

Judge Skinner ruling comes as victory for plaintiffs' lawyers

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By MARK SULLIVAN

BOSTON — Disputed findings on water and soil contamination in Woburn may be used in an expert witness' testimony before the jury, the judge in the *Anderson vs. W. R. Grace* leukemia trial ruled Tuesday.

For the lawyers for eight East Woburn families, the ruling by U.S. District Court Judge Walter Jay Skinner came as a win.

It means their star witness, Princeton University professor George Pinder, will be allowed to cite readings taken in an Environmental Protection Agency investigation of contaminated wells in Woburn — readings defense attorneys for the Grace and Beatrice corporations contend are misleading.

Pinder, who takes the stand today, is to testify on how toxic chemical solvents dumped at two industrial sites in the city could have made their way into the wells, tainting them.

Judge Skinner, closing a three-and-a-half day hearing on the accuracy of the scientific findings, announced the data to be "of the type reasonably relied upon by experts" — and

thus acceptable for "expert" Pinder to bring up in his testimony.

The judge made his decision after having heard from a geologist and lab technician brought in by the plaintiffs to vouch for the accuracy of boxfuls of EPA research.

Those two were placed on the stand in lieu of the people who could have best evaluated the findings — the people who reached them. The EPA last week told Jan Schlichtmann, the plaintiffs' chief counsel, that it would not allow the consultants it hired to testify in the trial.

Anderson vs. W. R. Grace involves a claim by the eight Woburn families that chemical solvents dumped at Grace's Cryovac plant on Washington Street and at a Salem Street tannery bought by Beatrice contaminated two municipal wells, which were closed in 1979 after 15 years of use.

The contamination caused the leukemia deaths of five children and one adult and the illnesses of two other children, the families contend.

The accuracy of nearly 300 wellwater tests and soil borings, a significant number of them

contracted by the EPA, was the topic the last three and a half days at what was termed a "104" hearing — a session held without the jury to determine if evidence is "of the type reasonably relied upon by experts."

All those findings won't be admitted as evidence — just the ones the "expert," Pinder, sees fit to mention.

In effect, Judge Skinner explained, an expert like the professor "sprinkles holy water" on data, his expertise making the information admissible before the jury.

Grace defense attorney Michael Keating called on Judge Skinner to "exercise some control" over graphs or films the plaintiffs might try to enter based on unadmitted EPA data.

Colorful graphs based on maximum contamination readings "out of wack" with other figures would be "inherently unreliable," and misleading to the jury, he argued.

"I hope you make the plaintiffs be economic in publishing any information that has not been admitted," Keating told the judge.