plant was directly adjacent to the Mohawk Nation of Akwesasne, and Carpenter's research included health studies of the Mohawks and animal toxicology studies examining the effects of PCBs on the nervous, immune and endocrine systems. Two other aluminum foundries in that area also were blamed for leaking PCBs into the St. Lawrence River from hydraulic fluids they used.

The chemical company has frequently faced off against Carpenter when he has testified as an expert in civil actions in which the plaintiffs are usually alleging they have suffered serious health consequences due to exposure to toxic substances. Monsanto has paid billions of dollars through court verdicts and settlements related to its manufacturing of PCBs — or polychlorinated biphenyls — and other biochemical products. Nearly all PCBs in the U.S. were produced by Monsanto before the chemicals were banned by the U.S. Environmental Protection Agency in 1977.

Carpenter's research on PCBs began nearly 40 years ago. He was the former director of the state Health Department's Wadsworth Laboratory in Albany, a position he left in 1986 to become the founding dean of UAlbany's School of Public Health. In that role, he directed a multi-year study on the health effects of exposure to PCBs that was funded by the National Institute of Environmental Health Sciences. Court records indicate he has over 400 peer-reviewed publications in the fields of neuroscience and environmental health and has been active in training and research.

Carpenter has for two decades arranged for the money he has received for testifying as an expert witness — minus travel expenses— to be funneled back to the university to assist his graduate students, staff and research programs.

United University Professions, a union that represents more than 35,000 employees at State University of New York campuses, including Carpenter, issued a statement last week on his behalf saying they are seeking to "ensure that his academic freedom and contractual rights are preserved and protected."

"UUP strongly and unequivocally supports Dr. Carpenter, a highly acclaimed academic at the University at Albany and a highly respected expert on the dangers posed by Monsanto around the country and the world," UUP President Frederick E. Kowal said in the statement. "His credentials are impeccable and we will not allow him to be silenced."

After he was placed on restricted duties last year, Carpenter said university officials came to his office and removed files that included his expert reports, depositions, invoices and other financial records. He charges $400 an hour for his private consulting work and said the money has been used to help his master's and Ph.D. students with tuition and living expenses, as well as to support staff and research studies.

Carpenter and his attorney, Schofield, previously said they suspect the company's attorneys were either seeking to silence the Harvard-educated public health physician or to undermine future testimony when they filed the formal request a year ago for records related to his funding, payments, grants, scholarships, research accounts, staff and students. The request sought records specifically in connection with any consulting services or expert testimony he has provided related to PCBs.

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Reach Brendan J. on

Brendan J. Lyons is a managing editor for the Times Union overseeing the Capitol Bureau and investigations. Lyons joined the Times Union in 1998 as a crime reporter before being assigned to the investigations team. He became editor of the investigations team in 2013 and began overseeing the Capitol Bureau in 2017. You can reach him at blyons@timesunion.com or 518-454-5547.

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