

## Wally's wins key ruling

### Judge limits damage claims against station

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A Baltimore County judge Tuesday further whittled Parkton residents' \$3 billion lawsuit against a gas station operator for allegedly contaminating their water supply.

After a hearing Tuesday afternoon, Judge J. Norris Byrnes granted **Carroll Independent Fuel Co.**'s motion for summary judgment on emotional distress claims filed by more than 100 plaintiffs.

The judge cited a lack of expert testimony on the potential dangers of chemicals found in the groundwater, which would be necessary to support the plaintiffs' claims that they have reason to fear those adverse effects.

"You have the jury being an expert witness and that's what worries me," Byrnes told lawyers from **The Law Offices of Peter G. Angelos P.C.**, who are representing the more than 30 households in the lawsuit in **Baltimore County Circuit Court**. "There's nobody to tell them what the problem is. If you don't give them something to work with, there's a missing link in the chain."

Byrnes' decision comes after his December ruling dismissing the plaintiffs' claims for punitive damages and physical injuries. The plaintiffs at that time also decided not seek medical monitoring damages.

#### Experts withdrawn

The ruling on emotional distress claims covers homes with wells testing positive for both methyl tertiary butyl ether, a gasoline additive that has not conclusively been shown to cause can-



RICH DENNISON

**Wally's Citgo was rebranded as a BP station in early 2008 but is still operated by R&J Wisner Inc., which is a defendant along with Carroll Independent Fuel Co.**

cer in humans, and benzene, a known human carcinogen.

The plaintiffs' experts were to offer testimony about the carcinogenicity of MTBE and benzene as it relates to the general population.

However, both experts were withdrawn from the witness list, leading the defense to file its motion to dismiss the emotional distress claims.

Without expert testimony, said defense lawyer Dwight W. Stone II, the plaintiffs cannot demonstrate during a trial that the physical manifestations of their fears are objectively reasonable.

"It's going to be throwing things at the wall and seeing what the jury finds makes sense," said Stone, a partner with **Whiteford, Taylor & Preston LLP** in Baltimore.

No trial date has been set in the case.

The homeowners filed suit in 2007 against Baltimore-based Carroll based on groundwater contamination found in 2005 around the former Wally's Citgo, at the intersection of Middletown and Rayville roads.

Eric M. Rosenfeld, one of the plaintiffs' lawyers, said his clients' depositions describe the emotional toll of living with a potentially-contaminated water supply, and that a jury can decide if their claims are reasonable.

But Byrnes, a retired judge specially assigned to the case, remained skeptical.

"Here's what's troubling me," he said. "People can't go on the stand and say, 'I'm scared to death and I'm going to get cancer' without some reason for that."

The residents, collectively known as the Beazley plaintiffs, seek \$1.5 billion to restore their water supply and \$10 million each in compensatory damages, including for emotional distress.

Wally's Citgo was rebranded as a BP station in early 2008 but is still operated by the same entity, **R&J Wiser Inc.**, which is a defendant in the lawsuit along with Carroll, the supplier.

## Appellate issue

Byrnes on Tuesday also refused to reconsider his December decision to dismiss claims of diminished property values made by seven homeowners whose groundwater showed no contamination.

Michael S. Rosofsky, another plaintiffs' lawyer, argued that the surrounding contamination has caused "substantial and unreasonable interference" of the seven homeowners' use of their property. He and Byrnes engaged in a spirited back-and-forth.

"All of these people who live next to the contaminated properties are free to play Russian roulette with their water?" the lawyer asked. "It's not reasonable for plaintiffs to have fear?"

"It's not enough," the judge responded, noting that those homes may never



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have contaminated water. "I wouldn't begin to know how to tell a jury what the measure of damages is for these seven."

Byrnes did agree to certify his decision as a final judgment to allow an immediate appeal.

Both the judge and lawyers acknowledged that the **Court of Special Appeals** will take up the issue this year in another case, when it considers a Baltimore County jury's \$150 million award to Jacksonville residents who sued **ExxonMobil Corp.** after a 2006 gasoline leak. In that case, the jury awarded the plaintiffs damages equal to their homes' pre-leak value.

Another motions hearing in the Carroll case is scheduled for September.

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