

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

APR 19 2004

JAMES R. LANSSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN RE HANFORD NUCLEAR
RESERVATION LITIGATION

NO. CY-91-3015-WFN

SIXTH STATUS CONFERENCE
ORDER: APRIL 15, 2004

This Order relates to: All Cases

A sixth status conference was held April 15, 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 Peter Nordberg	Merrill Davidoff (Tele) John S. Moore ² (Tele)
Evenson	Arnold Levin Richard Pierson	John Cummings (Tele)
Berg	Steven Jones Connie Powell	Richard Eymann (Tele)
Berg/Lumpkin	David Breskin	Brian Depew

¹Lead Counsel for all Plaintiffs.

²Liaison Counsel for all Plaintiffs.

SIXTH STATUS CONFERENCE
ORDER: APRIL 15, 2004 - 1

Defendants	Counsel
E.I. DuPont De Nemours & Co. [DuPont]	Kevin T. Van Wart ³ William (Randy) Squires
General Electric Co. [GE]	
UNC Nuclear Industries, Inc. [UNC]	
Third Party	Counsel ⁴
Center for Disease Control [CDC]	Julie Anderson (Tele)
Department of Justice [DOJ]	Timothy Nusraty (Tele)
Fred Hutchinson Cancer Research Center [FHCRC]	Jane Campbell (Tele)

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

The Court and the parties discussed the items on the previously filed Agenda. An in-camera hearing was held with Plaintiffs' counsel following the status conference which is memorialized in a separate Order. This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

IT IS ORDERED that:

1. General Update. The Court advised the parties that Judge McDonald's August 22, 2002, Order Denying Motion to Vacate Disqualification Order [Re: Nancy Oreskovich] was affirmed on appeal and the Mandate was filed in this court April 9, 2004, Ct. Rec. 1473.

2. Mediation. The second mediation session is currently set for June 2, 2004.

³Lead Counsel for Defendants.

⁴Counsel for the Third-Parties participated telephonically only on the issue of the Plaintiffs' Motion to Compel.

1 **3. Discovery Issue--Plaintiffs' Motion to Compel Compliance with**
2 **Subpoenas Served on FHCRC (Fred Hutchinson Cancer Research Center)**, filed
3 March 25, 2004, Ct. Rec. 1456. The parties advised that some issues
4 have been resolved and they would like additional time to address the
5 remaining issues related to the subpoena. Ms. Anderson advised the
6 Court that Timothy Nusraty would be assuming representation of the CDC
7 on the subpoena issues. The CDC would like to file a friend of Court
8 brief.

9 (a) FHCRC's third party response to Plaintiffs' Motion to Compel
10 is limited to ten (10) pages and shall be filed and served no later than
11 May 6, 2004.

12 (b) The CDC's friend of Court brief is limited to ten (10) pages
13 and shall be filed and served no later than May 6, 2004.

14 (c) Plaintiffs' reply, which is limited to ten (10) pages, shall
15 be filed and served no later than May 20, 2004.

16 (d) The hearing on Plaintiffs' Motion to Compel, filed March 25,
17 2004, Ct. Rec. 1456, shall be set for June 3, 2004, at 8:00 a.m., in
18 Spokane, Washington.

19 **4. Discovery Issue--Defendants' Request for Information on BWs**
20 **(Bellwether Plaintiffs)**. The Plaintiffs advised that they are attempting
21 to complete the disclosure of medical records for the BWs. If the issue
22 is not resolved, the parties may schedule a telephonic conference call
23 with the Court the week of April 19, 2004, by contacting Courtroom Deputy
24 David Naccarato at 509.353.3163.

25 **5. Dismissal of Carla Griffin.** The Court advised that it had not
26 received Ms. Carla Griffin, one of the BWs, request to voluntarily

SIXTH STATUS CONFERENCE
ORDER: APRIL 15, 2004 - 3

1 dismiss her claims. Mr. Cummings will advise Mr. Foulds so that the
2 request for voluntary dismissal will be filed forthwith.

3 6. Modification of Discovery No. 1: May 29-30, 2003. The Plaintiffs
4 requested that the Court alter the August 31, 2004, deadline for
5 Plaintiffs' Daubert motions.

6 (a) Paragraph 4(f), Defendants' Depositions of Plaintiffs'
7 Experts. The June 30, 2004, deadline is STRICKEN and RESET to July 30,
8 2004.

9 (b) Paragraph 4(h), Defendants' Expert Report Deadline. The
10 deadline of June 30, 2004, is STRICKEN and RESET to July 30, 2004.

11 (c) Paragraph 4(i), Daubert Motion Filing Deadline. The
12 August 31, 2004, deadline for Defendants' Daubert motion filing shall
13 REMAIN IN PLACE. The deadline for Plaintiffs' Daubert motion filings is
14 RESET to November 30, 2004.

15 The Court CONFIRMED that depositions are limited to one day
16 (seven hours). If the time limitation results in disputes that cannot
17 be resolved by the parties, the parties may schedule a telephonic
18 conference call with the Court by contacting Courtroom Deputy David
19 Naccarato at 509.353.3163.

20 Decisions regarding whether multiple Daubert motions will be
21 filed versus an umbrella motion and whether some Daubert hearings should
22 be held together will be discussed at a future status conference.

23 7. Defendants' Request for Clarification Re: Court's Order Striking
24 Defendants' Government Contractor Defense (Order filed March 30, 2004,
25 Ct. Rec. 1462). Defendants requested that the Court clarify whether the
26 standard of care was negligence or strict liability. This issue was not

SIXTH STATUS CONFERENCE

ORDER: APRIL 15, 2004 - 4

1 resolved in the Court's Order striking the Defendants' government
2 contractor defense. The Plaintiffs advise that they will be requesting
3 permission to file a motion regarding the ultra-hazardous nature of
4 Defendants' activity at a future time.

5 8. Pending Motion--Defendants' Motion for Summary Judgment--Statute
6 of Limitations, filed February 20, 2004 (Ct. Rec. 1433). The Court
7 reviewed the previously set briefing length and deadlines. A hearing on
8 the Motion shall be set for July 15, 2004, at 8:00 a.m., in Spokane,
9 Washington.

10 9. Pending Motion--Durfey Plaintiffs' Motion for Certification of
11 Interlocutory Appeal Under 28 U.S.C. § 1292(b), filed April 7, 2004 (Ct.
12 Rec. 1468). The Court reviewed the previously established briefing
13 deadlines and briefing length. The parties confirmed that this matter
14 will be submitted on the briefs and oral argument will not be set. Thus,
15 the Court will take the Motion under advisement when the briefing is
16 complete.

17 10. New Motions.

18 (a) The Court GRANTS Defendants' request for leave to file
19 a motion for interlocutory appeal of the Court Order striking the
20 government contractor defense, filed March 30, 2004 (Ct. Rec.
21 1462).

22 1) Defendants' briefing on the motion for interlocutory
23 appeal, which shall be limited to twenty (20) pages, shall be filed and
24 served no later than May 6, 2004.

25 2) Plaintiffs' response, which shall be limited to twenty
26 (20) pages, shall be filed and served no later than May 20, 2004.

SIXTH STATUS CONFERENCE

ORDER: APRIL 15, 2004 - 5

1 3) Defendants' reply, which shall be limited to ten (10)
2 pages, shall be filed and served no later than June 1, 2004.

3 4) A hearing date and time shall be set at a future status
4 conference.

5 (b) Defendants advised the Court that they will defer requesting
6 permission to file a summary judgment motion related to no duty to warn
7 until after expert discovery has been completed.

8 11. Expert Reports/Court-Appointed Experts. After some discussion,
9 the Court concluded that it would not request copies of the expert
10 reports. The Plaintiffs objected to use of Court-appointed experts
11 from the American Association of the Advancement of Science [AAAS]
12 as the Defendants' Kirkland & Ellis Law Firm participates in that
13 project.

14 The parties both offered to present an education session of four
15 to eight hours for the Court on the science involved in this case. Such
16 a session will likely be scheduled in the fall of 2004. Whether the
17 Court will need one or more Court-appointed experts pursuant to Rule 706
18 of the Federal Rules of Civil Procedure is a decision that will be
19 deferred to the fall of 2004.

20 12. Seventh Status Conference. The seventh status conference shall
21 be held Thursday, June 3, 2004, at 8:00 a.m., in Spokane, Washington.

22 (a) Counsel who wish to appear telephonically shall set up a
23 conference call and call the Court at 8:00 a.m. at 509.353.3163.

24 (b) Lead Counsels' status report shall be filed and served no
25 later than May 20, 2004. Responses to the status report are not
26 appropriate and shall not be submitted.

SIXTH STATUS CONFERENCE
ORDER: APRIL 15, 2004 - 6

1 Any documents to be reviewed at the status conference are
2 also requested to be supplied to the Court with the status report so that
3 the Court may review them prior to the status conference.

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

- 8 • June Campbell
9 Lane, Powell, Spears & Lubersky
10 1420 Fifth Avenue, Suite 4100
11 Seattle, Washington 98101
- 12 • Julie Anderson
13 U.S. Department of Justice
14 1800 Richard Russell Bldg.
15 75 Spring Street, S.W.
16 Atlanta, Georgia 30303
- 17 • Timothy Nusraty
18 U.S. Dept. of Justice
19 Civil Division
20 Federal Programs Branch
21 20 Massachusetts Avenue, N.W.
22 Washington, DC 20530

23 DATED this 19 day of April, 2004.

24 

25 WM. FREMMING NIELSEN
26 SENIOR UNITED STATES DISTRICT JUDGE

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SIXTH STATUS CONFERENCE
ORDER: APRIL 15, 2004 - 7