

# DEADLOCK

## Judge tells jurors: Keep deliberating

By DAN KENNEDY

BOSTON — Jury deliberations in the Woburn leukemia trial reached a crisis Thursday, as the jurors reported they were deadlocked after nearly eight days. A short time later, the foreman asked to be excused.

The jurors' message carried with it the specter of a possible mistrial, although U.S. District Court Judge Walter Jay Skinner

directed them to continue their deliberations.

According to lawyers involved in the case, the three-man, three-woman jury reported at 2:15 p.m. that it could not reach a unanimous verdict on the first of four questions it has been directed to answer.

That question is whether the plaintiffs have shown "by a preponderance of the evidence" that certain chemicals were

disposed of on a property owned by W.R. Grace & Co. and on another property formerly owned by Beatrice Foods Co., and that those chemicals "substantially contributed" to the contamination of municipal wells G and H.

Those wells were closed in 1979 after 15 years of use. The plaintiffs, eight East Woburn families, say chemicals in the

**TOXIC — PAGE 10A**

## ● Toxic (Continued from Page One)

wells caused six deaths and two illnesses.

At 2:30, Judge Skinner delivered to the jurors what Beatrice attorney Neil Jacobs described as "a modified Allen charge" — a standard message aimed at encouraging compromise.

Skinner told the jurors he would not declare a mistrial and added that, in their efforts to reach agreement, they were obligated to consult their fellow jurors and to take their opinions into consideration, as long as doing so would not violate their own beliefs.

At the request of the jury, Skinner also reviewed the definitions of "preponderance of the evidence" and "substantially contributed."

The jurors then resumed their deliberations, only to report a short time later that their foreman, William Vogel of Quincy, a NYNEX supervisor, wished to be excused because of personal problems.

Lawyers said that Vogel will deliberate again today. If the jury has not reached a verdict or is not close to a verdict by Monday, Vogel will likely be excused.

His place would be taken by Dina Gilbern of Newton, a retired state social worker, the first of five alternates who sat through the five-month-long trial. If Gilbern does join the jury, the deliberations would have to begin anew.

If the jury reaches a verdict today, it will not be known until Monday, because Judge Skinner is taking today off.

In addition to the first question, other questions the jury must answer involve when chemicals — primarily trichloroethylene — arrived at wells G and H, and whether the defendants acted negligently.

Jacobs, in a telephone interview from his office at Hale and Dorr of Boston, said Skinner's charge is "supposed to encourage a hold-out to stop holding out."

But Jacobs added it was his opinion that the deadlock was not the result of a lone hold-out, and that a mistrial — and a new trial — are distinct possibilities.

"My sense is it's a pretty even split right now," he said. "I



would not be surprised because of the difficulty of the issues involved in this case."

If a new trial is necessary, he added, "we would pull up our socks and try again."

However, attorney Stanley W. Eller, a member of the plaintiffs' law firm, Schlichtmann, Conway & Crowley of Boston, said he believed the jury was still likely to reach a verdict.

"We're still a long way from a hung jury or mistrial," he said. "The judge has said he's not prepared to declare a mistrial."

Skinner has considerable discretion to take extraordinary steps to break a deadlock.

Eller said that could even take the form of enlarging the jury by adding more alternates, although he cautioned, "The situation will dictate what the next move is going to be."

Lawyers for Grace could not be reached late Thursday afternoon.

The properties in the case are Grace's Cryovac manufacturing plant, 369 Washington St., 2,500 feet northeast of wells G and H, and an undeveloped lot adjacent to the Riley Leather Co. tannery, 228 Salem St., 700 feet southwest of the wells.

Beatrice owned the Riley tannery and the adjacent lot from 1978 to 1983 and retains legal liability.