

City to sue, families will appeal

By DAN KENNEDY

WOBURN — In the aftermath of Monday's verdict against W.R. Grace & Co. in the Woburn leukemia trial, Mayor John W. Rabbitt said the city will sue Grace and another company, charging them with contaminating the city's water supply.

Rabbitt told the Daily Times Chronicle the city will also sue UniFirst Corp., which reached an out-of-court settlement with eight East Woburn families in 1985 concerning the contamination of municipal wells G and H.

A U.S. District Court jury found Monday that Grace negligently dumped chemicals at its Cryovac manufacturing plant, located in East Woburn at 369 Washington St., leading to the contamination of municipal wells G and H. The wells are 2,500 feet southwest of the Cryovac site.

The jurors dismissed a similar complaint against Beatrice Foods Co. Lawyers for the plaintiffs vowed they will appeal the verdict.

The eight East Woburn families who brought the lawsuit will now attempt to show that the chemicals dumped by Grace resulted in six leukemia deaths and two illnesses.

That phase of the trial, to be tried before the same jury, will get underway Sept. 15, and is expected to last several months. The first phase lasted five months.

The plaintiffs reached an out-of-court settlement with UniFirst in 1985 for a reported \$1.2 million.

UniFirst, which operates a dry-cleaning operation at 15 Olympia Ave., dumped dry-cleaning chemicals on the ground, contributing to the contamination of G and H, according to the plaintiffs' complaint in Middlesex Superior Court.

The plaintiffs had also alleged that Beatrice negligently allowed chemicals to be disposed of on property the company formerly owned, and that the chemicals then flowed into wells G and H.

The property is a 15-acre site adjacent to the Riley Leather Co. tannery, 228 Salem St. Beatrice owned the tannery and the 15 acres from 1978 to 1983

● Verdict

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and retained legal liability.

Attorney Kevin P. Conway of Schlichtmann, Conway & Crowley of Boston, the plaintiffs' law firm, said he believed Judge Walter Jay Skinner made errors of sufficient magnitude that the verdict in Beatrice's favor should be reviewed by the U.S. Court of Appeals.

"We will appeal and we think we'll probably win," Conway told the Daily Times Chronicle.

Among the alleged errors Conway cited were:

• Skinner's decision to strike from the jury's consideration whether Beatrice had a "duty to warn" government officials that activities on the 15 acres posed a threat to wells G and H. The wells were closed in 1979 after 15 years of use.

• Skinner's ruling striking evidence that the tannery itself contributed to the contamination of the 15 acres. The only option remaining for the plaintiffs was to argue that Beatrice negligently allowed others to dump on its land.

• A decision by the judge that the jury could not consider evidence of chemical dumping at the 15 acres prior to Aug. 27, 1968 — the date that then-tannery owner John J. Riley Jr. received a letter from an engineer stating that the water table on Riley's land was being affected by other wells in the area.

Skinner ruled that was the first time Riley could have had any knowledge that groundwater on his property was connected to the wells. Conway called Skinner's action "arbitrary" and said the timing of it — coming after the plaintiffs had presented their case — made it impossible to call additional witnesses to testify about dumping after 1968.

• "Skull and crossbones"

Mayor Rabbitt, in saying the city would sue Grace and UniFirst, commented, "As far



THE JURY that rendered a verdict Monday in the Woburn leukemia trial. At right is foreman William Vogel of Quincy. (Dave Olsen illustration)

as I'm concerned, Grace ought to change their letterhead and put a skull and crossbones on there."

He said he plans to take action "some time in September" by hiring an outside law firm. While Rabbitt said he didn't know how much in monetary damages the city would seek, he added, "There's no question the city will proceed to recover."

Rabbitt also hailed the plaintiff families as "brave, brave people."

The corridors on the 15th floor of the federal courthouse in Boston were tense Monday morning, the 10th day of jury deliberations.

There was a buzz in the air that a verdict might be at hand. The jury foreman, William Vogel of Quincy, had told the judge Thursday that he wished to be excused for personal reasons. Several observers suspected the jury, which had been deadlocked Thursday, might have resolved its remaining differences Friday rather than begin deliberations anew.

At 9:45 a.m., Vogel was called into the courtroom and spoke for several minutes with Skinner and lawyers in the case. Lawyers said Vogel told them the jury had reached a verdict and would be reporting it shortly.

The courtroom, which had

been practically empty an hour earlier, was packed by 10:24 a.m., when a court officer announced the jury was on its way in. At 10:28 the six unsmiling jurors filed into the room. Vogel stood and handed a slip of paper to the court officer, who in turn handed it to the judge.

Skinner then read the jury's answer to the first question it had been charged with considering concerning Beatrice.

Skinner announced the jury had not found that chemicals were disposed of at the Beatrice site or that such chemicals "substantially contributed" to the contamination of the wells.

Plaintiffs' chief counsel Jan Richard Schlichtmann and Harvard Law School Prof. Charles Nesson, who has been advising Schlichtmann, buried their heads on their table as the Beatrice decision was read.

The judge then announced the jury had found that trichloroethylene (TCE) and tetrachloroethylene (PCE) had been dumped at the Grace property and had contributed to contamination of the wells between Oct. 1, 1964 — the date well G opened — and May 22, 1979 — the date both wells were closed.

The jury rejected the plaintiffs' claim that 1,2-dichloroethylene (DCE) had

been dumped at the Grace site and had contaminated the wells.

The second question concerned when TCE and PCE dumped at the Grace site after Oct. 1, 1964, first made a "substantial contribution" to contamination of the wells. The jurors replied they could not determine the answer to that question.

The third question concerned whether Grace had acted negligently, and the jury replied that it had.

The fourth and final question asked when "was the earliest time" that the contamination of the wells was caused by the "negligent conduct" of Grace.

The jury replied that TCE from the Grace site first appeared in the wells as a result of Grace's negligence by September 1973, and that it could not determine the date for PCE contamination. (Expert witnesses for all parties testified during the trial that PCE travels through groundwater three times more slowly than TCE.)

Lawyers besieged

Following the verdict, the lawyers were besieged by a battery of television lights and tape recorders in the courthouse lobby.

Attorney Jerome P. Facher of Hales and Dorr, the Boston law

firm retained by Beatrice Foods, told reporters he was "delighted by the verdict. I think once again the jury system has been vindicated."

He called the verdict in Beatrice's favor "not only warranted but justified. The opinions of the (plaintiffs') experts were obviously not accepted as far as Beatrice was concerned."

Asked whether the jury's long delay in reaching a verdict had caused him any anxious moments, Facher replied, "There are always anxious moments when a jury is out."

Attorney Michael B. Keating of Foley, Hoag & Eliot, the Boston firm retained by Grace, said he was "not necessarily surprised but a little disappointed. I wish they'd decided it another way."

Looking ahead to the second phase of the trial, Keating added, "I'm very confident W.R. Grace will be completely vindicated."

Schlichtmann said he was "bitterly disappointed" with the verdict, adding, "It's very mixed. It was important in this case to send a clear message to the corporate community — and this wasn't as clear as it could have been."

Three of the eight leukemia cases, including two that ended in death, cited by the plaintiffs

were diagnosed prior to September 1973.

At a press conference in Woburn Monday afternoon, the Daily Times Chronicle asked Schlichtmann whether he believed Judge Skinner would strike those cases from the second phase of the trial.

Schlichtmann replied that, under Massachusetts law, a defendant may be held liable for "aggravating and complicating a disease and hastening death," thus preserving those plaintiffs' claims against Grace.

Schlichtmann said his primary concern was that the jury's "mixed message," especially relating to dates of contamination, would make it more difficult for him to try the second phase.

"We have to have the tools for us to prevail in the next phase," he said. The jury's decision, he added, "makes it that much harder to hold Grace responsible."

Asked whether Grace and the families were likely to reach an out-of-court settlement prior to Sept. 15, Schlichtmann said that "it's important for the families that no corporation in the future is going to take the community for granted."

Conway later added, "We're sure we're going to win against Grace."