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As lawyers for both sides fought, the case grew. Eventually 648 plaintiffs joined the lawsuit. (That did not account for all the people who had lived in the Hinkley area over the years - some of whom were not part of the case but are sick today.) The legal teams reviewed about 1 million documents and took several hundred depositions.

As PG&E's own documents were starting to stack the liability decks against it, company officials received the worst possible news from the trial court. The "fear of cancer" claim (referred to as "preconception injuries" in the case) would go to the jury. PG&E had filed a motion to strike all claims for "preconception" injuries. Its lawyers had argued such injury claims were speculative.

Maybe so (goes the argument for plaintiffs), but people who drank polluted water and breathed contaminated air get one day in court. Even if they aren't actually sick on the day of trial, how would they ever recover if they got sick in the future?

Arguments like this are made all the time during trials. This time, however, the court's ruling was quite different:

*Public policy can rightly be said to be found in the concept that the public interest in a pure water supply gives rise to a special relationship to one who pollutes that supply in some substantial fashion.*

*However, there may be no public policy to be served if the pollution occurs at a time and in a manner when no one knows, or ought to know, that the acts now complained of endanger the public.*

*The existence of facts necessary to make the determination of any such special relationship, as well as the factual background to determine whether public policy principles should be applied, are triable issues best left to the trier of fact.*

(Judge LeRoy Simmons' Opinion, 6/13/94)

Put simply, if PG&E didn't realize that its discharge of chrome 6 would cause harm to the public, it may not have violated public policy. On the other hand, if it knew - or *should* have known - the result would be different. Since it is the jury's job to determine facts - and the above issues are fact issues - the jury would decide whether plaintiffs could recover for such injury claims.

This outcome, to say the least, was not a great prospect for PG&E. Any hope of a "cheap settlement" was eliminated when Walter Lack told the court and defense counsel:

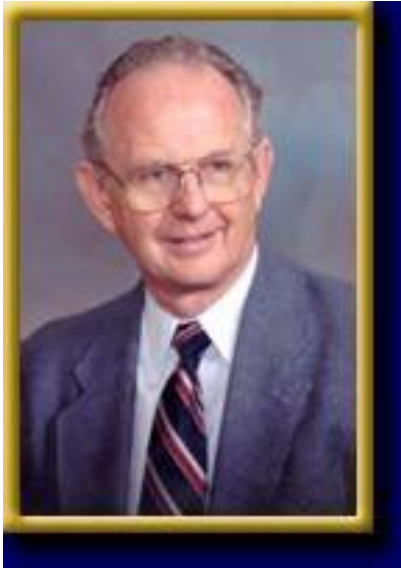
*We are not going to go away for eight figures.*

See Alignments to State and Common Core standards for this story online at:

<http://www.awesomestories.com/asset/AcademicAlignment/THE-BATTLE-Erin-Brockovich>

See Learning Tasks for this story online at:

<http://www.awesomestories.com/asset/AcademicActivities/THE-BATTLE-Erin-Brockovich>



Judge LeRoy Simmons

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