

plaintiff's and defendants presenting their evidence on each phase, and the jury returning appropriate verdicts, before the next phase begins. The first phase ("the conduct and contamination phase") would focus on defendants' conduct and its impact if any, on Wells G and H. If plaintiffs prevail on this phase, the parties would move on to a second phase ("the water distribution phase"), which would focus on whether, and if so, when, and to what extent, any complaint chemicals that migrated from defendants' property to Wells G and H reached each plaintiff's home. If some or all plaintiffs establish that they were exposed to any complaint chemicals that migrated from defendants' property, the third phase of the liability case ("the medical causation phase") would then focus on whether those plaintiffs were physically harmed as a result of their exposure to any of these complaint chemicals.

There are at least two compelling reasons for adopting this approach. First, it will establish a structure that requires that the case be presented in a logical and orderly sequence.

This will help focus the jury's attention on the disputes between the parties on an issue-by-issue basis.

Second, this approach will bring to the forefront the potentially dispositive conduct and contamination issues that are common to all plaintiffs. Because the proof on these issues will not vary from plaintiff to plaintiff, these issues can be resolved relatively quickly. Only if plaintiffs prevail on these common issues will there be any need to consider the water distribution and medical causation issues, both of which will require more individualized, and hence more time consuming proof.

Conclusion

For the reasons set forth above, as well as those set forth in Grace's original Memorandum In Support Of Motion For Separate Trial On Liability And Damages, which Grace incorporates by reference herein, Grace respectfully suggests that the Court exercise its discretion to order separate trials on liability and damages under Fed. R Civ. P. 42(b), and try the liability issues in phases as described above. Grace believes that, in the unique circumstances of this case, this general approach would be the most logical, efficient, and expeditious way of reaching a just resolution of the important issues that are involved.

Grace reserves its right to suggest the precise framing of these and other issues, as well as special jury interrogatories, at the pretrial conference or such other time as the Court request.

W. R. GRACE & CO.
By its attorneys,

Michael B. Keating
William J. Cheeseman
James K. Brown
Foley, Hoag & Eliot
One Post Office Square
Boston, Massachusetts 02109
(617) 482-1390

Dated: January 15, 1986

Legend: ~ matter omitted

This document contains the text from the original document submitted in court, but reformatted. The formatting is intended to recreate a facsimile of the original.