

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action
No. 82-1672-S

SKINNER, D. J.
and a Jury

ANNE ANDERSON, ET AL

V.

W. R. GRACE & CO., ET AL

Forty-Seventh Day of Trial

APPEARANCES:

Schlichtmann, Conway & Crowley (by Jan Richard Schlichtmann, Esq., Kevin P. Conway, Esq., and William J. Crowley, III, Esq.) on behalf of the Plaintiffs.

Charles R. Nesson, Esquire, on behalf of the Plaintiffs.

Herlihy & O'Brien (by Thomas M. Kiley, Esq.) on behalf of the Plaintiffs.

Hale & Dorr (by Jerome P. Facher, Esq., Neil Jacobs, Esq., Donald R. Frederico, Esq., and Deborah P. Fawcett, Esq.) on behalf of Beatrice Foods.

Foley, Hoag & Eliot (by Michael B. Keating, Esq., Sandra Lynch, Esq., William Cheeseman, Esq., and Marc K. Temin, Esq.) on behalf of W. R. Grace & Co.

Courtroom No. 6
Federal Building
Boston, MA 02109
9:15 a.m., Tuesday
May 20, 1986

Marie L. Cloonan
Court Reporter
1690 U.S.P.O. & Courthouse
Boston, MA 02109

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P R O C E E D I N G S

THE COURT: Good morning. I guess we now proceed to the next stage of the exercise, which is cross-examination by Mr. Keating.

MR. KEATING: Thank you very much, your Honor.

GEORGE PINDER, RESUMED

CROSS-EXAMINATION BY MR. KEATING

Q Dr. Pinder, you were retained to testify in this case more than two years after this lawsuit was filed, is that right?

A That sounds reasonable. I don't know when the lawsuit was filed.

Q And you did not know then in 1984 nor do you now have any personal knowledge as to when any contamination was disposed of on either the Beatrice or the Grace properties, isn't that true?

A I think it's true. I don't quite understand what you mean by personal knowledge, but I certainly wasn't there.

Q Right. And you did not even have any knowledge of this particular case until some time either in the summer or fall of 1984?

A To the best of my recollection, that's correct, sir.

1 Q Are you aware, Dr. Pinder, that there is a well
2 called S-83 which is located either on Whitney Barrel or
3 on Aberjona Auto Parts, in this particular vicinity between
4 the two properties?

5 A Yes, sir, I do recall that.

6 Q And have you determined what the water quality analysis
7 for that particular well was found to be in terms of
8 complaint chemicals, the complaint chemicals that are at
9 issue in this particular case?

10 A I have seen that data.

11 Q Do you have a recollection what that data reveals as
12 to the presence of -- in that particular well -- of the
13 complaint or some of the complaint chemicals that are
14 involved in this case?

15 A Without reference to my notes, it's my recollection
16 that there was some contamination in that well.

17 Q Would it refresh your recollection if I suggested to
18 you that there was 665 parts per billion of
19 trichloroethylene in that well?

20 A That would be consistent with what I recall and
21 consistent with what I understand about the system.

22 Q And that there was 137 parts per billion of trans
23 at that particular well that was determined?

24 A Well, you're looking at the document. I have no
25 reason to believe that you're not reading it correctly.

1 Q Why don't you read it with me, then.

2 And there was some chloroform found in
3 that well?

4 A Yes, sir.

5 Q Three parts per billion?

6 A Yes.

7 Q And there was some tetrachloroethylene found in that
8 well?

9 A That's correct.

10 Q 24 parts per billion?

11 A Yes.

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1 Q. Now, do you recall, Dr. Pinder, being asked at your
2 deposition if you did any investigation of Whitney Barrel
3 and whether or not Whitney Barrel may have contributed to
4 the contamination of Wells G and H? Do you recall being
5 asked that question?

6 A. I have some recollection of that.

7 Q. Do you remember what your answer was?

8 A. I don't remember my answer, but I imagine it was that
9 I didn't do any investigation of that.

10 Q. Now, did you do any investigation of Aberjona Auto
11 Parts as part of the data that you gathered to form your
12 opinion in this particular case?

13 A. The information I have on those sources as well as
14 others in the valley was as I stated in testimony earlier,
15 that I was asked to look at these locations as potential
16 sources of contamination and to determine what I believed
17 to be the possibility of contamination arising from those
18 particular sites. Beyond that, nothing.

19 Q. All right.

20 And did you make such an investigation of
21 Aberjona Auto Parts?

22 A. Only in the sense that I just explained to you.

23 Q. And how about Murphy's Waste Oil?

24 A. I believe that was also documented on the information
25 that I have.

1 Q. Are you aware, sir, of what quantity of trichloroethylene
2 was used at Whitney Barrel Company according to the testimony
3 of one of their employees?

4 A. No, sir, I have no knowledge of that.

5 Q. Would it refresh your recollection if I suggested
6 that they used 12 drums of trichloroethylene per year, does
7 that refresh your recollection as to what was going on at
8 Whitney Barrel?

9 A. No. I don't think I was privy to that information, or
10 if I was, I don't remember.

11 Q. Now, going back to your diagram with the gradients
12 with the pumps on. The next building up on Salem Street
13 or going to the northeast, are you able to identify what
14 that building is?

15 A. No, sir, I don't know that building.

16 Q. All right.

17 And that building, I will tell you, is
18 another building owned by Murphy's Oil.

19 And would you agree with me that the ground-
20 water from that location also moves toward Well G, according
21 to your computed gradients with the pumps on?

22 A. That, again, happens to be right in the section where
23 it can go either way in that particular layer. Remember,
24 this is a three-dimensional model. We must not be misled.
25 The upper layers may be slightly different, but not dramatically.

1 It is not unreasonable to assume that water from here may
2 have reached G (indicating).

3 Q. Are you aware of another building to the northeast of
4 Wells -- northeast on Salem Street which was entitled
5 New England Resins and Plastics?

6 A. I don't know that building by name, sir.

7 Q. All right.

8 And you are not sure where that building
9 was located?

10 A. You just mentioned it was northeast on Salem Street.
11 I don't see anything northeast on Salem Street there.

12 Q. How about in this area up here (indicating)? This
13 is Salem Street.

14 A. This building?

15 Q. Yes.

16 A. I think I did in fact look at that as a possibility.

17 Q. Are you aware whether or not that particular company
18 used solvents?

19 A. I don't know for a fact they used them, but I don't
20 think I would have been asked to look at it if someone hadn't
21 had some suspicions that there was some used there.

22 Q. You said you looked at it. What did you do when you
23 looked at it?

24 A. Again, I tried to put that particular building into
25 my overall understanding of the system and draw a conclusion

1 as to whether I believed they had substantially contaminated
2 these wells.

3 Q. Isn't it a fact, Dr. Pinder, that when you were engaged
4 in this case, you did not look at any of the areas or any
5 of the buildings that lie between the W.R. Grace site and the
6 wells to determine whether or not any of those locations
7 might have contaminated Wells G or H?

8 A. If you mean did I physically go on the site and ask
9 questions and investigate each company, I did not do that,
10 sir.

11 Q. No. That you simply did not inquire about any
12 contamination that may have existed in what I would character-
13 ize, and I think was characterized in your deposition, as the
14 intervening area between W.R. Grace and the plant -- and the
15 wells, I'm sorry, the wells?

16 A. No. I think to the contrary; I did request information
17 on that toward the end of my work, and it was in response
18 to that that I received the information that outlined those
19 buildings that would be of particular interest in that
20 regard.

21 Q. When you were deposed initially in this case, Dr.
22 Pinder, you were asked -- Were you asked to assume any
23 contamination from the intervening property, and you said
24 no?

25 A. That's correct.

1 Q. Then you were asked---

2 A. It was later on that I asked for this information.

3 Q. It was later on that you asked for the information?

4 A. Yes.

5 Q. And you asked, "Were you able to determine whether there
6 was any contamination from the intervening property?" And you
7 said you saw no evidence?

8 A. That's right.

9 Q. And you were asked, "Did you reach an opinion that
10 the intervening property had not been a source of contamina-
11 tion?"

12 And you said, "No," is that right?

13 A. I don't remember exactly what the sequence of events were,
14 but that is consistent with what I understood.

15 Q. But this is at a time, was it not, Dr. Pinder, when
16 you testified in that regard that you did give the opinion
17 that contamination that was shown to exist in the wells in
18 May of 1979 came from the Grace site?

19 A. Yes. I think that evidence was quite strong.

20 Q. And you had not at that time excluded the possibility
21 that contamination might have come from some other source,
22 at the time that I'm now referring?

23 A. If you mean that I did not have an opinion as to
24 other sources at that time, I don't recall for sure, but
25 I think the information I had available to me at that time

1 did not have any occasion of alternative sources. That
2 was the spirit I was answering.

3 Q. But the only information you had available at that
4 time, was information, was it not, that Mr. Schlichtmann
5 had given you? At the time that you gave your first opinion
6 in December of 1985, concerning the contamination in Wells
7 G and H as coming from the Grace or Beatrice sites.

8 A. I had all of the information that I accrued in the
9 field, chemical, hydrodynamic, and physical of various
10 kinds. It wasn't on a lack of knowledge of an existing
11 source, it was based on no evidence of another source
12 combined with all of the information I had on the site at
13 that time.

14 Q. No, there is another well, S-94, which is located
15 between Well G and New England Plastics. Isn't that correct?
16 Do you know where Well S-94 is located?

17 A. I think it is about where you said it was.

18 Q. Did you ever test Well S-94 to see whether or not it
19 had contamination?

20 A. I would have to look at the data to know whether that
21 one was, in fact, sampled.

22 Q. Now, let's move north, Dr. Pinder, to the area of
23 Olympia Street, which is located at this part of the
24 photograph (indicating).

25 According to your computed gradients, pumps on,

1 you show the flow of groundwater immediately next to the
2 river going south along the river toward Well H and Well
3 G, is that a fair statement?

4 A. In the lower layer, that is what it is represented
5 to be.

6 Q. Once you are north of Well H, the groundwater along
7 the river goes south along the river?

8 A. Are you speaking about here (indicating)?

9 Q. No, I am speaking about here with the pumps on (indicating).

10 A. Going this way?

11 Q. Yes, it goes south along the river.

12 A. I think that is a fair statement.

13 Q. And you testified here the groundwater moves very fast
14 along the river because the soil around the river is very
15 permeable?

16 A. Well, the soil at depth is very permeable. That is
17 why the cone spreads out across the river and so far up and
18 down the river because you have a very permeable zone above
19 the river. This is purported to represent that layer where
20 you have that permeable material.

21 Q. Now, there is a well that is located just north of
22 Olympia Avenue, and that is called Well S-74. Are you
23 aware of where that well is?

24 A. I would prefer to look at a diagram that has it on it.

25 Q. Well, it is up in this particular area (indicating)?

1 A. That is my particular recollection.

2 Q. North of Olympia Avenue?

3 A. I don't know exactly where it is.

4 Q. Now, during the pump test that occurred, do you know
5 what happened to the water table in the area around -- at
6 Well S-74?

7 A. I probably looked at that particular data point, but
8 I have no recollection of its behavior.

9 Q. And that, let me suggest to you and you can assume if
10 you wish that the water table at S-74 dropped about a foot
11 during the pumping. Would that seem to confirm what you might
12 know about that particular well?

13 A. That's a lot of drawdown if that is what the change
14 is due to.

15 Q. And you don't recall.

16 A. I don't recall noting that, but it would not be
17 inconsistent with things I was told about the overall
18 behavior of the system.

19 Q. All right.

20 Now, do you know where in the area of
21 Well S-74, which is north of Olympia, I will ask you to assume
22 is about 500 feet north of Olympia and about 900 feet from
23 Well ~~8~~^H, do you know where is located a piggery called
24 Murphy's Piggery?

25 A. No, sir, I'm not familiar with that establishment.

1 MR. KEATING: Settlement discussion.

2 MR. SCHLICHTMANN: But he raised it. They
3 just want to use that part that helps them.

4 MR. KEATING: All I want to know is what he
5 knew about UniFirst.

6 THE COURT: All right. I will state to the
7 jury what the actual record was, and then you can ask your
8 question about what he knew about UniFirst.

9 MR. KEATING: But the problem with your
10 stating to the jury what the action was is that it would
11 suggest to the jury that Grace has taken the position that
12 UniFirst has nothing to do with this proceeding, which is
13 not correct. I mean --

14 THE COURT: I don't know on what basis
15 would be voluntary dismissal.

16 MR. KEATING: It was all without prejudice.

17 THE COURT: All right. I will state it
18 that way.

19 END OF CONFERENCE AT THE BENCH.)

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21 THE COURT: Now, the record on the position
22 of UniFirst in litigation is a trifle complicated, and
23 perhaps I'd better restate that so that there will be no
24 misunderstanding.

25 UniFirst was brought into this case

1 initially as a third-party defendant; that is, one of the
2 defendants. I believe it was Grace who brought UniFirst
3 into this action. Later, for reasons that are not
4 necessarily on the record but, in any case, don't have
5 anything to do with your consideration of this case,
6 UniFirst was dismissed out of this case and, thereafter,
7 was sued in the state court by the plaintiffs, by the same
8 plaintiffs who are plaintiffs here. And that case has
9 been disposed of on some basis or other. It is not now
10 pending.

11 Is that correct?

12 MR. SCHLICHTMANN: That's correct.

13 Q (By Mr. Keating) Were you aware at some point in time,
14 Dr. Pinder, that UniFirst had been sued, not here, but in
15 the state court by the plaintiffs in this particular action?
16 Was that fact ever brought to your attention?

17 A I knew they were somehow involved, but I didn't know
18 the legal ins and outs of the involvement.

19 Q When you first were made aware of this particular case,
20 Mr. Schlichtmann told you about -- and I've asked you this
21 before, but just to get back on track -- Grace, Beatrice
22 and UniFirst, isn't that right? He identified those three
23 companies as companies within the particular area of the
24 Aberjona River Valley that he was particularly interested
25 in?

1 A At some point along the way, I was made aware of that.

2 Q All right. And as we discussed earlier, UniFirst is,
3 if not closer, is at least as close to Well H as the W. R.
4 Grace facility is?

5 A Yes, sir, I think that's a fair statement.

6 Q Now, at some point in time after Mr. Schlichtmann had
7 mentioned to you UniFirst, he told you, did he not, that
8 the only contamination problem at UniFirst occurred in the
9 late 1970s?

10 A I think that's probably correct, although somewhere
11 along the way I became aware, maybe through their own
12 reports, that they may have had some chemical usage at
13 other times.

14 Q Did you not, Dr. Pinder, determine that UniFirst was
15 not a source of contamination to Wells G and H, at least
16 at the time that the wells were operating in the 1960s
17 because Mr. Schlichtmann told you that the contamination
18 problem that UniFirst had occurred in the late 1970s?

19 A I don't know that I made that first statement.

20 Q What first statement?

21 A If you read back to me what you just asked, you said
22 that I made a deduction that they were not a --

23 Q Well, at your deposition when you were asked about
24 sources of contamination at the well, in the well field
25 in the 1960s, did you not say that you excluded UniFirst

1 as a possible source because you had been told by
2 Mr. Schlichtmann that there had been a spill but that that
3 spill had occurred in the late 1970s?

4 A I don't recall the details of my deposition, but it
5 seems that at that time, that may have been my state of
6 knowledge.

7 Q Okay. Now, do you know the business of Interstate
8 Uniform or as it is now known, UniFirst? Do you know what
9 business they are in?

10 A I would assume it's cleaning uniforms.

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1 Q. Yes.

2 And do you know how long UniFirst has been
3 in operation in the area which is on Olympia Avenue across
4 from the, or down Olympia Avenue down from W.R. Grace?

5 A. I think my current state of knowledge is they started
6 it in the early '60s.

7 Q. All right.

8 And do you know what products are used by
9 UniFirst in their dry cleaning business?

10 A. I remember from their report that they used perc.
11 I have some recollection they may have used similar organic
12 solvents in the '60s.

13 Q. And do you recall saying in the '60s they also used
14 trichloroethylene?

15 A. That may have been my understanding at the time.

16 Q. Are you aware, sir, that at the UniFirst property
17 they had a 5,000 gallon tank of perc located at the property?

18 A. I'm aware that they had a large tank of perc. I
19 don't recall the exact volume.

20 Q. Do you remember saying at your deposition that your
21 investigation of UniFirst was "very cursory"?

22 A. I think that we had not pursued it very far with the
23 understanding that anything that might have taken place
24 would have taken place in the very late '70s.

25 Q. All right.

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And at the time was that a time when you gave your deposition under oath that UniFirst was not in your opinion a contributor to the contamination at Wells G and H; isn't that true?

A. Contaminator ---

Q. At Wells G and H?

A. In 1979?

Q. At any time when the wells were pumping.

A. I think that would reflect my state of knowledge at that time.

Q. In fact, at that same deposition, you said, did you not, that you did not have the responsibility of determining whether or not UniFirst was a substantial contributor to the contamination at Wells G and H while those wells were pumping?

A. I think that my particular mandate was to determine whether it was reasonable to assume that Grace and/or Beatrice were sources of contamination to the wells. I don't remember being asked specifically to investigate whether Interstate was also a source of contamination at that time.

Q. All right.

You weren't asked specifically to investigate whether UniFirst or Interstate was a source of contamination, but, did you, in fact, before you gave your opinion that they

1 were not a source of contamination, did you, in fact,
2 investigate whether UniFirst was a source of contamination
3 at the Grace site -- I beg your pardon, at Wells G and H?

4 A. Could we go over the question again?

5 Q. Yes.

6 You weren't asked to make an investigation
7 as to whether UniFirst was a source of contamination at Wells
8 G and H while the wells were pumping, but did you, in fact,
9 make an investigation as to whether UniFirst was a source
10 of contamination at Wells G and H?

11 A. If by that we mean took the assumptions of the time
12 of the spill that was reported at UniFirst and combined that
13 with my knowledge of the flow fields and the chemistry,
14 I think in that sense I had made some deductions. I did
15 not go to the extent that I did with the other sources of
16 contamination in my deliberations.

17 Q. When you say the extent that you did with the other
18 sources of contamination, other than Beatrice and Grace,
19 what other sources are you referring to?

20 A. I was speaking very specifically to Grace and Beatrice
21 as the principal areas of concern, but I'm sure you are
22 aware when you are looking at chemical data and flow fields
23 you have to consider other possibilities, if, indeed, that
24 information that you are looking at should suggest such
25 possibilities, and I just didn't see that.

1 Q. When you were asked at your deposition about the spill
2 of solvents which occurred at the UniFirst facility in the
3 1970s and according to Mr. Schlichtmann in the late 1970s,
4 you stated, "I am not particularly interested in that aspect
5 of the case, so I don't remember the details." Do you
6 remember saying that?

7 A. That would be consistent with my state of knowledge
8 at the time, I think.

9 Q. And are you aware, sir, that it was tetrachloroethylene
10 that UniFirst spilled at some point in the 1970s?

11 A. Reviewing their report, it is my recollection that
12 that was the chemical that they reported had been spilled
13 on the floor of the plant that they were working with and
14 claimed that they had cleaned up.

15 Q. And you did not make any investigation to determine
16 whether or not that claim was accurate or inaccurate?

17 A. How could I do that when I didn't read the report,
18 sir?

19 Q. Well, you didn't investigate any other activity or
20 other waste disposal practices or other use of solvents
21 that may have occurred in UniFirst since they were in
22 business in that area in the 1960s?

23 A. I think my knowledge that I have today comes basically
24 from their report.

25 Q. Wouldn't surface water run from UniFirst down towards

1 Wells G and H, Dr. Pinder?

2 A. If there were surface water, it would not be impossible
3 for that to occur, but I don't -- Well, unless I see it
4 very carefully and what the topography is, it would be
5 difficult to say anything more than it is not beyond the
6 realm of possibility.

7 Q. Now, you agree, and I think we've said this earlier,
8 that the concentrations of tetrachloroethylene or perc,
9 which have been found to exist at the UniFirst site, are
10 far higher than the concentrations of tetrachloroethylene
11 that exist at the Grace site?

12 A. I think specifically you've got about something in
13 excess of a thousand parts per billion at Grace and you
14 said 7,000 parts per billion at UniFirst, and those numbers
15 don't seem out of line to me.

16 Q. And, therefore, sir, isn't it a fact that UniFirst
17 would be a far more likely source of trichloroethylene --
18 tetrachloroethylene to the Well G and H location than W. R.
19 Grace would be?

20 A. If those concentrations of tetrachloroethylene existed
21 at the UniFirst site in the early '60s and the concentrations
22 that you see at the Grace site existed in the early '60s, I
23 would think that both of those companies could be contributors
24 to the wells.

25 Q. My question is isn't it more likely, based on the

1 concentrations we know existed at UniFirst in the 1980s in
2 comparison to tetrachloroethylene concentrations that we
3 know existed at the Grace site in the 1980s, isn't it more
4 likely that the contamination to the wells by tetrachloroethylene
5 came from the UniFirst site?

6 A. If, again, we have to talk about a time frame, if we
7 are going to assume the concentrations at UniFirst existed
8 at the same point in time as the concentrations at Grace,
9 then I would think it is not unreasonable to assume that the
10 concentrations coming from UniFirst could be in the same
11 order of magnitude as Grace. I don't think I could pin it
12 down any tighter than that.

13 MR. KEATING: Excuse me one second, your
14 Honor.

15 (Discussion off record between Mr. Keating
16 and Miss Lynch.)

17 Q. But my question to you, finally on this subject,
18 today, Dr. Pinder, is that you did not make any investigation
19 of the UniFirst site, of its history, of the chemical usages
20 at that particular location, or their waste disposal practices
21 or otherwise when you formed your opinions in this case?

22 A. Well, I did, in fact, visit the site, sir. I was
23 concerned about it.

24 Q. Isn't it a fact that you testified that you weren't
25 permitted to go on the site?

1 A. That is right.

2 Q. In fact, you walked around the periphery of the site,
3 isn't that true?

4 A. Yes, I was unable to get on the property; walked
5 around the property, in the neighborhood of the property,
6 as I did with Grace.

7 Q. On the Grace site you were on the property?

8 A. I am trying to indicate we also walked over the
9 intervening area, which you might generically call the area
10 between UniFirst, Grace, and Wells G and H, to get a feeling
11 for the topography and whether or not people had private
12 wells, which was a concern, of course, because I was afraid
13 they might be using them. I did the best I could with the
14 UniFirst situation, given my ability or inability to access
15 the property. And the other information I had was basically
16 the reports.

17 Q. The reports?

18 A. Their reports.

19 Q. Dr. Pinder, isn't it a fact that you have signed an
20 agreement with the UniFirst Company that you would not
21 testify against that company in any action brought against
22 that company which concerns contamination at their site?

23 MR. SCHLICHTMANN: Your Honor, may we have
24 a Side Bar on this issue---

25 THE COURT: Sure.

1 MR. SCHLICHTMANN: Prior to going into the
2 area.

3
4 CONFERENCE AT THE SIDE BAR AS FOLLOWS:

5 (Mr. Keating hands a document to the Court.)

6 THE COURT: Isn't that part of cross-examination?

7 MR. SCHLICHTMANN: The issue is what is going
8 to be put before the jury about the UniFirst settlement.

9 MR. KEATING: I will not get to the UniFirst
10 settlement.

11 MR. SCHLICHTMANN: This is taken from the
12 UniFirst settlement. If my Brother is going to ask about
13 agreement, then it has to be in the context of the settlement.
14 We can't have him say he has an agreement without saying it
15 is part of the settlement agreement.

16 THE COURT: I don't think that that is true.
17 I don't know what you expect to do, but it is a settlement
18 agreement.

19 MR. KEATING: I will not introduce the
20 settlement agreement. I want him to acknowledge this. It
21 shows bias---

22 THE COURT: No, a limitation.

23 MR. KEATING: Limitation on the investigation,
24 at least.

25 THE COURT: Limitation on his permitted

1 testimony.

2 MR. SCHLICHTMANN: No, he can testify to
3 anything he wishes to. It is a question of his appearing in
4 a case against UniFirst. It has nothing to do with presenting
5 him to testify.

6 MR. KEATING: If that is his answer, that is
7 his answer. I am entitled to ask him about that.

8 MR. SCHLICHTMANN: He has, in fact, testified
9 that they are a contributor to contamination.

10 MR. KEATING: Hardly.

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MR. KEATING: I think I'm entitled to it

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to show whether or not he thought he was under any

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constraint in the investigation that he made of the UniFirst

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Company. This is as likely a contaminator of these wells

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as either of the two defendants, if not more likely. He's

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given them virtually a clean bill of health.

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THE COURT: Not quite.

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MR. KEATING: Awful close to it. And he

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never did anything with the company. He walked around the

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periphery of the company.

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THE COURT: This was all before September

12

of '85?

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MR. KEATING: I don't know what material

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-- it's after he was engaged in this case.

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THE COURT: I know, but he walked around

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-- the walking around and so forth was prior to the

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signing of this agreement?

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MR. KEATING: I don't mean to quarrel

19

with that. But what I'd like to explore is whether or not

20

-- first of all, it says he received consideration from

21

UniFirst in exchange for his promise not to testify

22

against them, and it seems to me that's --

23

MR. SCHLICHTMANN: The consideration is

24

the settlement of the action.

25

MR. KEATING: What does he care about the

1 settlement of the action? I ought to be able to ask him
2 about that. And I certainly ought to be able to ask him
3 whether or not that agreement with UniFirst in some fashion
4 constrained him, at least as he interpreted that agreement,
5 from either what he could say about UniFirst in this
6 action or the thoroughness about his investigation into
7 UniFirst.

8 MR. SCHLICHTMANN: The issue here is
9 relevance. Whether or not UniFirst, Murphy's Piggery, the
10 tanneries to the north or any other company is a source
11 of contamination is not relevant on the issue of whether
12 Grace and Beatrice contaminated the wells. It's not
13 plaintiffs' burden to bring in here every tortfeasor who
14 polluted the groundwater. And it's not fair to insinuate
15 to the jury we have such a burden.

16 There was a settlement agreement. If my
17 brother wants to bring it up, he cannot do it piecemeal.
18 Out of fairness, it cannot be done piecemeal. And the
19 issue of relevance is very key here. My brother is using
20 its prejudicial value. What is logically relevant about
21 any of this?

22 THE COURT: If he, in connection with his
23 defense, brings in an expert who disputes Dr. Pinder --
24 you're assuming that Pinder's conclusions are unassailable
25 and incontestable. I rather doubt that that's so, and I

1 suspect that there will be an expert who will say that it
2 wasn't Grace, it wasn't Beatrice. Maybe two experts, I
3 don't know. But if so, and if one of them were to say it
4 isn't these two, it's UniFirst, and then the jury has to
5 make a decision as to which expert to believe, which I
6 guess is what a jury has to do -- and it's going to be
7 extremely difficult to do in this situation -- I'm assuming
8 that there will be these experts. I see all kinds of
9 distinguished gray-haired types.

10 MR. SCHLICHTMANN: If they're here in the
11 courtroom, they won't be testifying. They're just monitors.

12 THE COURT: Oh, I see.

13 I assume there's going to be another
14 hydrogeologist, is there not?

15 MR. KEATING: Yes.

16 THE COURT: An expert of this caliber?

17 MR. KEATING: Hopefully better.

18 THE COURT: Of the same general class of
19 experts?

20 MR. KEATING: Yes, sir.

21 THE COURT: And they're going to say
22 something different than what Dr. Pinder has said.

23 MR. KEATING: Yes.

24 THE COURT: Then the jury is going to have
25 a choice. And I think this agreement -- it's an

1 astonishing agreement. I've never seen one. But, anyway,
2 there it is. I think it has to be in.

3 Now, to the extent that you want to go
4 further with it, that's up to you, but I would not permit
5 Mr. Keating to go any further with it than just this.

6 MR. SCHLICHTMANN: By mentioning the
7 agreement, this is the settlement agreement.

8 MR. KEATING: No, it isn't. It's the
9 amount of the settlement which you're concerned with.

10 THE COURT: I'm going to let it in.
11 Anything more you want to put in is up to you.

12 MR. SCHLICHTMANN: Only that there was a
13 settlement. When he says agreement, it should be the
14 settlement agreement. Part of the settlement agreement.

15 THE COURT: You want him to say it's part
16 of a settlement agreement? Sure. But this goes in.

17 Do you want to have it marked?

18 MR. KEATING: Sure. Can I ask him one or
19 two more questions?

20 END OF CONFERENCE AT THE BENCH.)

21
22 Q (By Mr. Keating) Now, Dr. Pinder, I show you a
23 document entitled "Agreement" and ask you whether or not
24 that document bears your signature?

25 A Yes, it does.

1 Q And I ask you whether or not this document was
2 executed by you in connection with the settlement of the
3 lawsuit against the UniFirst Corporation.

4 A I think that was the reason that I was given this
5 document.

6 Q All right. Now, would you read to the jury the
7 paragraph that begins "Professor George Pinder promises. . . ."?

8 A "Professor George Pinder promises not to consult" --

9 Q Would you slow down just a bit?

10 A ". . .consult, testify or otherwise provide services
11 to any person who is seeking to bring or who has brought
12 any action or claim against UniFirst based upon the
13 transactions or occurrences that are at issue in this
14 lawsuit."

15 Q ". . . the lawsuit."

16 A ". . . the lawsuit."

17 Q And that bears your signature?

18 A Yes, sir.

19 Q And the transactions or occurrences that are at issue
20 in quote the lawsuit close quote are the same transactions
21 or occurrences relating to groundwater contamination from
22 UniFirst that are at issue in this lawsuit, isn't that true?

23 A I don't understand the nuances of this, but my
24 understanding is that this basically says that I am not
25 going to be further involved in this case beyond the current

1 trial.

2 Q Well, it says that you are not going to testify.

3 A Right.

4 Q And it says you're not going to otherwise provide
5 services to any person who is seeking to bring or who has
6 brought a claim against UniFirst based upon transactions
7 or occurrences that are at issue in the lawsuit. And the
8 lawsuit has to do with groundwater contamination --

9 THE COURT: The lawsuit is defined in the
10 document, in the first paragraph, as being Anderson versus
11 UniFirst.

12 MR. KEATING: Right, your Honor. Docket
13 85-2098.

14 MR. FACHER: Middlesex County.

15 Q That is what the document says, does it not?

16 A You read the paragraph, as I did.

17 MR. KEATING: Is this admitted, your Honor?

18 THE COURT: Yes. What number did you
19 finally give it?

20 MR. KEATING: That is G-560.

21 (Document entitled "Agreement" was marked
22 Defendant Grace Exhibit G-560 and received
into evidence.)

23 MR. KEATING: And, your Honor, I think that
24 that is all I will have for today. If we could begin this
25 on Monday -- excuse me. I mean begin it tomorrow, rather.

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THE COURT: Tomorrow morning at nine.

MR. SCHLICHTMANN: Is the document going to be shown to the jury?

THE COURT: It's been read, so I don't think it needs to be now. I'm not going to hold them up now.

(Jury leaves the courtroom.)

(CONFERENCE AT THE BENCH AS FOLLOWS:

THE COURT: As to the amount of the settlement, I think that may be admissible later on. There are two ways to do it, and I'm not sure, I think we discussed this earlier.

MR. SCHLICHTMANN: There's a right way and a fair way. The fair way, your Honor, I believe, and I think authority supports us on this is that what is this relevant for, what's the amount relevant for. The only possible relevance of the amount is that the plaintiff is going to have double recovery. The plaintiffs stipulate for the record that any amount recovered in this case, they will deduct from that the amount received in settlement from UniFirst. With that stipulation in mind--

THE COURT: That's my preference, but I'm not so sure that's what we're dealing with in a Massachusetts case.

1 In any case, my present inquiry is to ask
2 how long your cross-examination is likely to be.

3 MR. KEATING: I think it will finish
4 tomorrow, your Honor.

5 THE COURT: So then you'll want some
6 redirect?

7 MR. SCHLICHTMANN: Short redirect.

8 THE COURT: And recross will be on
9 Wednesday and Thursday of next week.

10 MR. SCHLICHTMANN: The last day is
11 Thursday.

12 MR. FACHER: He's right. Wednesday and
13 Thursday of next week.

14 THE COURT: Wednesday and Thursday of
15 next week will finish up recross.

16 MR. SCHLICHTMANN: That does present a
17 scheduling problem for Dr. Pinder.

18 THE COURT: I asked you a little while ago
19 if he was going to be available the 27th and 28th.

20 MR. SCHLICHTMANN: I thought you were
21 referring to this week, your Honor. I was wondering if we
22 could have the redirect tomorrow afternoon, and that will
23 provide all day for recross on Thursday. My redirect will
24 not consume very much time on Wednesday, and that will
25 give them all Thursday on recross.

1 THE COURT: I wouldn't think there would
2 be much recross. What's the matter with him on Wednesday?

3 MR. SCHLICHTMANN: He's leaving the country,
4 your Honor. I don't even know if there's a time problem.

5 Do my brothers object to that, if we stay
6 a little later for my redirect, and then you have all day
7 Thursday for recross?

8 THE COURT: How much redirect do you think
9 you're going to have?

10 Let's assume, Mr. Keating, you quit by
11 11 o'clock tomorrow.

12 MR. KEATING: That's a little early,
13 although I would hope I would quit so he could get some
14 time tomorrow.

15 MR. SCHLICHTMANN: I wouldn't hold you to
16 it. My redirect would be less than an hour, 30 minutes,
17 45 minutes.

18 THE COURT: And then Thursday morning
19 would be enough for recross, I would suppose.

20 MR. SCHLICHTMANN: That's what I'm asking
21 my brothers.

22 MR. FACHER: I don't know, but one would
23 try.

24 THE COURT: I wouldn't feel at all
25 embarrassed about limiting recross to an hour and a half

1 apiece.

2 MR. FACHER: I can't work Thursday
3 afternoon because I've got a meeting in the Supreme
4 Judicial Court.

5 THE COURT: No, no. We're not talking
6 about Thursday afternoon. We're talking about tomorrow
7 afternoon.

8 MR. FACHER: I can work tomorrow afternoon,
9 if that will help you.

10 MR. SCHLICHTMANN: I'll keep my redirect
11 short if it's an inconvenience with everybody.

12 THE COURT: I'll have to check with the
13 jurors.

14 MS. LYNCH: It's the jurors that have
15 expectations about not being here in the afternoon.

16 MR. FACHER: I was under the impression
17 we were good for the whole month.

18 THE COURT: When is he leaving for
19 Europe?

20 MR. SCHLICHTMANN: The 29th.

21 THE COURT: The 29th is all right. The
22 27th and the 28th are the days we want him.

23 MR. SCHLICHTMANN: Next week?

24 MR. FACHER: No, I think the 28th and 29th.
25 The 26th is a Monday.

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THE COURT: Oh, yes. And I specifically asked you--

MR. SCHLICHTMANN: I thought you were talking about this week. I'm sorry. I apologize for that. I don't think it's a problem here.

THE COURT: Well, if we get him for the 28th, anyway--

MR. SCHLICHTMANN: If we had to.

THE COURT: That ought to handle it, actually.

MR. FACHER: I think the 28th would handle it.

THE COURT: Unless there's a problem with the jurors.

1 THE COURT: Unless there is a problem with
2 the jurors, which is now too late to inquire about, I will
3 put it to them tomorrow morning and see if we can't bring
4 them in.

5 MR. KEATING: I wouldn't be surprised if
6 we wouldn't be finished Thursday, depending on what you've
7 got. I don't think I will have too much recross.

8 MR. FACHER: This case is not good for
9 prediction. It has always been longer.

10 THE COURT: Recross is more subject to
11 judicial discretion rather than anything else. I wouldn't
12 feel too bad about that. Everybody has climbed up one side
13 of this guy and down the other.

14 MR. FACHER: He said some new things, though,
15 we heard some new things this morning.

16 MR. SCHLICHTMANN: New things?

17 THE COURT: He brought them out. You don't
18 have to do them again.

19 MR. FACHER: Well---

20 THE COURT: Let me point to what seems to
21 be a professional compulsion.

22 MR. KEATING: Professional what, your Honor?

23 THE COURT: Compulsion.

24 That is to meet every irrelevancy with a
25 counter irrelevancy, just because the other guy has raised

1 it. Let it go. Maybe we can shorten the thing up.

2 It seems to me that we have gotten this
3 guy's position and the weaknesses in his position, and all
4 of this has been covered extensively, and I would think
5 that if there is really something new, then we have to
6 cover it. We do have a little bit of an escape valve on
7 the 28th; we can bring him back.

8 MR. KEATING: Let's see what happens.

9 MR. SCHLICHTMANN: I think based on what my
10 Brothers are saying and what I have in mind---

11 MR. FACHER: it is hard when the witness has
12 a compulsion to explain. You can say explain, and I will
13 hear a speech and off we go. We certainly can try.

14 THE COURT: He has his problems, you have
15 yours.

16 MR. FACHER: That is why these are all
17 separate parties.

18 THE COURT: That is why you have to restrain
19 yourselves a little bit.

20 If it isn't important -- I am kind of
21 interested in this discrepancy between the report on Well 3
22 in the picture.

23 MR. FACHER: There are some others like
24 that.

25 THE COURT: It brings to mind restrictions

1 in the use of the picture.

2 MR. KEATING: Why don't we see what happens
3 tomorrow. I will not prolong it. I will try to finish it
4 up as soon as I can.

5 THE COURT: The guy is going to Europe.

6 I don't understand why knowing he was going
7 to be a key figure in this lawsuit, he didn't arrange his
8 life better. I though he had to get back to Princeton.

9 MR. SCHLICHTMANN: He took special leave of
10 absence. It is against the rules of Princeton for him to
11 testify, so he took a leave of absence to spend as much
12 time as necessary on this thing. He has done that.

13 THE COURT: Part of this time -- He's got
14 to be charged with some of the time we have spent trying to
15 get him to straighten out his answers.

16 Let's all do the best we can.

17 MR. FACHER: All right, your Honor.

18 MR. KEATING: See you tomorrow.

19

20 END OF CONFERENCE AT THE SIDE BAR.

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(Whereupon, the 47th day of trial was concluded.)

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