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Jury Awards \$137,500 in Death Due to Paraquat

By Laura A. Kiernan
Washington Post Staff Writer

A U.S. District Court jury awarded \$137,500 yesterday to the family of a 62-year-old Southeast Washington gardener who contended in a lawsuit brought before his death that he developed a lung disease as a result of exposure to the controversial herbicide paraquat.

The man, Richard L. Ferebee, who tended experimental grapevines at the Beltsville Agricultural Research Center and used a paraquat solution as a weed killer, lapsed into a coma and died in March 1982, one month before his case first went to trial.

The verdict appears to be the first time that there has been a determination in court that exposure to paraquat has caused disease or death, according to Gerald Doppelt, general counsel for the Chevron Chemical Co. of San Francisco, which was the exclusive distributor of paraquat at the time Ferebee used it.

"We're disappointed, obviously. Our side of the story was that paraquat could not have caused the illness that Mr. Ferebee died from," Doppelt said.

Paraquat, a commonly used weed killer, has been the focus of heated debate over its use in the eradication of marijuana plants. In 1978 the federal government, concerned

about possible lung damage to marijuana users, banned the use of the herbicide on the plants, but this year approved the use after the Drug Enforcement Administration argued that it does not cause harm to marijuana users. It has since been used on marijuana crops in Florida and Georgia.

Ferebee's attorneys, Robert C. Liotta and Nathan I. Finkelstein, contended during the trial that Ferebee had absorbed the paraquat through his skin, particularly through his hands, when he used his hands as a shield to protect healthy vines from the solution he sprayed on the weeds.

According to evidence in the case, Ferebee

worked with the paraquat solution from June 1977 through the summer of 1979. According to Liotta, Ferebee said in videotaped testimony made before his death that during the five-month growing season, he used the spray six or seven times a month.

Liotta said there was evidence that on one occasion Ferebee's entire torso was exposed to the herbicide when he was standing behind a tractor using a hose attached to a tankful of a paraquat solution, and on another occasion when the hose on a hand-held paraquat sprayer broke, soaking his pants, legs and shoes with the herbicide.

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Chevron argued that Ferebee did not wear protective clothing when using the herbicide, as directed on the label.

The paraquat involved in the Ferebee case, known as "Ortho Paraquat CL," is sold as a concentrate in gallon jugs. According to Liotta, the spray solution mixed by Ferebee contained 0.5 percent paraquat, the standard agricultural level and substantially above the paraquat level found in weed killers available to consumers. "There is nothing on the [general] market that is remotely close to it," said Doppelt, who added that paraquat concentrate is only available for professional use.

Liotta said that since 1978 the federal government has prohibited the sale of paraquat concentrate to anyone other than certified professional users.

According to Liotta and Finkelstein, Ferebee began experiencing shortness of breath and coughing in 1977, and by 1979 always felt congested, as if he had a constant cold. Ferebee retired on disability in 1979 from the research center, where he had worked since 1966, the attorneys said.

Later, his treating physician and an expert from the National Institutes of Health, both of whom testified at the trial before Judge Louis F. Oberdorfer, diagnosed Ferebee's illness as pulmonary fibrosis, a disease that causes scarring of the lungs' air sacs, Liotta said. He said that the doctors concluded that Ferebee's illness was caused by exposure to paraquat.

The first trial in the Ferebee case ended in a mistrial after the jury said it was deadlocked 11 to 1 in Ferebee's favor, attorneys said.

The verdict by the second jury

yesterday was reached after a 10-day retrial and about five hours of deliberation.

Of the damages awarded by the jury yesterday, \$77,500 will go to Ferebee's three minor children, who are 14, 15, and 18 years old, for the loss of their father's financial support and companionship. The remaining \$60,000 will be paid to Ferebee's estate to cover medical and hospital bills and the cost of his funeral, with any money left over to be shared by his heirs.

In September, a Florida gardener who had accidentally inhaled and swallowed paraquat and destroyed his lungs, underwent a rare lung transplant. He remained in critical condition yesterday.

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