

IN THE 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 )

**DOCKETED**

PLAINTIFFS' TRIAL PLAN: A MODIFIED TEST CASE

I. Introduction

Plaintiffs acknowledge the issues raised by W.R. Grace (Grace) in its memorandum in support of separate trials on liability and damages. Grace suggests a division of issues into liability, compensatory damages and punitive damages. The difficulty with this approach is that issues of liability and damages do not sort out neatly because plaintiffs evidence on exposure overlaps their evidence on damages. The plaintiffs are also sensitive to the concerns raised by the Court that a jury might be overwhelmed by the consideration of 33 separate damage claims. The Grace proposal does not respond directly to this concern. Plaintiffs, after much deliberation, suggest that the Grace plan be modified as described below.

## II. A Modified Test Case

As the Court is well aware, plaintiffs consist of 33 separate claims, including those of five deceased children. To ensure an orderly, manageable, clear and error-free trial, the plaintiffs propose that all theories and claims of the Anne Anderson family alone be tried against both defendants to a verdict on both liability and damages. These claims consist of those of Anne Anderson, individually and as administratrix of the estate of James Anderson, Christine Anderson and Charles Anderson.

The Anderson family is indeed the appropriate family to be tried first and is strikingly indicative of how the issues of liability and damages integrally intertwine. The plaintiffs' case on liability, particularly causation, is a story which begins with Anne Anderson and her investigation concerning the similarities of injuries in Woburn to those of her own family. The liability story in this case began with a recognition of damages and an investigation of its causes.

By limiting the first phase of the trial to these four claims, plaintiffs believe they can alleviate the defendant Grace's concerns, at least those which resulted in its motion for a bifurcated trial under Fed. R. Civ. P. 42(b). In addition, plaintiffs' trial plan addresses the Court's concern about confusion resulting from a jury's need to consider 33 separate claims simultaneously.

### III. Conduct of Trial

The plaintiffs and defendants would select a jury which would eventually resolve all claims of all plaintiffs with respect to both defendants. The trial plan would be explained to the jury. Selection of an unbiased jury would require the identification of all 33 plaintiffs. The Anderson family would serve as a test case and be tried first. Plaintiffs' counsel would make an opening statement with respect to all families. The Andersons would present fact witnesses and expert testimony on all issues, limited to the claims of the Anderson family. Plaintiffs emphasize, however, that expert testimony on the Anderson family will to some extent necessarily involve testimony relating to medical examinations and symptoms of other plaintiffs since, in some cases, the symptomology of other exposed persons is evidentiary and confirmatory of a given individual's claim. In this regard, the simplification which this plan permits lies not in the limitation of the evidence which will be presented with respect to the Anderson family, but in the elimination of evidence relating to the specific damages of the remaining 29 claimants to the extent that it does not relate to the Andersons' claims and to the clarity of the issue before the jury, that is, liability and damages with respect to a single family of plaintiffs.

### IV. Remaining Claims

Assuming an affirmative verdict in the Anderson case on the common issues of liability, the second phase of the case would

entail presentation of the remaining claims on a family by family basis. This phase would involve recalling only a limited number of experts to present testimony unique to the claims of the individual families. All relevant evidence previously presented would be deemed to be before the jury, and the plaintiffs would be bound by any findings in the Anderson case which are common to them.

V. Exemplary Damages

The plaintiffs agree with Grace's suggestion that only when all thirty-three (33) claims have been resolved by the jury would the exemplary damages be addressed. These claims would then be submitted to the same jury.

Respectfully submitted,

Plaintiffs  
By their attorney,



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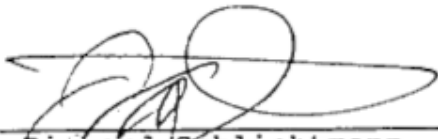
CERTIFICATE OF SERVICE

I, Jan R. Schlichtmann, attorney for the Plaintiffs, hereby certify that I have sent a copy of the attached Plaintiffs' Trial Plan: A Modified Case, by delivering the same in hand on January 15, 1986, to the following counsel:

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Dated: January 15, 1986



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