
Court	Harris County District Court - 269th	Week of	02-05-2001
Judge	John T. Wooldridge	B.S. No.	J:00:19033
Cause No.	1999-25373	Issue No.	25-10
Style	Celanese, Ltd., f/k/a Hoechst Celanese Chemical Group vs. Waste Management Industrial Services		
Attorneys	P - <u>Mike Fay, Jerry L. Mitchell, Jr. & Eric L. Vinson</u> of Kasowitz, Benson, Torres & Friedman, Houston		
	D - <u>John Engvall, Jr. & Jon Hlavinka</u> of Karotkin & Engvall, Houston		

Type of Claim NEGLIGENCE/BREACH OF CONTRACT/FRAUD - Celanese purchased a new, \$12 million acrylic acid reactor from DWE, a German designer/manufacturer. Prior to startup, scale, an oily residue and rust were found in the reactor. Celanese tried to burn off the oily residue by heating up the reactor. Next, Celanese tried wire brushing. Celanese then hired Waste Management Industrial Services ("WM") to water blast. When none of these methods proved successful, Celanese hired WM to chemically clean the reactor, which has 44,000 vertical tubes and 88,000 welds.

The dispute focused on corrosion found after the chemical cleaning and coating (by WM) and the drying (by Celanese). Accounts varied, but estimates of 10% to 25% of the weld surfaces were removed by either atmospheric corrosion (WM argued), chemical cleaning or coating (Celanese argued) or drying (WM argued). The reactor leaked after drying, and Celanese heated the reactor up several more times to identify leaking welds, eventually spending \$1.7 million to repair the welds. The reactor was supposed to startup on Dec. 8, 1997, but did not startup until April 8, 1998. The reactor has been operated since the repairs, but accounts vary as to its reliability. Celanese purchased another reactor, which cost \$23 million, including installation costs. Celanese argued it was a "replacement" reactor, while WM argued that Celanese planned to add a sixth reactor, as well as a seventh and eighth in the year ahead, according to pre-incident marketing plans.

WM argued that Celanese left the vessel exposed to Gulf air, causing corrosion before cleaning. WM also argued that Celanese subjected the reactor to excessive temperatures and excessive temperature heat-up and cool-down rates before and after cleaning.

Damages Celanese claimed the following damages: \$1,700,000 in repairs; \$1,600,000 for loss of catalyst life; \$10,500,000 in outsourcing costs to cover demand during startup delay; and \$20,200,000 for a new reactor, totaling \$34,000,000.

Experts P - Herbert L. "Pete" Lyon, Ph.D., Professor of Economics, University of Houston, Houston, re economic damages
Joe H. Payer, Ph.D., Case Western Reserve University, Cleveland, OH, re corrosion
Mark Barteau, Ph.D., University of Delaware, MD, re catalyst

D - Rodney Sowards, Navigant Consulting, Dallas, re damages
John Slater, Ph.D., metallurgist, Invetech, Houston, re corrosion
William J. O'Donnell, Ph.D., professional engineer, O'Donnell Consulting, Bethel Park, PA, re weld design/fabrication/failure
Bob Manyik, Ph.D., retired, Union Carbide, Charleston, WV, re catalyst
Chris Bloch, chemical cleaning, city unknown

Verdict Jury apportioned 50% negligence on Plaintiff and 50% on Defendant. The jury found no breach of contract or fraud. Awarded:
 \$1,700,000 actual damages.
 (\$850,000 after reduction for comparative fault)
 12 - 0 (9 day trial)

Verdict Date: 02-16-2001

Pre-trial demand: \$20 million
 Pre-trial offer: \$ 6 million

Last demand during trial: \$20 million
 Asked of jury: \$34 million
 Last offer during trial: \$10 million

Sidelights In order to comply with an agreed upon and court-encouraged deadline of seven and a half days of evidence, court gave Defendant 10 minutes for direct examination of its corrosion expert, Dr. Slater. Counsel used only seven minutes, and cross-examination was conducted in just under three minutes.

DWE (manufacturer) was brought into the case by WM, but secured summary judgment on legal grounds, per the UOP opinion. DWE's negligence was submitted to the jury in percentage terms, but the jury found no negligence as to DWE.

Case was tried under Texas tort law and New Jersey contract law, per national contract between the parties.