

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

SEP 16 2004

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN RE HANFORD NUCLEAR
RESERVATION LITIGATION.

NO. CY-91-3015-WFN

NINTH STATUS CONFERENCE
ORDER: SEPTEMBER 14, 2004

This Order relates to: All Cases

A ninth status conference was held September 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 Peter Nordberg Merrill Davidoff (Tele)
Evanson	Tom Foulds Frank Dudenhefer Arnold Levin Richard Pierson Monica Mitchell Jill Olson (Tele)
Berg	Richard Eymann Steven Jones Connie Powell
Berg/Lumpkin	Elizabeth Crooke

¹Lead Counsel for Plaintiffs.

Defendants	Counsel
E.I. DuPont DOE Nemours & Co. [DuPont]	Kevin T. Van Wart ² William (Randy) Squires
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 noted that a Stipulation had been filed on July 26, 2004, dealing with the IMEs (Ct. Rec. 1535). This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

IT IS ORDERED that:

1. Trial Exhibits.

(a) Only items for which admission into evidence is sought shall be listed on the Final Trial Exhibit List. For lengthy documents or books, the parties shall designate as an exhibit the pages to be admitted rather than the entire document. The entire document or book must be available for opposing counsel to review.

(b) The Court confirms the deadline for exchanging the Final Trial Exhibit List of **November 30, 2004**. Plaintiffs anticipate that this is also when the parties will exchange the electronic images of the exhibits.

²Lead Counsel for Defendants.

1 • Formal objections to the exhibits are due December 14,
2 2004;

3 • Formal responses to objections to the exhibits are due
4 December 28, 2004;

5 • A hearing on the objections to the exhibits will be
6 scheduled during mid-January, 2005.

7 (c) The Parties shall determine which exhibits are duplicates and
8 move the duplicate exhibits to a Joint Exhibit List where the exhibits
9 will be designated as "J" rather than Plaintiffs' or Defendants'
10 exhibits.

11 (d) The parties and the Court reaffirmed the agreement that the
12 number of exhibits will be limited. That limitation will be set at a
13 future status conference.

14 (e) The Court suggested again that the parties attempt to
15 delineate exhibits of record versus those that would be submitted to the
16 jury.

17 (f) The Court encouraged the use of demonstrative exhibits which
18 usually do not go to the jury during deliberations.

19 2. Materials Relied Upon by Expert Witnesses. Materials relied upon
20 by expert witnesses should not be listed on the Final Trial Exhibit List.
21 This also applies to the experts' curriculum vitae and the experts'
22 report.

23 (a) Several days prior to the testimony of an expert, counsel
24 shall designate the exhibits that will be relied upon by the expert and
25 share that designation with opposing counsel. This will facilitate the
26 examination of the expert.

1 (b) Defendants indicate that they will provide reliance materials
 2 to the Plaintiffs prior to the Plaintiffs' depositions of the Defendants'
 3 experts.

4 3. Expert Testimony. The Federal Rule of Civil Procedure 26(a)(2)
 5 expert reports limit the scope of the expert's testimony on direct
 6 examination. The parties may supplement the expert report with correc-
 7 tions, explanations, or in some cases elaboration. The parties are not
 8 permitted to supplement a report by an expansion into new areas.
 9 Deposition testimony will satisfy the supplementation requirement of Rule
 10 26(e) of the Federal Rules of Civil Procedure.

11 4. Relative Timing of Pretrial Events. In the Eighth Status
 12 Conference Order: July 15, 2004, Ct. Rec. 1532, ¶ 5, the Court set forth
 13 the relative timing of pretrial events. One additional deadline is added
 14 to that table. The entire table is repeated with the addition of an
 15 exchange date for a tentative witness list.

Description	Relative Timing
Tentative Witness List Exchange	January 10, 2005
Proposed Voir Dire Joint Proposed Jury Instructions Objections/Disputed Jury Instructions Trial Briefs Motions in Limine	Six Weeks Before Trial
Responses to: Trial Briefs Motions in Limine	Five Weeks Before Trial
Proposed Pretrial Order	Five Weeks Before Trial
Final Pretrial Conference	Three Weeks Before Trial
Exhibits • Marked • Listed on Court Form • To Court and Counsel	One Week Before Trial
Final Witness Lists	One Week Before Trial

1 Specific dates will be set at a future status conferences. Once the
2 trial date is set it will be a firm date. The parties confirmed a trial
3 length of approximately six to eight weeks. It was determined that the
4 resolution of the bellwether trial would likely occupy the Court and
5 counsel through the end of May, 2005.

6 5. Scientific Session for the Court. A scientific session for the
7 Court is scheduled for October 28, 2004. Each side shall have two hours
8 for the presentation with the Defendants from 1:00 to 3:00 p.m. and the
9 Plaintiffs from 3:15-5:15 p.m. The Court encourages the parties to coop-
10 erate and submit a glossary of terms to the Court two weeks prior to the
11 session. The session should educate the Court regarding basic scientific
12 concepts and related medical issues. The Court will not allow argument
13 of positions and does not wish to have the burden of proof or Washington
14 law discussed. The Court notes that the glossary developed for this
15 session might be the starting point for a joint glossary for the jury.

16 6. Pending Motions.

17 (a) Plaintiffs have filed a Motion for Summary Judgment--
18 Abnormally Dangerous Activity on September 8, 2004, Ct. Rec. 1564.
19 The briefing schedule has already been set forth but will be
20 repeated:

21 • Defendants' response of 20 pages shall be filed and served
22 no later than September 22, 2004;

23 • Plaintiffs' reply of 10 pages shall be filed and served no
24 later than October 6, 2004.

25 • The Motion shall be set for hearing on October 28, 2004,
26 at 8:00 a.m., in Spokane, Washington.

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1 (b) Defendants' Motion for Leave to File Appendices Instanter,
2 filed September 2, 2004, Ct. Rec. 1562, is GRANTED. The Appendices are
3 ACCEPTED AS FILED.

4 (c) The Court noted that Defendants have filed Daubert motions
5 on 13 experts with Plaintiffs' responses due on November 30, 2004.
6 Defendants have filed an additional Daubert motion on four Evanson
7 Plaintiffs and the Plaintiff' responses are due on December 7, 2004.
8 Defendants' replies on the Defendants' Daubert motions are due
9 December 14, 2004.

10 At the next status conference the parties should be prepared to
11 discuss how the Daubert motions should be grouped for scheduling and how
12 they should be scheduled in January, 2005.

13 7. New Motions.

14 (a) The Defendants shall file and serve any motion for summary
15 judgment regarding bellwether Plaintiffs (five Evanson Plaintiffs) no
16 later than November 19, 2004. The Motion shall be limited to 20 pages.

17 • Plaintiffs' response shall be filed and served no later
18 than December 10, 2004, and shall be limited to 20 pages;

19 • Defendants' reply shall be filed and served no later than
20 December 24, 2004, and shall be limited to 10 pages.

21 • The hearing on the Defendants' motions for summary
22 judgment regarding the bellwether Plaintiffs will likely be set in
23 January, 2005.

24 (b) The Defendants' request to file a motion for summary judgment
25 on liability will be held in abeyance until the Court rules on the
26 Plaintiffs' Motion for Summary Judgment--Abnormally Dangerous Activity.

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1 **8. Next Status Conferences.**

2 (a) The tenth status conference shall be held Thursday,
3 October 28, 2004, in Spokane, Washington. The status conference shall
4 follow the hearing on Plaintiffs' Motion for Summary Judgment set for
5 8:00 a.m.

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

9 (c) Lead Counsels' status report shall be filed and served no
10 later than October 14, 2004.

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 **9. Electronic Case Filing [ECF].**

15 (a) All counsel of record are encouraged to register for
16 electronic case filing [ECF] as soon as possible. The attorney
17 registration form is available on the district's website at
18 www.waed.uscourts.gov. Counsel were advised that they may begin
19 electronic filing in this matter on October 4, 2004, and that electronic
20 case filing will be mandatory as of April 5, 2005.

21 (b) The procedures for electronic case filing advise that
22 documents over 100 pages may be electronically filed but the party must
23 provide a single courtesy copy for the Court. That rule is being
24 **MODIFIED** for this case. On any motions, regardless of length, two
25 courtesy copies of the motion and memorandum in support shall be provided
26 and clearly marked "JUDGE'S COURTESY COPY OF ELECTRONIC FILING." One

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1 courtesy copy of attachments shall also be provided and similarly marked.
2 The attachments shall be bound and tabbed.

3 (c) Five attorneys, who are not admitted to practice in this
4 district and have not obtained permission to appear *pro hac vice*, were
5 advised that they would not be receiving electronic filings unless they
6 first were admitted or obtained permission to appear *pro hac vice* and
7 they filed a notice of appearance as to which parties they represent.
8 At that point they may register for ECF. The five attorneys are: Arnold
9 Levin, Daniel Levin, Frank Dudenhefer, Jill Olson and Mark Nomellini.

10 (d) The following three attorneys are either admitted to practice
11 or have obtained *pro hac vice* status in this case but are not of record:
12 Richard Pierson, John Cummings and Connie Powell. These attorneys may
13 register for ECF after they have filed a notice of appearance indicating
14 which Plaintiffs they represent.

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

19 DATED this 16 day of September, 2004.

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WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE

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