

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

JUN 03 2003

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

IN RE BERG)
NO. CY-96-3151-WFN

NED CHARLES LUMPKIN, et al.,)
Plaintiffs,) NO. CT-00-5052-WFN

-vs-

E.I. DUPONT DE NEMOURS & CO.,)
et al.) CASE MANAGEMENT ORDER NO. 1
Defendants.) MAY 29-30, 2003

This document relates to: All Cases

A Case Management Conference [Conference] was held May 29-30, 2003, in Spokane, Washington, in the three above-captioned cases. The following counsel were present representing the listed parties.

| Case | Plaintiffs | Counsel |
|---------------------------------------------------------------------------------|--------------------------------------------------------------|---------------------------------------------------|
| <i>In Re: Hanford Nuclear Reservation Litigation</i> <i>[In Re: Hanford]</i> | Jaros | Roy S. Haber |
| | Seaman | |
| | Hamilton/Criswell | Louise Roselle Peter Nordberg Daniel Berger |
| | Evenson | Tom H. Foulds Frank Dudenhefer, Jr. |
| | Liaison Counsel for ALL <i>In Re: Hanford Plaintiffs:</i> | John S. Moore |

CASE MANAGEMENT ORDER NO. 1
MAY 29-30, 2003 - 1

| | | |
|---------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------|
| <p><i>In Re: Berg Litigation</i> [<i>In Re: Berg</i>]</p> | <p>Berg</p> | <p>David E. Breskin Brian Depew Richard C. Eymann Steven Jones</p> |
| <p><i>In Re: Lumpkin Litigation</i> [<i>In Re: Lumpkin</i>]</p> | <p>Lumpkin</p> | <p>David E. Breskin Brian Depew</p> |
| <p>Defendants</p> | | <p>Counsel</p> |
| <p>E.I. DuPont De Nemours & Co. [DuPont]</p> | | |
| <p>General Electric Co. [GE]</p> | | |
| <p>UNC Nuclear Industries, Inc. [UNC]</p> | | <p>Kevin T. Van Wart John Amash</p> |
| <p>Atlantic Richfield Company [ARCO]</p> | | <p>William (Randy) Squires</p> |
| <p>Rockwell International Corporation [Rockwell]</p> | | |

I. PROCEDURAL BACKGROUND

In Re Hanford and *In Re Berg* have been remanded from the United States Ninth Circuit Court of Appeals.¹ The Honorable Judge Alan McDonald subsequently recused himself from *In Re Hanford* and *In Re Berg*. This Court was assigned the three captioned cases on April 11, 2003. The Court requested that counsel identify issues to be discussed at a planning hearing. An agenda was developed and counsel were invited to submit brief written comments on each agenda item. See Order filed in all captioned cases May 6, 2003.

The Conference, held pursuant to Rule 16 of the Federal Rules of Civil Procedure, provided counsel an opportunity to orally express their views on the general roadmap for the litigation, the status of the cases, future management of the litigation, and future discovery. The Court

¹*In Re Hanford Nuclear Reservation Litigation*, 292 F.3d 1124 (9th Cir. 2002); *In Re Berg Litigation*, 293 F.3d 1127 (9th Cir. 2002).

1 reviewed the case histories, considered the written submissions and oral
2 views of counsel, and developed, with counsels' input, a plan for case
3 management and discovery.² Special procedures were developed pursuant to
4 Rule 16(c)(12) of the Federal Rules of Civil Procedure, with reliance
5 upon the Manual for Complex Litigation, Third (Federal Judicial Center
6 1995) [MCL 3d]. Accordingly,

7 IT IS ORDERED that:

8 1. Case Consolidation and Filing Procedures.

9 (a) Pursuant to Rule 42(a) of the Federal Rules of Civil
10 Procedure, and with the agreement of counsel, *In Re: Berg*, CY-96-3151-
11 WFN, and *Ned Charles Lumpkin, et al. v. E.I. DuPont De Nemours & Co., et*
12 *al.*, CT-00-5052-WFN, shall be CONSOLIDATED into *In Re: Hanford*, CY-91-
13 3015-WFN for pretrial proceedings. The Court RESERVES CONSIDERATION
14 regarding consolidation for trial.

15 (b) In this consolidated action, *In Re: Hanford Nuclear Reserva-*
16 *tion Litigation*, CY-91-3015-WFN, shall be maintained as the MASTER CASE
17 and the MASTER FILE.

18 (c) This Case Management Order [CMO] and all future papers which
19 relate to this consolidated action shall be filed in MASTER FILE
20 NO. CY-91-3015-WFN, and be captioned as "*In Re: Hanford Nuclear*
21 *Reservation Litigation*, Master File No. CY-91-3015-WFN." Below the
22 case caption, the following should be inserted: "This document relates
23 to:". Where a paper relates to this consolidated action generally,
24

25 ²The Discovery Order No. 1 May 29 30, 2003, shall appear separate
26 from this Case Management Order.

1 the words "All Cases" shall be inserted immediately following the
2 phrase "This document relates to:". Conversely, where a paper relates
3 to only a portion of this consolidated action, the last name of the
4 Plaintiff and the file number of each pre-consolidation action(s) to
5 which such paper relates shall be inserted following the phrase "This
6 document relates to:".

7 All papers filed and entered in accordance with the above
8 procedure shall be deemed filed and entered in each pre-consolidation
9 action to the extent applicable. In addition, any party, without seeking
10 leave of the Court, may request that any paper filed in the Master
11 File also be actually filed and entered in one or more pre-
12 consolidation action files. Such additional filing shall be accom-
13 plished by: (1) inserting below the phrase "This document relates
14 to:", the phrase "Also to be filed in:," followed by the pre-
15 consolidation action name(s) and file number(s) in the manner prescribed
16 above, and (2) providing the District Court Executive with the
17 requisite number of additional copies. The parties are advised that
18 the use of this procedure is to be considered as the exception and
19 not the rule.

20 (d) Any stay previously imposed in any pre-consolidated action
21 is LIFTED, including the stay in *In Re: Lumpkin*, CT-00-5052-WFN.

22 2. Status of Parties, Claims, and Relief Requested.

23 (a) The Plaintiffs agree that the remaining relief requested is
24 for damages for personal injury. No claims for injunctive or declaratory
25 relief will be pursued. It is unlikely any claims for property damage
26 will remain.

1 (b) All parties agree that Westinghouse is no longer a Defendant
2 in this consolidated action but pursuant to a prior stipulation will
3 participate in discovery.

4 (c) The Court finds with the agreement or acquiescence of
5 counsel, that the ruling in *In Re: Berg Litigation*, 293 F.3d 1127 (9th
6 Cir. 2002), is applicable to *In Re: Hanford and Lumpkin, et al. v. E.I.*
7 *DuPont, et al.* Accordingly, all Plaintiffs in all the above three
8 captioned cases, who claim emotional distress without bodily injury or
9 seek medical monitoring but do not yet have a detectible illness, shall
10 be **DISMISSED WITHOUT PREJUDICE** when they are identified and when they may
11 be transferred to an inactive docket.

12 (d) Plaintiffs' counsel shall provide a joint list of Plaintiffs
13 to be dismissed without prejudice no later than July 17, 2003.

14 (e) Plaintiffs' counsel shall submit a proposed stipulated
15 order to create an inactive docket. Counsel are referred to *In Re:*
16 *Asbestos*, 142 F.R.D. 152 (N.D. Ill. 1991) for guidance. The proposed
17 stipulated order shall be filed and served no later than July 17,
18 2003.

19 **3. Second Amended Consolidated Complaint and Answer.**

20 (a) A second amended consolidated complaint shall be filed and
21 served no later than August 29, 2003.

22 (b) An answer to the second amended consolidated complaint shall
23 be filed and served no later than September 29, 2003.

24 **4. Process to Add Plaintiffs.** A Plaintiff may be added to this
25 litigation by the attorney amending his or her appendix to the second
26 amended consolidated complaint to include the name of the new Plaintiff.

1 Plaintiffs' counsel should then prepare a proposed order for submittal
2 to the Defendants for signature as to form and for entry by the Court.
3 The prepared order shall provide that within 30 days after entry of the
4 order, the Plaintiff provide to Defendants:

5 (a) Executed releases for obtaining medical records and a list
6 of healthcare providers;

7 (b) Responses to Defendants' First Set of Requests for Production
8 of Documents; and

9 (c) Answers to Defendants' First Set of Interrogatories,
10 including specifically II.2 through II.4.

11 5. Deadline to Amend. A deadline to amend the pleadings and to add
12 parties shall not be set at this time.

13 6. Orders Applicable to New Parties. This Case Management Order and
14 the accompanying Discovery Order [DO], as well as all future orders and
15 rulings on Rule 12(b) and Rule 56 motions, will be applicable to any new
16 parties added to this consolidated action.

17 7. Remand Motion Re: Durfey. Plaintiffs shall file and serve any
18 motion to remand *Durfey, et al. v. E.I. DuPont*, CY-93-3087, no later than
19 June 13, 2003. The briefs shall be presented by Peter Nordberg and shall
20 be limited to 20 pages.

21 (a) Responsive briefing shall be filed and served no later than
22 June 27, 2003, presented by Kevin T. Van Wart and shall be limited to
23 20 pages.

24 (b) Plaintiffs' reply, if any, shall be filed and served no later
25 than July 7, 2003, presented by Peter Nordberg and shall be limited to
26 10 pages.

1 (c) The Court shall take the matter of remand under advisement
2 when the briefing is complete.

3 (d) The District Court Executive shall set a **CASE MANAGEMENT**
4 **DEADLINE** for July 7, 2003.

5 **8. Organization of Counsel.**

6 (a) **Liaison Counsel.**

7 1) **Designation.**

8 a. Liaison counsel for Plaintiffs shall be:

9 John S. Moore
10 Velikanje, Moore & Shore
11 405 East Lincoln Avenue
12 Post Office Box 22550
13 Yakima, Washington 98907-2550

14 Telephone: 509.248.6030

15 Facsimile: 509.453.6880

16 b. Liaison counsel for Defendants shall be:

17 William Randolph Squires, III
18 Summit Law Group, PLLC
19 315 Fifth Avenue, South, Suite 1000
20 Seattle, Washington 98104-2682

21 Telephone: 206.676.7000

22 Facsimile: 206.676.7001.

23 2) **Role.** The role of Plaintiffs' and Defendants' liaison
24 counsel is incorporated as set forth in MCL 3d at page 446.

25 3) Liaison counsel shall submit a list of all attorneys in
26 the consolidated action with firm, address, telephone, facsimile, e-mail,
and who they represent no later than ten (10) days after this Order is
filed.

4) **Service Procedures.** The District Court Executive shall
provide service of each paper issued by the Court to the liaison counsel

1 identified for redistribution among Plaintiffs and Defendants respective
2 counsel. Parties shall serve liaison counsel who will then distribute
3 such papers among counsel consistent with their role as liaison counsel.

4 (b) Lead Counsel.

5 1) Designation.

6 a. Plaintiffs. The attorney proposed for lead Plain-
7 tiffs' counsel shall submit an in-camera application to the Court within
8 two weeks of this hearing. The Court will take the matter under
9 advisement when the application is received.

10 b. Defendants. Defendants' designated lead counsel shall
11 be Kevin T. Van Wart.

12 2) Role. The role of Plaintiffs' and Defendants' lead

13 counsel is incorporated as set forth in MCL 3d at page 445.

14 9. Conduct of Counsel.

15 The Court expects, as officers of the
16 Court, as well as advocates, that counsel shall follow and abide by
17 all federal and local rules governing civil procedure and professional
18 conduct. Counsel shall act in a professional and cooperative manner
19 with the Court and other counsel, be courteous and pursue the goal of
20 securing a "just, speedy, and inexpensive determination" of this
21 consolidated action. FED. R. Civ. P. 1

22 10. Attorney Fee and Expense Records.

23 Judge McDonald had previously
24 ordered counsel to submit in camera reports on attorneys' fees, costs,
25 and expenses incurred in the litigation. The reports were to be filed
26 every six months. The requirement to file the reports shall continue for
Plaintiffs' counsel. The reports shall be submitted in camera to the
Court. The next report should be filed within 30 days of this Order and

1 may include the time period when the Hanford and Berg cases were on
2 appeal.

3 11. Class Certification. Plaintiffs' counsel have advised the Court
4 that all Motions for Class Certification are **WITHDRAWN**, including the
5 Motion in *In Re: Hanford CY-91-3015*, Ct. Rec. 385.

6 12. Status Conferences.

7 (a) The Court shall set regular status conferences pursuant to
8 Rule 16 of the Federal Rules of Civil Procedure every six to eight weeks
9 in this consolidated action.

10 (b) Unless otherwise ordered, lead counsel shall participate at
11 the status conferences.

12 (c) The following shall be the agenda for each regular status
13 conference:

- 14 1) General update on status of case
- 15 2) Settlement progress report
- 16 3) Identification of issues that require Court intervention
- 17 4) Hearing and ruling on motions previously set for this date
- 18 by the Court
- 19 5) Modify or supplement Case Management Order or Discovery
- 20 Order
- 21 6) Determine what new motions will be filed (see motion
- 22 practice protocol)
- 23 7) Other

24 (d) Two weeks prior to the conference, lead counsel shall file
25 and serve a status conference report which addresses the regular agenda
26 items and suggests other agenda items.

1 (e) The first regular status conference shall be set for July 17,
2 2003, at 8:30 a.m., in Spokane, Washington.

3 13. Motion Practice Protocol. The motion practice protocol for this
4 case is as follows:

5 (a) The parties shall confer and seek consensus on any issue to
6 be raised by motion.

7 (b) The parties shall obtain leave of Court to file the motion
8 at a regular status conference through lead counsel.

9 (c) The Court, with counsels' input will determine what counsel
10 will respond to the motion. In most instances lead counsel will
11 coordinate the response.

12 (d) The Court expects that all briefing will be joint, but a
13 party who wishes to present an alternative position may do so in the
14 joint brief and at oral argument.

15 (e) The length of the briefing shall be established at the time
16 the Court grants the request to file the motion. Expansions of page
17 limitations beyond that which the Court initially determines will be
18 granted only in extraordinary circumstances. Leave to file an overlength
19 brief must be granted prior to the filing of the overlength brief.

20 (f) The briefing schedule will be determined at the time the
21 Court grants the request for the motion to be filed. Once the briefing
22 deadlines are established, extensions will not be granted absent
23 extraordinary circumstances.

24 (g) The Court will set the hearing date on the motion when it
25 grants the party's request to file the motion and establishes the
26 briefing schedule.

1 (h) All exhibits and attachments to the Court's copies on any
2 motion must be bound and tabbed.

3 (i) All materials filed in support of, or in opposition to, a
4 motion for summary judgment must strictly comply with the requirements
5 of Rule 56(e) of the Federal Rules of Civil Procedure. See *Orr v. Bank*
6 *of America*, 285 F.3d 764 (9th Cir. 2002).

7 (j) Local Rule 7.1(g)(2) prohibits the citing of unpublished
8 cases.

9 (k) Argument on motions shall be presented by lead counsel
10 or a designee. Any party with an alternate position will be pro-
11 vided an opportunity to make a presentation on the alternate
12 position.

13 14. Sealed Document. With the agreement of all parties, the Report
14 entitled Assessment of Radiation Dose Estimates Made by Hanford
15 Environmental Dose Reconstruction Project, authored by Thomas H. Pigford,
16 December, 1994, and filed under seal in CY-91-3015, 1/10/95, Ct. Rec.
17 514, shall be REMOVED FROM UNDER SEAL and made a part of the public
18 docket and file.

19 15. Mediator/Special Masters/Court Experts. The Court shall not
20 appoint a settlement mediator, special discovery master, or court's
21 experts at this time. The parties shall be prepared to present a
22 proposal of the process to select a mediator for settlement and the names
23 of individuals who might serve in this capacity at the status conference
24 set for July 17, 2003.

25 16. Settlement. The Court encourages the parties to actively pursue
26 settlement to resolve this litigation.

1 17. Corporate Parties. Any non-governmental corporate party to
2 this action shall file a statement identifying any publicly traded
3 corporation that own ten percent (10%) or more of the party's stock.
4 Counsel have an ongoing responsibility to supplement this infor-
5 mation.

6 The District Court Executive is directed to file this Order and
7 provide copies to liaison counsel in the three above-captioned cases.

8 DATED this 3 day of June, 2003.

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10 
11 WM. FREMMING NIELSEN
12 UNITED STATES DISTRICT JUDGE

11 H\O\0602.CMO

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