



Plaintiffs express bitterness at Grace Grace denies any wrongdoing

By DAN KENNEDY

WOBURN — The eight East Woburn families who accused W.R. Grace & Co. of contaminating their drinking water and causing the leukemia deaths of five children and one adult exhibited lingering bitterness toward the company at a news conference Monday.

The families met the media at Trinity Episcopal Church to discuss their reaction to the out-of-court settlement that had been reached several hours earlier with Grace, a multinational conglomerate based in New York City.

Although Grace will pay the families what plaintiffs' attorney Jan Richard

Schlichtmann termed "a substantial amount of money," Grace attorney Michael J. Keating, in a news conference at his Boston office, denied that meant Grace was admitting any guilt.

"Grace categorically denies as part of the settlement that there was any wrongdoing on the part of Grace," Keating said.

That assessment did not sit well with the plaintiffs.

With television lights glaring in her face and microphones stacked before her, Anne M. Anderson, whose son, Jimmy, died of leukemia in 1981, looked squarely into the cameras and said, "The words aren't necessary. The settlement speaks for itself."

Added Kathryn Gamache, whose husband, Roland, died of complications stemming from leukemia on March 13 of this year. "If they don't feel at all guilty, then why did they settle?"

Kevin Kane Jr., a 15-year-old Woburn High School sophomore who has recovered from leukemia, commented after the news conference, "We proved that they (Grace) contaminated

the wells. You can never take that away. And they're paying us. Why are they paying us if they're not guilty?"

The plaintiffs contend that chemicals dumped at Grace's Cryovac manufacturing plant, located in East Woburn at 369 Washington St., flowed 2,500 feet southwest into wells G and H, which were closed in 1979 after

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— Anne Anderson



END OF AN ODYSSEY — Donna Robbins and son Kevin, 11, embrace Monday following announcement that the plaintiffs in the Woburn toxic waste trial had reached an out-of-court settlement with W.R. Grace. Mrs. Robbins's son, Robbie, died of leukemia in 1981.

(Barbara Kennedy photo)

TOXIC TRIAL: THE AFTERMATH

● Settlement

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15 years of use.

Drinking the water, the plaintiffs say, resulted in eight leukemia cases, six of them fatal, and a host of other illnesses, including disorders of the heart, liver, skin and immune system.

Verdict no longer relevant

Keating argued that the jury's July 28 verdict following the five-month-long first phase of the trial was no longer relevant. The jury found that Grace had negligently dumped chemicals at the Cryovac plant and that those chemicals had contaminated the wells some time before they were shut down in 1979.

U.S. District Judge Walter Jay Skinner had thrown out that verdict and ordered a new trial, Keating noted. If Monday's settlement had not been reached, he added, the first phase would have been retried.

Keating said it was Grace's position that it had never polluted the wells and was not responsible for the illnesses and deaths suffered by the plaintiffs.

Schlichtmann, when told of Keating's statement that Grace denies any responsibility as part of the settlement, said there is no language in the settlement specifically absolving Grace.

"I'm surprised he (Keating) is saying that, but, no, that's not true," Schlichtmann told the Daily Times Chronicle.

One of the terms of the settlement is that neither side can discuss its specifications.

However, the Daily Times Chronicle has independently verified news reports that the

plaintiffs and their lawyers will receive about \$8 million from Grace. That money will pay for legal expenses and fees, with the remainder set aside to compensate the families.

The Daily Times Chronicle has also learned through confidential sources that a report carried Monday by WCVB-TV concerning how the \$8 million will be divided was incorrect.

The WCVB report stated that the plaintiffs must share the money with five other Woburn families represented by Schlichtmann who were not part of the lawsuit. Sources said that report was not true, and that the money will be shared only by the eight families who are part of the suit.

Second phase was to begin

Monday morning was supposed to have been the first day of the second phase of the trial. Schlichtmann and his legal team, having shown that Grace negligently contaminated the wells, was to have begun presenting their case that the well water caused leukemia and other illnesses.

By 9 a.m., though, most observers at U.S. District Court had heard that a settlement was likely.

When Judge Skinner entered the courtroom at 9:35, he told the six jurors and five alternates, "Well, now, I think I have some surprises this morning." He said he would divide the news into "good news and bad news."

The "bad news," Skinner said, was that he was compelled to grant a motion by Grace for a

new trial and throw out the jury's verdict.

The judge said the jury's answers to the four questions he had posed were inconsistent. In answering one question, he noted the jury said it could not determine when trichloroethylene (TCE) and tetrachloroethylene (PCE) dumped at Grace's Cryovac plant had first arrived at the wells in substantial quantities.

In answer to another question, however, the jury said the wells first became contaminated as a result of Grace negligence in September 1973, and that no date could be determined for PCE.

Skinner said it was unclear to him whether September 1973 was meant to apply to the time that negligence began on the Cryovac site or to the time that negligently dumped TCE first appeared in the wells.

He added that the problem arose "not through any failure on the part of the jury. I think you did an excellent job. I did not make it as clear as I should have."

After "struggling for 10 days," Skinner continued, he came to the conclusion that the only resolution was to grant Grace a new trial. He added he had considered asking the jurors to deliberate again, but decided "that seemed unfair."

Ruling was impounded

Skinner filed his ruling last Wednesday and impounded it, meaning it could not be released until Monday morning, although the parties to the lawsuit were notified of the decision.

Skinner then went on to the "good news," saying that, toward the end of last week, he learned there was "a strong possibility that the matter would be settled."

He said the final terms were agreed upon Monday morning, and that he held a brief hearing in his chambers to determine, which he must under Massachusetts law, whether the settlement was fair and reasonable.

"It is indeed a fair and reasonable settlement to this case," Skinner said.

Keating, in the news conference at his office, said he and Schlichtmann had discussed a possible settlement ever since the July 28 verdict.

He added Skinner's ruling last Wednesday was "very important" in cementing the settlement, since neither side wished to retry the entire case — a prospect that could have meant another year or more in court.

Keating said his discussions with Schlichtmann were "amicable," and that final agreement was reached Saturday at 10:30 p.m. after a day of shuttling back and forth between their offices, which are located several blocks apart near the federal courthouse.

"We're very pleased with the outcome of this case," Keating said. "We both won."

The lesson for other corporations facing similar actions, he added, is "the great difficulty in presenting a case with this amount of technical information."

He said the first phase of the trial was well tried by lawyers for all parties before an "attentive jury" and a "first-rate judge," yet the jury was unable to reach a supportable verdict, at least with respect to Grace. (The jury, at the same time that it rendered its verdict concerning Grace, dismissed a similar complaint against Beatrice Foods Co.)

Keating said he wasn't sure how to improve the process, but suggested that judges in similar

cases make more preliminary rulings and narrow the issues that juries must decide.

Schlichtmann, at the Trinity Church news conference, underscored the plaintiffs' contention that the settlement was an admission of guilt by Grace.

"They (the families) achieved what they set out to achieve in this case, and that is to make the companies responsible pay for what they did," Schlichtmann said. "By this settlement they have acknowledged that wrong."

End of an ordeal

The plaintiffs spoke eloquently about their ordeal and what it means to put it all behind them.

All seven Woburn families attended the briefing, as well as the eighth family, formerly of East Woburn and now of Winchester.

"We have suffered a lot — more than anybody can pay us for," said Richard Toomey of Woburn, whose son, Patrick, died of leukemia in 1981.

Toomey added the case shows that "people banding together can get justice, whether through the courts or through a settlement."

Donna Robbins of Woburn, whose son, Robbie, also died in 1981, added, "I'm happy with the settlement. It's never going to bring our children back, but maybe we can finally get on with our lives."

Concerning Grace's statement that it was not admitting wrongdoing, Robbins added, "I think just the fact that they settled, that they wanted to settle out of court, says it all. They're guilty."

Joan Zona of Woburn, whose son, Michael, died in 1974, said she was pleased with the settlement because of the "terrible emotional strain" the families would have gone through had they testified in court.

Lauren Aufiero of Woburn, whose son, Jarrod, died in 1982, added, "The settlement can't bring Jarrod back."

Both Robbins and Anderson spoke of the closeness the families have come to feel for one another during the seven years since the wells were closed and they began to question whether there was a link between the water and their children's leukemia.

"We became friends throughout our children's illnesses," Anderson said. "We saw each other through their deaths. Nothing can replace that kind of closeness."

Added Robbins, "They (the other families) became my family. We've grown together through this whole thing."

Anderson said that, despite the mixed message of the settlement, she believes what the families accomplished has sent a clear message across the country.

"Citizens aren't going to sit back and take what they've taken in the past. Now corporate America has to be responsible for its actions," she said.

Settlement was expected

Anderson later said in an interview that the families had known for some time that a settlement was in the works. She said she had spoken to Schlichtmann a month ago, and that the families all met at Schlichtmann's office on Saturday, Sept. 6, to discuss the terms.

Asked whether she had any feeling that the plaintiffs should have rejected the settlement and pushed for a new trial, she replied, "How much can you put us through?"

Attorney Kevin P. Conway, an associate of Schlichtmann, added the lawyers were ready to retry the case until Grace made what they felt was a reasonable offer.



JAN SCHLICHTMANN
... plaintiffs' attorney



MICHAEL KEATING
... Grace attorney

"You're really not serving your clients well if you say, 'The hell with it, let's go back and try it,'" Conway added.

Although the plaintiffs' legal fees are believed to be well over \$2 million, Conway refused to give a definite figure. "I can say this — our costs were substantial," he said. "This was a very expensive action."

He added that, since the case began, he has received calls from across the country from people who believe they have been injured by toxic waste and who are looking for help.

"It just indicates to me that there's a lot of people out there who think they've had problems with toxic waste," Conway said.

Two other defendants

The plaintiffs originally sued two other companies in addition to Grace.

The jury in its July 28 ver-

dict, dismissed a complaint against Beatrice Foods Co. of Chicago, which owned the Riley Leather Co. tannery, located at 228 Salem St. in East Woburn, from 1978 to 1983.

The jury found the plaintiffs had not presented sufficient evidence to support their contention that the tannery used a 15-acre site northeast of the main tannery grounds as a chemical dump, and that those chemicals contaminated the wells, 700 feet to the northeast.

The plaintiffs plan to appeal the Beatrice portion of the verdict.

In 1985, the plaintiffs reached a settlement in state court with UniFirst Corp., 15 Olympia Ave., for a reported \$1.05 million.

UniFirst, about 2,000 feet north of the wells, is an industrial dry-cleaning establishment that uses PCE.