

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

JUN 04 2004

JAMES R. LARSEN, CLERK
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SPOKANE, WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN RE HANFORD NUCLEAR
RESERVATION LITIGATION

NO. CY-91-3015-WFN

SEVENTH STATUS CONFERENCE
ORDER: JUNE 3, 2004

This Order relates to: All Cases

A seventh status conference was held June 3, 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 John S. Moore ² (Tele)
Evenson	Tom Foulds Arnold Levin Jill Olson John Cummings (Tele)
Berg	Richard Eymann Steven Jones Connie Powell
Berg/Lumpkin	Brian Depew

¹Lead Counsel for Plaintiffs.

²Liaison Counsel for Plaintiffs.

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

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 heard argument on the Plaintiffs' Motion to Compel Compliance with [FHCRC Amended] Subpoena, filed March 25, 2004 (Ct. Rec. 1456) and on non-party witness FHCRC's Motion for a Protective Order, filed May 6, 2004 (Ct. Rec. 1495). This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

IT IS ORDERED that:

1. Plaintiffs' Motion to Compel Compliance with [FHCRC Amended] Subpoena. Plaintiffs' Motion to Compel Compliance with [FHCRC Amended] Subpoena, filed March 25, 2004, Ct. Rec. 1456, is **GRANTED**. FHCRC is willing to provide all of the information sought by the Subpoena, paragraphs 1-36, and 38, without any specific conditions attached. The

³Lead Counsel for Defendants.

1 only issue relates to paragraph 37 of the Amended Subpoena in which the
2 Plaintiffs seek the raw data which is the basis for the Hanford Thyroid
3 Disease Study [HTDS]. The Court finds that the raw data is relevant to
4 Plaintiffs' claims, is not privileged, and is discoverable. FED. R. CIV.
5 P. 26(b)(1). Discovery will be compelled but "upon specific conditions"
6 in the form of a protective order. FED. R. CIV. P. 45(c).

7 **2. Non-Party Witness FHCRC's Motion for Protective Order.** Non-Party
8 Witness FHCRC's Motion for Protective Order, filed May 6, 2004, Ct.
9 Rec. 1495, is **GRANTED**. The Court finds that the raw data identified in
10 paragraph 37 of the Plaintiffs' Amended Subpoena to FHCRC contains
11 confidential research. FED. R. CIV. P. 26(c)(7). The Court also finds
12 that disclosure of the raw data would be harmful to the FHCRC
13 researchers' interests in maintaining the raw data as confidential until
14 it is made available, as provided by the contract, to the CDC for
15 disclosure to the scientific community.

16 The Court made editing changes to the proposed protective order
17 and required that a time limit in the likely range of two years be placed
18 on the protective order. The parties will confer and submit a revised
19 protective order for the Court's review.

20 **3. Discovery Issues Re" Bellwethers.**

21 (a) Independent Medical Examinations [IMEs]. Defendants have
22 requested the scheduling of IMEs in Chicago. Plaintiffs oppose the
23 request. The parties advised that they would resolve this issue.

24 (b) Plaintiffs' Updated Interrogatory Answers. This issue has
25 been resolved with the Evenson trial bellwethers having provided the
26 required updated interrogatory answers.

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1 (c) Bellwether Medical Records. An independent contractor,
2 MedRec, has received the request for medical records and should be
3 providing them to the Defendants.

4 4. General Discovery Issues Re: Plaintiffs' Experts.

5 (a) Plaintiffs' Experts' Reliance Materials and Documents.
6 Counsel will confer to resolve any dispute over whether the required
7 reliance materials and documents for the Plaintiffs' experts have been
8 provided to Defendants.

9 (b) Length of Plaintiffs' Expert Depositions. The Defendants
10 requested two day depositions of Plaintiffs' experts Ruttenber and
11 Hoffman. The parties report that this issue has been resolved.

12 5. Specific Discovery Issues Related to Plaintiffs' Experts.

13 (a) Plaintiffs' historical expert, Dr. Balzarini. The Defendants
14 object to Dr. Balzarini's report as not in compliance with Rule 26(a)(2)
15 of the Federal Rules of Civil Procedure. The Court finds that Dr.
16 Balzarini is not a fact witness but is an expert witness and thus must
17 file a report in compliance with Rule 26(a)(2) if he is to testify. Any
18 amended report shall be provided to the Defendants no later than June 17,
19 2004.

20 (b) Plaintiffs' Expert Gobles-Deposition Needed. The issue
21 regarding the scheduling of expert Gobles' deposition has been resolved.

22 (c) Plaintiffs' Five Expert Report on the HTDS. Defendants
23 request that the Plaintiffs be required to identify which of the five
24 experts who prepared the report will be witnesses at trial. The
25 Plaintiffs advise that they may call all five experts as each dealt with
26 a different subject in the report. The Plaintiffs shall advise the

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1 Defendants of the subject areas of the report for which each expert is
2 responsible.

3 6. Discovery Issue: DOE Witness Depositions. The Plaintiffs
4 wish to depose DOE witnesses regarding historical exhibits. The
5 Defendants object that the request is not timely. Although the
6 depositions are arguably of a general discovery nature, an exception is
7 being made due to the difficulty that exists in this case of providing
8 information to the jury regarding actions that occurred 60 years ago.
9 Thus, the Court finds that the request for the DOE depositions is timely
10 and related to the bellwether Plaintiffs' trial.

11 Raphael Gomez advised the Court that the DOE employees may choose
12 to speak or not speak with Plaintiffs' counsel. If the information
13 cannot be obtained informally, Plaintiffs' counsel will discuss subpoenas
14 for the information with Mr. Gomez.

15 7. Discovery Issue: Plaintiffs' Request for Hanford Tour. Plain-
16 tiffs' request for a Hanford tour for their negligence experts and
17 counsel is DENIED as the experts have already filed their Fed. R. Civ.
18 P. 26(a)(2) reports and the request is untimely.

19 8. Discovery Issues. The Court encourages counsel to resolve
20 discovery issues informally to the extent possible in order to avoid
21 time-consuming motion practice. Counsel may obtain an expedited ruling
22 through a telephone conference call to the Court at 509.353.3163.

23 9. Scientific Session for the Court. The Court believes that a
24 scientific session for the Court would be helpful. This session should
25 be held in conjunction with a status conference in October or November,
26 2004. At a future status conference the parties will be requested to

1 propose the substance of the issues to be presented and the format for
2 presentation.

3 10. Trial Procedures. The parties estimate a trial of four to eight
4 weeks. Plaintiffs suggest that each side have a limited amount of time
5 to present their case (perhaps 40 hours). The Court reviewed usual
6 trial procedures but encouraged counsel to be creative in their approach
7 to the trial. The Court recommended that counsel review the Manual for
8 Complex Litigation, Fourth, published by the Federal Judicial Center
9 (2004). Trial procedures will be discussed and finalized at a later
10 conference.

11 11. Dismissal of Carla Griffin. On April 19, 2004, the Court entered
12 an Order for the dismissal of Carla Griffin without prejudice. The
13 Defendants object arguing that the dismissal should be with prejudice and
14 with costs. The Order for Dismissal of Carla Griffin entered April 19,
15 2004, Ct. Rec. 1479, is AMENDED to provide that the dismissal is with
16 prejudice, but without costs.

17 12. Court's Ex Parte Hearings with Plaintiffs' Counsel. Defendants
18 request the Court cease its meetings ex parte with Plaintiffs' counsel.
19 The Court advised that past ex parte hearings were held primarily to deal
20 with confusion regarding the nature of the time records to be filed by
21 Plaintiffs' counsel. That issue has been resolved and future hearings
22 should not be necessary. The Court further advised that all ex parte
23 hearings with Plaintiffs' counsel were on the record and that the Court
24 was careful to not insert itself into issues between Plaintiffs' counsel.

25 13. Notice of Appearance filed May 21, 2004 (Ct. Rec. 1507). The
26 Court questioned whether the four Plaintiffs listed in the Notice of

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1 Appearance were new Plaintiffs and whether the seven attorneys
2 listed were all active in this case. Mr. Depew advised that the
3 Plaintiffs are new Plaintiffs that will be added to the underlying
4 Lumpkin case, CT-00-5052-WFN (consolidated into CY-91-3015-WFN, Ct. Rec.
5 1289). Mr. Depew will amend the Lumpkin appendix to the Second Amended
6 Consolidated Complaint in compliance with the Case Management Order No.
7 1: May 29-30, 2003, page 5, para-graph 4. Mr. Depew further advised that
8 the firms listed on the Notice of Appearance are in fact active in the
9 case representing Berg/Lumpkin Plaintiffs.

10 **14. Pending Motions.**

11 (a) Briefing is complete and the Court has **UNDER ADVISEMENT** the
12 Durfey Plaintiffs' Motion for Certification of Interlocutory Appeal Under
13 28 U.S.C. § 1292(b), filed April 7, 2004, **CY-91-3015 Ct. Rec. 1468** and
14 **CY-93-3087 Ct. Rec. 53**, and the Defendants' Motion for Certification
15 Under 28 U.S.C. § 1292(b) [on Government Contractor Defense], filed
16 May 6, 2004, **Ct. Rec. 1490**. If the Motions for Interlocutory Appeal are
17 granted, the Court will fax the Order directly to the moving party so
18 that an appeal may be timely filed with the Ninth Circuit.

19 (b) Defendants' Motion for Summary Judgment--Statute of Limita-
20 tions, filed February 20, 2004, **Ct. Rec. 1433**, is set for hearing on
21 July 15, 2004, at 8:00 a.m., in Spokane, Washington. The briefing on
22 this Motion is complete.

23 **15. Court's Policy on Depositions.** The Court expects that counsel
24 treat each deponent in a polite and respectful manner without being
25 overly aggressive. Each witness should answer the questions respon-
26 sively. Counsel may object if the witness's answer is not responsive.

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1 Counsel may not coach witnesses. The Court remains available by phone
2 to resolve disputes arising at depositions.

3 16. Eighth Status Conference. The eighth status conference shall be
4 held **Thursday, July 15, 2004, at 8:00 a.m., in Spokane, Washington.**

5 (a) Counsel who wish to appear telephonically shall notify Joanna
6 Knutson no later than two days prior to the hearing at 509.353.3163, in
7 order to schedule a conference call.

8 (b) Lead Counsels' status report shall be filed and served no
9 later than **July 1, 2004.** Responses to the status report are not
10 appropriate and shall not be submitted.

11 Any documents to be reviewed at the status conference are
12 also requested to be supplied to the Court with the status report so that
13 the Court may review them prior to the status conference.

14 17. Plaintiffs' Counsels' Attorney Fee and Expense In Camera Reports.
15 The next deadline for the attorney fee and expense in camera reports is
16 **July 1, 2004.**

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

- 21 • June Campbell
22 Lane, Powell, Spears & Lubersky
23 1420 Fifth Avenue, Suite 4100
24 Seattle, Washington 98101
- 25 • Timothy Nusraty
26 U.S. Dept. of Justice
Civil Division
Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, DC 20530

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• Raphael O. Gomez
U.S. Dept. of Justice
Civil Division, Room 7206
Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
DATED this 4 day of June, 2004.


WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE

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