

Woburn's landmark trial

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Toxic waste case is given to the jury

By DAN KENNEDY

BOSTON — Lawyers in the Woburn leukemia trial made their closing arguments in U.S. District Court Monday, bringing the first phase of the historic "toxic tort" case to a conclusion after 77 days.

Judge Walter Jay Skinner was to instruct the six-member, five-alternate jury this morning before it begins its deliberations — a process that could take as long as several weeks given the highly complex, technical nature of the testimony and evidence.

The steamy 15th-floor courtroom was packed Monday. With every seat taken, court officers forced a number of would-be spectators to cool their heels in the corridor. The scene was in

sharp contrast to the scant public interest that has prevailed most of the time since the trial opened March 10.

The case involves a claim by eight East Woburn families that two large, multinational corporations — W.R. Grace & Co. and Beatrice Foods Co. — are responsible for contaminating municipal wells G and H, which were closed in 1979 after 15 years of use.

The contaminants caused six deaths and two illnesses, the plaintiffs say.

In this first phase of the trial, however, the jury must decide only the question of whether the companies are liable for the contamination. If the jurors decide in favor of the defendants, then the trial will be over.

But a verdict against one or both defendants will bring about a second phase of the trial, in which the plaintiffs will attempt to show that the chemicals at issue — principally trichloroethylene (TCE) — cause leukemia, heart problems, and disorders of the immune and nervous systems.

The Grace property is the company's Cryovac manufacturing plant, 369 Washington St., located 2,500 northeast of wells G and H. During the trial, present and former employees testified that they dumped chemical solvents down storm drains and on the ground behind the plant.

Grace lawyers do not dispute that testimony. But they presented evidence that the chemicals

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could not have reached the wells by the time they closed in 1979, and that the principal source of contamination was the Aberjona River, into which a number of industries in North Woburn and Wilmington poured industrial wastes.

The Beatrice property is a 15-acre site 700 feet southwest of the wells. It is adjacent to the Riley Leather Co. tannery, 228 Salem St. Beatrice owned both the tannery and the 15 acres from 1978 to 1983, and retains legal liability.

The plaintiffs claim the tannery allowed others to use the 15 acres as a chemical dumping ground during the 1960s and '70s — a claim Beatrice's lawyers have vigorously contested.

The jury heard no new evidence Monday, as the lawyers used their closing arguments to review the testimony of the previous four months. But the jurors, and the spectators, did hear some of the more colorful invective of the trial, as the lawyers attempted to persuade the jurors to see things their way.

For example, Grace attorney Michael B. Keating compared the testimony of plaintiffs' hydrogeologist Dr. George Pinder, concerning the effect of the Aberjona River on wells G and H, to "a bad piece of meat at the top of a can of beef stew — you are under no obligation to fish around any further."

Plaintiffs' attorney Jan Richard Schlichtmann claimed that, when Grace hydrogeologist Dr. John H. Guswa told Judge Skinner that it was, indeed, "probable" that contaminated groundwater was flowing into wells G and H from the west and the northeast, "W.R. Grace blew the horn in retreat" by suggesting the contamination came from the Massachusetts Rifle Association

range and from residential septic systems on Dewey Avenue rather than from its own property.

And Beatrice attorney Jerome P. Facher continually referred to Pinder's testimony that groundwater from the Beatrice site changes direction and flows under the Aberjona River into the wells when the wells are turned on as "bizarre" and "contrary to nature."

One issue must still be decided before the jury begins its deliberations. Lawyers told reporters Monday that Skinner has not yet ruled whether the case will be decided by a unanimous vote of the six regular jurors or by a majority vote of all 11 jury members. In the latter case, eight or nine votes would be required to find either defendant liable.

Another issue that is to be decided is whether the standard of "strict liability" will be applied to Grace. In a ruling he issued June 4, Judge Skinner said that standard could be applied because of evidence that Cryovac employees engaged in an "abnormally dangerous" activity — deliberately dumping chemicals on the ground.

Under the standard of strict liability, Grace could be held liable for contaminating wells G and H even if the jury determines the company did not act negligently.

In the case of Beatrice, Skinner ruled there was no evidence that the tannery itself had dumped chemicals on the 15 acres. Therefore, the judge said, the plaintiffs would have to show that the tannery negligently allowed others to dump chemicals.

But on Monday, lawyers told reporters that the jury will not decide the strict liability issue, because Massachusetts law allows jurors only to vote on

whether they believe a defendant acted negligently.

If the jury finds that chemicals at the Grace site contaminated wells G and H, but that the company did not act negligently, Skinner could rule that Grace is liable under the standard of strict liability.

Plaintiffs' attorney Kevin Conway and Grace attorney William Cheeseman said that could lead to an odd but unlikely scenario in which the jury would dismiss the complaint against Grace and the judge would reinstate it and send Grace into the second phase of the trial.

Both sides focused heavily on the negligence issue Monday. Facher and Keating pointed to numerous studies by engineers hired by the city of Woburn and by state health agencies approving the installation of drinking water wells in the area of G and H in 1964 and again in 1978.

Those actions showed responsible public officials could not foresee that the Grace and

Beatrice properties represented any threat to health, they said, adding that their clients could not be expected to be more knowledgeable about drinking water supplies than governmental agencies.

But Schlichtmann argued the burden was on the defendants to make sure they did nothing that could endanger groundwater supplies, which they knew or should have known was a source of drinking water in the city.

The tannery, Schlichtmann said, should have, at the least, constructed a fence to halt access for Whitney Barrel Co. and others that allegedly dumped chemicals and barrels on the 15 acres.

Grace officials, he added, should have had their liquid wastes trucked offsite and disposed of properly. The company's attitude, he said, was that "any amount of money, no matter how little, was too much" rather than that "any

amount of waste dumped on the ground, no matter how little, is too much."

Facher, at the conclusion of his 1-hour, 45-minute argument, asked the jury to consider the record of John J. Riley Jr., the man who sold his tannery to Beatrice and who bought it back five years later. As Riley sat in the audience, Facher described him as a conscientious businessman whose family had owned the tannery for 71 years and who cared about the community.

"I would ask this jury to send Riley out of the courtroom and back to the tanning business. They (tannery officials) did nothing wrong and should not be held for these dire consequences," Facher said.

Keating, concluding his 1-hour, 15-minute presentation, told the jurors he was confident they could weigh the evidence in the case and set aside emotions.

"It is said that if you represent a major corporation today and that that corporation has been accused of contaminating the environment, and that it stands further accused of injuring people as a result of that contamination of the environment, you cannot receive a fair trial," Keating said. "But the people who say that do not believe in the process. My part-

ners and I believe in the process. We believe in this system because we believe in you."

And Schlichtmann ended his own 1-hour, 45-minute argument by asking the jurors to show "the courage and the strength to see this through to the end. As difficult as it is, as tedious and time-consuming as it is, it's got to be done right if the families are to receive justice."

Schlichtmann quoted from a 100-year-old play by Henrik Ibsen, "Enemy of the People," about a fictional tannery that pollutes a water supply: "Expediency turns justice and morality upside down until life here just isn't worth living." Schlichtmann concluded by asking the jury to set aside expediency in favor of justice and morality, and to make "life worth living" for his clients.