

*filed in open court  
7/9/80*

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

ANNE ANDERSON, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
v.	)	NO. 82-1672-S
	)	
CRYOVAC, INC., ET AL.,	)	
	)	
Defendants.	)	
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BEATRICE'S MOTION FOR A DIRECTED VERDICT  
AT THE CLOSE OF ALL OF THE EVIDENCE

Pursuant to Fed. R. Civ. P. 50(a) and (b), the defendant Beatrice Foods Co. moves for entry of a directed verdict for Beatrice on the grounds that the evidence most favorable to the plaintiffs would not permit a verdict for them. In support of this motion, Beatrice states:

1. The evidence most favorable to the plaintiffs does not establish that the tannery should have known that debris, barrels or other materials meant that dangerous liquid chemicals would get into the soil and groundwater under the 15 acres.

2. The evidence most favorable to the plaintiffs does not establish that it was reasonably foreseeable between 1964 and 1979 that dangerous liquid chemicals disposed of on the 15 acres would travel vertically through the soil, reach the groundwater, and

*Tr. 41-9193 - may or  
contaminated not long and later 60's  
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then continue to travel across and far underneath the 15 acres, under the Aberjona River and into Wells G and H when they were pumping together.

3. The evidence most favorable to the plaintiffs demonstrates that the contamination of Wells G and H by deep groundwater moving laterally from the Riley property was a highly extraordinary result, and is altogether different from the result Riley should have recognized. Therefore such a result is unforeseeable and not the legal cause of injury as a matter of law.

Restatement Torts 2d § 415 435

4. The evidence most favorable to the plaintiffs does not establish that Beatrice was responsible for plaintiffs' injuries because the independent acts of others, which diverted groundwater from under the 15 acres, were superseding and intervening forces which changed the natural conditions in a way not reasonably foreseeable and, thus, were the active efficient causes of plaintiffs' injuries.

5. The evidence most favorable to the plaintiffs fails to establish when and in what amounts complaint chemicals were disposed of on the 15 acres after August, 1968 and, thus, there is no evidence from which a jury may find negligence.

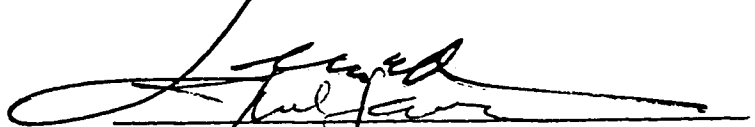
6. The evidence most favorable to the plaintiffs fails to establish that complaint chemicals disposed of on the 15 acres after August, 1968 substantially contributed to the contamination of Wells G and H as opposed to contamination which occurred at early times or which came from other sources.

7. The evidence most favorable to the plaintiffs fails to establish that prior to 1979 the complaint chemicals were disposed of on the 15 acres in sufficient quantity, concentration and frequency to result in their presence in the groundwater and wells.

8. The evidence most favorable to plaintiffs fails to establish that it was reasonably foreseeable to one in Riley's position that groundwater would flow counter to the flow of an adjacent river and past such river to wells upstream on the far side.

9. On the evidence most favorable to the plaintiffs, their nuisance claim does not constitute a separate cause of action against Beatrice for nuisance. The concept of "public nuisance" merely describes a type of injury based on negligence or intentional conduct. Since there have been no purposeful activity on the 15 acres any "nuisance" liability can only be based on negligence which is already stated as a separate cause of action.

By its attorneys,



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