

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

.....
ANNE ANDERSON, et al.,
Plaintiffs,
v.
CRYOVAC, INC., et al.,
Defendants.
.....

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
NOV 19 1982
Civil Action No.
82-1672-S

MOTION BY DEFENDANT W.R. GRACE & CO.
d/b/a CRYOVAC DIVISION TO STRIKE THE
COMPLAINT AND AMENDED COMPLAINT AND
DISMISS THE ACTION UNDER RULE 11

Defendant W.R. Grace & Co. ("W.R. Grace") moves pursuant to Rule 11, Fed.R.Civ.P., for an order striking the plaintiffs' Complaint and Amended Complaint and dismissing the plaintiffs' action as against W.R. Grace, without prejudice, on the ground that the Complaint and Amended Complaint were filed without belief that there was good ground to support the allegations made against W.R. Grace.

Defendant also moves that hearing and decision of this motion be stayed pending completion of discovery relevant thereto.

In support thereof, defendant says as follows:

1. Promotional brochures distributed by plaintiffs' Washington lawyers indicate that they solicit "contributions" of \$1,000 or more from attorneys practicing in each state, in exchange for preference in selection of local counsel to handle litigation forwarded by the Washington lawyers. Plaintiffs'

Boston lawyer is identified as a "Founder" who contributed \$1,000 or more. One brochure states that the Washington lawyers were considering a broad program of hazardous waste litigation against several dozen corporations under a statutory scheme whereby "successful litigants may recover costs and attorneys fees." Ex. A. On information and belief, plaintiffs' Washington lawyers solicited one or more of the plaintiffs to be plaintiffs in this action.

2. The Complaint and Amended Complaint allege that twenty-four plaintiffs fear they may in the future contract leukemia, and that six plaintiffs have contracted leukemia, as a result of ingesting municipal drinking water contaminated by chemicals which were allegedly disposed of by W.R. Grace and another defendant. Amended Complaint ¶¶1, 45-47, 58-61.

3. On May 28, 1982, a few days after this action was commenced, Elizabeth H. Kilbreth, identified as a technical consultant employed by plaintiffs' Washington lawyers, was reported in the Providence Journal to have said that the plaintiffs nonetheless "have no firm proof of a connection between the families, chemicals found in their wells and the three companies". She is quoted as having said that the suit is based instead only on a "kind of a common-sense kind of link. It's a fairly safe assumption that there is some kind of environmental link." Ms. Kilbreth is also quoted as having said, however, that "the chemicals [allegedly] dumped . . . have not been linked to leukemia." Ex. B.

4. On September 30, 1982, Douglas Johns, identified as a law clerk with plaintiff's Boston lawyers, was reported in the Somerville Journal to have complained that state and federal agencies have made no effort "to find the cause of the leukemia or to ascertain who is responsible" and that "Our suit alleges those two companies are responsible." Ex. C.

5. The Complaint and Amended Complaint are apparently based on information and statistics set forth in the March 8, 1982 "Final Report" by Ecology and Environment, Inc. on groundwater contamination in East Central Woburn, prepared under contract to the Environmental Protection Agency. However, that Final Report notes that there are approximately thirty-seven currently active industrial or commercial facilities in a one-square-mile area surrounding the affected municipal wells, as well as other active facilities outside that area but near the wells and numerous inactive or abandoned facilities and illegal dump sites which were studied. Of these facilities and sites, the W.R. Grace Cryovac plant, which manufactures stainless steel food handling equipment, is one of the farthest removed from the municipal wells. The report states that a variety of chemicals were found in groundwater sampled at test wells located throughout the area, and the report concludes that the source or sources of this contamination are undefined and that further study is needed before it is possible to identify specific industries as even potential, let alone actual sources. Excerpts, Ex. D.

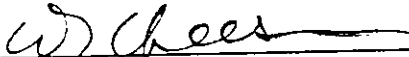
6. An Interim Report by Ecology and Environment, Inc. dated May 6, 1981 indicated that none of the chemicals referred to in

the Complaint and Amended Complaint is known to be associated with childhood leukemia.

7. On or about July 7, 1982 counsel for W.R. Grace wrote to plaintiffs' Washington and Boston lawyers, asking that this action be voluntarily dismissed, without prejudice to commencing a new action should a basis for claims against W.R. Grace ever arise. Affidavit of Ex. E. There has been no reply; instead, plaintiffs have endeavored to prosecute the action actively, and to put W.R. Grace to the expense of defending unfounded and improper charges.

8. W.R. Grace has noticed depositions and served interrogatories to elicit and authenticate additional facts relevant to this motion. W.R. Grace will attempt to complete this limited discovery promptly, and will then request a hearing on the within motion.

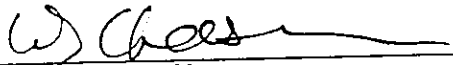
By its attorneys,



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Boston, Massachusetts 02109
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CERTIFICATE OF SERVICE

I, William J. Cheeseman, attorney for the above-named defendants, hereby certify that on November 8, 1982 I served the within Motion by Defendant W. R. Grace & Co. d/b/a Cryovac Division to Strike the Complaint and Amended Complaint and Dismiss the Action Under Rule 11 upon all other parties by causing a copy thereof to be delivered by mail, postage prepaid, to Jan Richard Schlichtmann, Esquire, Reed and Mulligan, 101 Tremont Street, Boston, Massachusetts, Neil Jacobs, Esquire, Hale and Dorr, 60 State Street, Boston, Massachusetts and to Anthony Z. Roisman, Esquire, Trial Lawyers for Public Justice, Suite 611, 2000 P Street, N. W., Washington, D.C.



William J. Cheeseman