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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN RE HANFORD NUCLEAR)
RESERVATION LITIGATION) NO. CV-91-3015-WFN
)
) **ELEVENTH STATUS CONFERENCE**
) **ORDER: DECEMBER 14, 2004**
)
)
)

This Order relates to: All Cases
Also to be filed in CV-03-9001-WFN

An eleventh status conference was held December 14, 2004, in Spokane, Washington. The following counsel were present representing the listed parties.

Plaintiffs	Counsel
Jaros	Roy S. Haber
Matthies	
Seaman	
Hamilton/Criswell	Louise Roselle ¹
Evenson	Richard Pierson Arnold Levin Frank Dudenhefer (telephonic)
Berg	Richard Eymann Steven Jones Connie Powell
Berg/Lumpkin	

¹Lead Counsel for Plaintiffs.

Defendants	Counsel
E.I. DuPont DOE Nemours & Co. [DuPont]	Kevin T. Van Wart ² William (Randy) Squires Tim Duffy Michelle Browdy (telephonic)
General Electric Co. [GE]	
UNC Nuclear Industries, Inc. [UNC]	

Pro se Plaintiffs Noreen L. Wynne, Carmela M. Destito-Buttice (for late John P. Destito, Jr.), and Marylin F. Mlnarik were not present.

The Court and the parties discussed the items on the previously filed Agenda. The Court also advised the parties of the Court's trial procedures which will appear in a separate Order. This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

IT IS ORDERED that:

1. Rance Jones, JoeAnn Wallace and Bernice Sadler. The Court **RESERVED RULING** on the Motion (Ct. Rec. 1579) and the Amended Motion (Ct. Rec. 1611) to Reinstate the Claims of Rance Jones; the Motion (Ct. Rec. 1581) and the Amended Motion (Ct. Rec. 1610) to Reinstate the Claims of JoeAnn Wallace; and the Motion for Voluntary Dismissal [without prejudice of Bernice Sadler] Pursuant to Fed. R. Civ. P. 41(a)(2) (received 11/15/04). These three Plaintiffs are currently in the Inactive Case, CV-03-9001-WFN.

(a) Plaintiffs shall file and serve any supplemental briefing in support of the Motions no later than **December 28, 2004.**

²Lead Counsel for Defendants.

1 (b) Defendants' responses shall be filed and served no later
2 than **January 7, 2005**.

3 (c) Plaintiffs' replies, if any, shall be filed and served no
4 later than **January 14, 2005**.

5 (d) The Court will take the matters under advisement when the
6 briefing is complete.

7 2. Request by Berg Plaintiffs to Amend Joint Consolidated
8 Complaint. The Berg Plaintiffs' Motion for Leave to Amend Joint
9 Consolidated Complaint, filed on December 6, 2004, **Ct. Rec. 1622** is
10 **GRANTED IN PART** and the Court **RESERVED RULING IN PART**.

11 (a) The new personal representatives for Berg Plaintiffs listed
12 on Exhibit A are accepted and will be updated in the case database.

13 (b) Paulette L. Losh, (identified in Exhibit B) who was
14 erroneously placed in the inactive case, CV-03-9001-WFN, shall be moved
15 into the active case, CV-91-3015-WFN.

16 (c) Berg Plaintiffs listed on Exhibit C shall be moved from the
17 active case, CV-91-3015-WFN, into the inactive case, CV-03-9001-WFN.

18 (d) The Court **RESERVED RULING** on the potential new Plaintiffs
19 listed on Exhibit D. Defendants may challenge any potential Plaintiff
20 by identifying the person and the nature of the challenge. The
21 challenges shall be filed and served no later than **January 3, 2005** so
22 that this matter may be resolved at the next status conference on January
23 14, 2005.

24 3. Request by Evenson Plaintiffs to Amend Joint Consolidated
25 Complaint. The Court **RESERVED RULING** on Motion of Evenson Plaintiffs for
26 Leave to Join Additional Plaintiffs to the Second Amended Consolidated

1 Complaint, filed December 13, 2004, **Ct. Rec. 1624**. Defendants may
2 challenge any potential new Plaintiff by identifying the person and the
3 nature of the challenge. The challenges shall be filed and served no
4 later than January 3, 2005 so that this matter may be resolved at the
5 next status conference on January 14, 2005.

6 4. **Abnormally Dangerous Activity - Motion for Reconsideration.**

7 Defendants' request to file a motion for reconsideration of the Court's
8 Order granting Plaintiffs' Motion for Summary Judgment-Abnormally
9 Dangerous Activity, filed November 3, 2004, Ct. Rec. 1603 is **GRANTED**.

10 (a) Defendants' Motion for Reconsideration shall be filed and
11 served no later than **January 14, 2005**.

12 (b) Plaintiffs' response shall be filed and served no later
13 than **February 11, 2005**.

14 (c) Defendants' reply, if any, shall be filed and served no
15 later than **March 4, 2005**.

16 (d) The Court will take the matter under advisement when the
17 briefing is complete. A hearing date, if any, will be set at a future
18 status conference.

19 5. **Pending Motions--Defendants' Daubert Motions (#17).**

20 (a) Plaintiffs' deadlines for filing responses to the
21 Defendants' *Daubert* Motions previously set for December 15, 2004 are
22 **STRICKEN and RESET to December 20, 2004**.

23 (b) The Defendants' deadline for filing replies will be set at
24 a telephonic status conference to be held on **Wednesday, December 22, 2004**
25 **at 2:00 pm PST**, with the Court to initiate the call to Lead Counsel. At
26 this hearing the parties shall also be prepared to:

1 1) Advise the Court whether live testimony will be required
2 at the Daubert hearings;

3 2) Discuss the grouping of Defendants' Daubert hearings and
4 the integration of Plaintiffs' Daubert hearings. Prior to the conference
5 call the parties shall fax the Court, at 509.353.2166, the joint proposed
6 grouping for the Daubert hearings; and

7 3) Discuss hearing dates for the groups of Daubert
8 Motions.

9 (c) The first hearing on Daubert Motions shall be set for
10 **Tuesday, January 25, 2005 at 8:00 a.m. in Spokane, Washington.**

11 6. **Pending Motions - Plaintiffs' Daubert Motions.** Plaintiffs have
12 filed one Daubert Motion related to Dr. Arthur Schneider (Motion filed
13 12/2/04, Ct. Rec. 1618). Plaintiffs intend to file two additional
14 motions related to Defendants' experts Anderson and Till. The deadline
15 for filing the Plaintiffs' Daubert Motions of December 15, 2004 is
16 **STRICKEN and RESET to December 17, 2004.**

17 (a) Defendants' responses shall be filed and served no later
18 than **January 21, 2005.**

19 (b) Plaintiffs' replies, if any, shall be filed and served no
20 later than **February 4, 2005.**

21 (c) Hearing dates for Plaintiffs' Daubert Motions will be
22 discussed on the conference call set for December 22, 2004.

23 7. **Burden of Proof Issue.** Defendants have filed a brief on the
24 burden of proof issue with their Daubert Motions. Plaintiffs' response
25 to the burden of proof issue shall be filed and served no later than
26 **December 15, 2004.**

1 (a) Defendants' reply shall be filed and served no later than
2 **December 23, 2004.**

3 (b) A hearing on the Burden of Proof Issue shall be **SET for**
4 **January 13, 2005 at 8:30 a.m. in Spokane**, Washington. A half day hearing
5 is anticipated.

6 8. **Tentative Trial Exhibit List Exchange.** The previous deadline
7 of December 15, 2004 for the exchange of tentative trial exhibit lists
8 is **STRICKEN**. Plaintiffs shall provide their Tentative Trial Exhibit List
9 to Defendants no later than **January 10, 2005**. Plaintiffs shall identify
10 only those exhibits they intend to use at trial. Defendants shall
11 provide to Plaintiffs their Tentative Trial Exhibit List no later than
12 **February 24, 2005**. Defendants shall identify all exhibits they intend
13 to use with their witnesses as well as the exhibits they will use to
14 cross-examine the Bellwether Plaintiffs.

15 9. **Identification of Documents for Expert Witnesses.** Documents
16 that will be used with expert witnesses but that will not be admitted
17 (such as articles upon which the expert relied) will not appear on the
18 parties' trial exhibit lists. These documents shall be identified
19 however, placed on an Expert Witness Document List, and provided to the
20 opposing party no later than 30 days before trial.

21 10. **Supplement to Court's Scientific Session.** The Plaintiffs'
22 request to provide a written tutorial regarding scientific issues to the
23 Court as a supplement to the scientific session held following the tenth
24 status conference is **DENIED** based upon the Defendants' objection.

25 11. **Case Scheduling.** The deadlines and hearings beginning
26 February 21, 2005 which were proposed by the Court on the calendar

1 circulated with the agenda for the eleventh status conference are
2 all considered tentative and will be set at a later status conference.
3 Once the Daubert Motion hearings are set, a deadline for Motions for
4 Summary Judgment on Bellwether Plaintiffs must be set with a briefing
5 schedule and hearing dates. The Court withdraws the proposed dates of
6 January 24, February 5, 9 and 17, 2005 on the calendar circulated with
7 the agenda for the eleventh status conference related to the summary
8 judgment motions.

9 12. Case Number for In re: Hanford Nuclear Reservation Litigation.

10 All parties are advised that the case number has been changed from
11 CY-91-3015-WFN to **CV-91-3015-WFN**. The parties are requested to use the
12 correct case number on all future filings.

13 13. Supplemental Jury Questionnaire. The parties shall file and
14 serve proposed supplemental jury questionnaires no later than **January 14,**
15 **2005.**

16 14. Next Status Conferences.

17 (a) The twelfth status conference shall be set for **Friday,**
18 **January 14, 2005, at 8:00 a.m., in Spokane,** Washington. Lead Counsels'
19 status report shall be filed and served no later than **December 29, 2004.**

20 (b) The thirteenth status conference shall be set for **Friday,**
21 **February 18, 2005 at 8:00 a.m. in Spokane,** Washington. Lead Counsels'
22 status report shall be filed and served no later than **February 4, 2005.**

23 15. Counsel who wish to appear telephonically at a status
24 conference shall notify Joanna Knutson no later than two days prior
25 to the hearing at 509.353.3163, in order to schedule a conference
26 call.

1 The District Court Executive is directed to file this Order and
2 provide copies to Liaison Counsel; Mediator Gary Bloom; **AND TO** pro se
3 Plaintiffs Noreen L. Wynne, Carmela M. Destito-Buttice (for late John P.
4 Destito, Jr.), and Marylin F. Mlnarik.

5 **DATED** this 21st day of December, 2004.

6
7 s/ Wm. Fremming Nielsen
8 WM. FREMMING NIELSEN
9 SENIOR UNITED STATES DISTRICT JUDGE

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