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Woburn leukemia trial postponed

Judge to ponder new legal contentions in suit over city's polluted drinking water

By Jerry Ackerman
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The Woburn leukemia trial, originally scheduled to resume tomorrow, has been postponed until the judge can reply to contentions that an earlier jury verdict may have raised more questions than it answered about when the city's drinking water was first polluted by chemicals.

Lawyers involved in the lawsuit, which seeks damages for personal injury and wrongful death, say that fixing a date is critical even though asking for such a clarification presents strategic risks to both sides.

For the Woburn families who instituted the suit against W.R. Grace & Co., said one lawyer, "it could be all over" if US District Court Judge Walter Jay Skinner rules to narrow the time frame in which the leukemia victims can be assumed to have consumed contaminated water.

However, should Skinner decide to ask the jury to elaborate on its ruling, attorneys say the way could be opened for comment that might further implicate Grace, which owns the Cryovac machinery manufacturing plant in Woburn.

Meanwhile, reports circulated that negotiations aimed at an out-of-court settlement have resumed. Lawyers for both the plaintiffs and Grace refused to comment on these.

The trial, which began last March, had been scheduled to resume tomorrow in US District Court in Boston after a seven-week recess following the jury's July 28 negligence ruling against Grace.

The case involves claims that industrial solvents dumped by Cryovac seeped into two municipal wells 2,500 feet away and were the cause of eight cases of leukemia in Woburn diagnosed between 1971 and 1981.

Six of the eight persons stricken, five of whom were children, have died. The cases of two other children are in remission. All eight lived in an area of East Woburn that got the bulk of its drinking water from the wells from 1964 to 1979, when the contamination was discovered and the wells were shut down.

The claim that chemical contamination can lead to leukemia is scientifically controversial, supported only by limited research and refuted by many leading cancer specialists, some of whom have been retained as expert witnesses by Grace.

On the other hand, a scientific review panel assembled last year by the US Centers for Disease Control declared that without further research, chemicals in drinking water couldn't be ruled out as a cause for Woburn's unusually high leukemia rate.

The Cryovac plant is only one of three possible sources of the contamination, according to the US Environmental Protection Agency. A separate suit against the second, an industrial dry cleaning firm, was settled last year for just over \$1 million, and the Woburn trial jury ruling in July absolved the third, a tannery, from further civil liability.

Under courtroom rules set by Skinner, the first stage of the trial dealt only with whether the defendants could be held responsible for the contamination. Medical issues were left untouched until the second phase.

In testimony last April, former Cryovac employees told of various times, starting in 1961, when small amounts of solvents were dumped into a drainage ditch outside the plant. Then, in 1973 or 1974 — the workers differed on this and other details — a trench was dug for use during a plant cleanup operation.

One employee testified that from 10 to 20 barrels of liquids, including the solvent trichloroethylene, a carcinogen, were poured into the trench. Another said a number of barrels were put in the trench intact, their contents unknown.

Hearing this, along with conflicting testimony about how long it would take the solvent to seep into the wells, the jury said the earliest that it could conclude the chemical got into the wells because of Cryovac negligence was September 1973.

Lawyers for Cryovac told Skinner during a hearing Sept. 5 that the terseness of this verdict, delivered in direct response to a question posed by the judge, left unclear whether the

jury meant this as the date the chemical reached the wells, or the date that it considered Cryovac to have been negligent.

Even without clarification, attorneys say the jury's conclusion appears to have put the Woburn plaintiffs at a disadvantage because three of the eight leukemia victims cited in the suit — two of whom have died — had their illnesses diagnosed before September 1973.

The scenario for the plaintiffs could worsen if the judge decides that September 1973 is only the time that negligence by Cryovac can be ascertained, according to William Cheeseman, a lawyer with the Boston firm of Foley, Hoag and Elliot, which represents Cryovac.

If this were the case, according to lawyers for both sides, even the seepage-rate testimony that was most favorable to the Woburn families would suggest there is no certainty the contamination reached the wells before 1976.

That conclusion would undercut the claim of an additional leukemia victim, who was diagnosed late in 1976 and died in 1981, according to Stanley Eller, a lawyer with the plaintiffs' law firm, Schlichtmann, Conway and Crowley of Boston.

Moreover, it would limit the timespan that the jury might conclude the remaining victims, whose leukemias were diagnosed between 1979 and 1982, were exposed to the contaminated water.

This is important because most scientists agree that it takes time — sometimes years — for leukemia, a cancer of the blood cells, to escalate to a point where its victims develop enough symptoms to seek a diagnosis.

Lawyers say the uncertain duration of this "latency period" would get in the way of efforts by the plaintiffs' lawyers to demonstrate that enough time passed after these remaining victims were exposed to the water for their leukemia cases to have shown up when they did.

However, Eller said, expert medical witnesses retained by the plaintiffs would still be able to give testimony arguing that even if the onset of the leukemias can't be linked to the water, the chemicals still might have hastened their development.