For the plaintiffs

Judge Skinner questions credibility of witness

By DAN KENNEDY

BOSTON — With jurors in the Woburn leukemia trial out of the courtroom, U.S. District Judge Walter Jay Skinner Wednesday openly questioned the credibility of a witness for the plaintiffs.

Skinner said the witness, Princeton University hydrogeologist Dr. George Pinder, conceded in his own testimony that he made a key finding in the case at "a morning-shower epiphany of some kind."

Skinner questioned whether Pinder's testimony on that point could be believed.

The judge made his comments in connection with a dispute over whether the Aberjona River contributed to the chemical contamination of municipal wells G and H in East Woburn.

The defendants, Beatrice Foods Co. and W.R. Grace & Co., say the Aberjona River, with a history of industrial contamination going back to the early 1900s, was largely responsible for polluting the wells, which are on the east bank of the river.

But Pinder contends the contamination came directly from the defendants' properties.

The river could not be a source, Pinder says, because of its impermeable peat bottom and because the volatile organic solvents that are at the heart of the lawsuit evaporate quickly in open water.

On Tuesday, Beatrice attorney Jerome Facher asked Pinder to explain data gathered by the U.S. Geological Service (USGS) that the river loses some 600 gallons of water per minute when wells G and H are pumping.

Pinder replied he had considered that question for some time and had concluded — probably while thinking about it in the shower, he quipped — that the underground aquifer which normally feeds the river reverses flow when the wells are turned on.

As a result, he said, the river receives more water from the aquifer when the wells are off than when they are on, with the difference amounting to about 600 gallons per minute.

Grace attorney Michael Keating lodged a motion last Friday asking Judge Skinner to strike from the record any testimony from Pinder that was not offered in his pre-trial deposition.

Keating's motion was based on an agreement with the plaintiffs that Pinder would not testify on certain subjects and would therefore not be deposed on them.

Since Pinder did not offer his explanation concerning the river and the aquifer at his deposition, Skinner had to consider whether to strike it. The judge told plaintiffs' chief counsel Jan Schlichtmann that he was troubled by Pinder's explanation.

Skinner said what happens to the missing river water is crucial to determining whether that water enters wells G and H, noting that Pinder's solution "came at a morning-shower epiphany of some kind."

Schlichtmann replied the issue was not important to the case and had been raised by the defense, not by the plaintiffs.

"It's as important as all get-out," Skinner responded. "It makes a hell of a lot of difference as to what went in there (wells G and H)."

Keating then solved Skinner's dilemma. Keating asked that the judge deny his own motion because he considered Pinder's testimony "so wrong" that he wants to have a chance to rebut it.

Skinner accommodated Keating by denying the motion.

Pinder also earned the judge's ire because of his tendency to become embroiled in semantical disputes during cross examination.

"This man's style of responding to questions is a source of confusion at the very least, aggravating at the next stage — I'll leave it at that," Skinner told the lawyers.

Later Wednesday morning, with the jury present, Skinner appeared to come close to losing his patience with Pinder.

Facher spent several minutes reviewing Tuesday's testimony with Pinder in a manner that did not appear to be open to dispute.

But when Facher asked Pinder whether his account was accurate, Pinder replied, "I'm sorry, that's not totally consistent with my recollection."

At that point, Skinner, clearly annoyed, called for the morning recess, telling Facher and Pinder, "I think we're approaching hopeless confusion." The judge then added, "I suggest very strongly to Dr. Pinder that he read the transcript of his testimony before we resume."

During testimony Wednesday, Facher attempted to blow holes in Pinder's theory of what happens to the river when the wells are turned on by again referring to USGS data.

The defendants argue that they did not contaminate the wells, and that even if they did, the chemicals cited by the plaintiffs do not cause leukemia.

The properties in question are Grace's Cryovac manufacturing plant, 369 Washington St., and the Riley Leather Co. tannery, 228 Salem St. Beatrice owned the tannery from 1978 to 1983 and retains legal liability.

In another action Wednesday, the number of chemicals cited in the complaint shrank from five to four when all parties agreed to drop chloroform from the lawsuit.

With the jury not present, Judge Skinner said chloroform did not appear to play nearly as important a role in the case as the other chemicals.

"Chloroform is not an issue in this case," Skinner said, urging Schlichtmann to drop it.

Schlichtmann agreed that he would, although he added, "I don't want to make it look like either side has lost or gained something."

Skinner replied that when it comes time to inform the jury of the change, he will explain that it was a "stipulation of the parties."

December 1985, during which wells G and H pumped continuously, Facher said the USGS found that the flow of the Aberjona River was more than 900 gallons per minute greater where it crosses Salem Street — south and downstream from the wells — than at Olympia Avenue, which is north of the wells.

Facher said that for Pinder's theory about the aquifer to be correct, data gathered while the wells are pumping should show the downstream flow to be equal to the upstream flow — reflecting the loss of groundwater that Pinder says flows into the river when the wells are not in use.

In fact, Facher said, 20 days after the wells were turned on the USGS found the flow at Salem Street was some 520 gallons per minute less than at Olympia Avenue, suggesting that some river water was disappearing — most likely, he added, into wells G and H.

But Pinder replied the USGS data was consistent with his theory. He said that during the pumping test, some river water began to penetrate the relatively impermeable layer of peat, accounting for the loss of water.

However, he reminded Facher that he had previously testified it would take 10 to 20 years for river water to enter the wells. Since well G went on line in 1964 and well H in 1967, that means no river water would have entered either well until 1974 at the earliest, according to Pinder.

Facher also alleged that Pinder, in conducting his investigation, did not sufficiently consider other possible sources of well contamination, including sewer overflows, flooding, and groundwater contamination by industries, landfills and dumps north of the well site.

The lawsuit involves a claim by eight East Woburn families that Beatrice and Grace allowed chemicals on company property contaminate wells G and H, which were closed in 1979.

The contamination led to the leukemia deaths of five children and one adult and the illnesses of two other children, the families contend.