

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.
82-1672-S

DOCKETED

ANNE ANDERSON, ET AL.

Plaintiffs

v.

W.R. GRACE & CO., INC., ET AL.

Defendants

ORDER

December 9, 1985

COHEN, M.

After hearing, it is hereby ordered as follows:

1. Defendants' Motion to Compel Deposition Testimony by Expert Witness filed December 9, 1985, is allowed, and Plaintiffs' Motion for Protective Order filed December 9, 1985, is allowed. Approximately two weeks ago, the parties appeared before this court with respect to a matter whereby plaintiffs sought to install a computer on land owned by an entity not a party to this lawsuit. Plaintiffs contended that the monitoring of ground water flow by means of a computer, as opposed to other means, would produce the most reliable results. This court found and concluded that plaintiffs were correct in this assertion, and further found and concluded that--above all other matters--accurate data acquisition was the most worthy of goals, even if that method might, as a by-product, provide

plaintiffs with some sort of tactical advantage.

The principles remain the same. The issues to be resolved in this case clearly and unequivocally transcend matters of tactical advantage, and questions of winners and losers. While issue has been joined in the context of a lawsuit pointing fingers at various defendants, the first and foremost issue to be resolved, from plaintiffs' perspective, is what, not who, appears to be causing a claimed higher incidence of leukemia and other health problems in their community. That is more than a parochial issue. It is a matter of great public interest to all. The stakes are simply too high to engage in extended griping about matters such as "tactical advantage." The public interest would hardly be served by requiring defendants to depose plaintiffs' experts on so serious a matter without the guidance of expertise provided by their own experts. That would not be meaningful discovery. It would merely be defendants groping in the dark about issues which concern all--not just the plaintiffs or the defendants in this case.

2. Defendant W.R. Grace & Co., Inc's Motion to Compel Answers to Deposition Questions filed December 9, 1985, is allowed to the extent that the said Dr. Shirley Conibear shall answer questions relating to all matters wherein she was involved as an expert in drinking water pollution litigation, to the extent that such involvement involved a matter which resulted in litigation.

3. The deposition of Dr. Pinder shall commence on Tuesday, December 10, 1985, as originally scheduled.

4. Plaintiffs' oral motion¹ for an order compelling defendants to finally designate all experts is denied. Since this court's initial involvement in this case, counsel for plaintiffs has seemingly relied upon the bare bones of certain reports and/or other information--i.e., the report entitled "Chlorinated Solvent Contamination of the Groudwater: East Central Woburn, Massachusetts", and some information that trichloroethylene caused tumors in mice--in support of their claims that these defendants caused a higher incidence of leukemia and other health problems in East Woburn. See Anderson v. Cryovac, Inc., 96 F.R.D. 431, 432 (D.Mass. 1983). While that general information may be sufficient to overcome any relief under the provisions of Rule 11, F.R. Civ. P., see Anderson v. Cryovac, Inc., supra, and while that general information is enough to warrant the case to proceed without the need of some sort of "mini-trial" to determine whether plaintiffs can ever establish their claims, see Anderson v. Cryovac, Inc., Civil Action No. 82-1672-S, Supplement to Order on Motion to Amend Complaint (D.Mass, January 30, 1985), it is clearly not enough to put these defendants on notice as to plaintiffs' precise theories of causation and liability. In the scheme of things,

1. At the hearing before this court on this date, counsel for plaintiffs alluded to a number of discovery and discovery-related motions referred to this court by Order of Reference dated October 4, 1985. As counsel for plaintiffs well knows, no hearing has been scheduled on those motions on account of representations made by all counsel that most--if not all--disputes subsumed therein have been informally resolved. If there has been a change in this status, counsel for plaintiffs [or defendants] merely needs to indicate to the Clerk of this court those motions which are ripe for consideration, and a hearing thereon will be scheduled in due course.

defendants can only be reasonably expected to finally designate their experts upon ascertaining these precise theories. That is simply the stuff of lawsuits. It is the plaintiffs who accuse, and the defendants who must defend. Once defendants have ascertained that of which they are being accused in all of the particulars, then they should then and there be required to designate those experts who they intend to call defensively to the accusations made by the plaintiffs.


UNITED STATES MAGISTRATE