

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

JUN 03 2003

JAMES H. LARSEN, CLERK
~~SPOKANE, WASHINGTON~~ DEPUTY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

6 IN RE HANFORD NUCLEAR) 7 RESERVATION LITIGATION) <hr/> 8 IN RE BERG) 9) 10 NED CHARLES LUMPKIN, et al.,) 11 Plaintiffs,) 12 -vs-) 13 E.I. DUPONT DE NEMOURS & CO.,) et al.) 14 Defendants.)	NO. CY-91-3015-WFN NO. CY-96-3151-WFN NO. CT-00-5052-WFN DISCOVERY ORDER NO. 1 MAY 29-30, 2003
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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> [In Re: Hanford]	Jaros	Roy S. Haber
	Scaman	
	Hamilton/Criswell	Louise Roselle Peter Nordberg Daniel Berger
	Evenson	Tom H. Foulds Frank Dudenhefer, Jr.
	Liaison Counsel for ALL In Re: Hanford Plaintiffs:	John S. Moore

DISCOVERY ORDER NO. 1
MAY 29-30, 2003 - 1

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

Following the conference, a Case Management Order No. 1--May 29-30, 2003, was entered. That Order consolidated for pretrial purposes the above three captioned cases. The parties described at some length the discovery undertaken to date and what discovery remains. Decisions regarding the future discovery process for the consolidated cases is set forth in this Order. Accordingly,

IT IS ORDERED that:

1. Grouping of Plaintiffs. The parties shall file and serve no later than August 29, 2003, a Joint Stipulated List of Plaintiffs Grouped by Diseases. It is anticipated that the two major groupings will be those Plaintiffs exposed to iodine-131 and those Plaintiffs exposed to non-iodine emissions. Subgroups of each of the two primary groups will be delineated by diseases.

2. Generic Causation. The parties shall jointly identify and file by August 29, 2003, a list of diseases for which generic causation is not disputed and a list for which generic causation is disputed.

1 **3. General Discovery.**

2 (a) General discovery which is liability discovery not specific
3 to bellwether Plaintiffs may be initiated immediately.

4 (b) General discovery shall be completed no later than
5 **January 30, 2004.**

6 (c) Dispositive motions related to general discovery shall be
7 filed and served no later than **February 20, 2004**, with the Court's prior
8 approval.

9 (d) The hearing on any dispositive motions related to general
10 discovery will be set in approximately **April, 2004**. The hearing date
11 will be set at the time the motion is approved by the Court for filing.

12 **4. Bellwether Plaintiffs.**

13 (a) The parties shall identify a process for the selection of 30
14 potential bellwether Plaintiffs [PBWs] no later than **July 17, 2003**. The
15 process will be reviewed by the Court at the status conference on
16 **July 17, 2003**.

17 (b) Plaintiffs and Defendants shall each identify 15 PBWs and
18 file and serve the list of names of Plaintiffs no later than **August 29,**
19 **2003.**

20 (c) Discovery regarding the PBWs shall begin following their
21 identification and shall be completed no later than **December 19, 2003**.
22 This discovery period shall be for full discovery, with the exception of
23 expert discovery for the PBWs.

24 (d) The Plaintiffs and Defendants shall each identify from the
25 30 PBWs, **five bellwether Plaintiffs [BWs]** and file and serve a list of
26 their names no later than **January 23, 2004.**

1 (e) Pursuant to Rule 26(a)(2) of the Federal Rules of Civil
2 Procedure, Plaintiffs' experts regarding the ten BWS shall be disclosed
3 no later than March 31, 2004.

4 (f) Discovery related to Plaintiffs' experts shall be completed
5 by Defendants no later than May 21, 2004.

6 (g) General discovery regarding the ten BWS shall also be
7 completed no later than May 21, 2004.

8 (h) Pursuant to Rule 26(a)(2) of the Federal Rules of Civil
9 Procedure, Defendants' experts regarding the ten BWS shall be disclosed
10 no later than June 30, 2004.

11 (i) Any *Daubert* motions regarding experts for the ten BWS shall
12 be filed and served no later than August 31, 2004, after the Court has
13 approved the filing of the motions.

14 (j) All discovery regarding Defendants' experts shall be
15 completed by the Plaintiffs no later than October 29, 2004.

16 (k) Briefs in response to the *Daubert* motions shall be filed and
17 served no later than November 30, 2004.

18 (l) Plaintiffs' rebuttal experts shall be identified no later
19 than November 30, 2004.

20 (m) A hearing on the *Daubert* motions shall set in approximately
21 January, 2005.

22 (n) Dispositive motions related to the ten BWS will be scheduled
23 at a future date.

24 5. Trial. A trial for the BWS shall be set for approximately
25 March, 2005.

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1 6. Protective Orders. It was the consensus that no protective
 2 orders exist or are necessary at this time, with the exception of a
 3 Protective Order pursuant to 5 U.S.C. § 552(a), filed in In Re: Berg,
 4 9/17/98 (Ct. Rec. 244), which shall **REMAIN IN EFFECT**. Counsel will
 5 report at the July 17, 2003 status conference whether the Order may be
 6 vacated.

7 7. Limitations on Discovery. The following limitations shall
 8 continue:

9 (a) Each witness shall be subject to only one deposition except
 10 for good cause. Good cause must include a showing that a second
 11 deposition is needed because of the discovery of new evidence which was
 12 not, and in the exercise of reasonable diligence could not, have been
 13 discovered at the time of the first deposition.

14 (b) The parties may withhold information covered by the attorney-
 15 client privilege, the joint defense or joint prosecution privilege, or
 16 the attorney-work product rule.

17 (c) Expert depositions shall be limited to no more than two days,
 18 subject to modification by agreement or by a showing of good cause. The
 19 party seeking the discovery will bear the cost of the reasonable expert
 20 fees.

21 In addition, the Court **INCORPORATES BY REFERENCE** the
 22 Guidelines for Depositions, MCL 3d, pp. 463-68.

23 8. Preservation of Evidence. During the pendency of this litiga-
 24 tion, all parties to this consolidation action and their respective
 25 officers, directors, agents, servants and employees are prohibited from
 26 destroying or altering any document or tangible item relating to any

1 issue raised by the pleadings, except upon agreement of counsel or upon
2 motion to and approval by the Court.

3 The Department of Energy and non-party DOE subcontractors are
4 also governed by this Order regarding preservation of evidence.

5 9. Resolution of Discovery Disputes. Parties who are unable to
6 resolve a discovery dispute by agreement may call David Naccarato at
7 509.353.3163 to obtain a telephonic conference with the undersigned to
8 resolve the discovery dispute without the need for formal motion
9 practice.

10 10. The Order Re: DOE Discovery Compliance, filed in *In Re: Hanford*,
11 CY-91-3015, October 6, 1995 (Ct. Rec. 576) continues to be in full force.

12 11. Shared Database. Counsel shall discuss the feasibility of a
13 shared database and report at the status conference scheduled for
14 July 17, 2003.

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

17 DATED this 3 day of June, 2003.

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WM. FREMMING NIELSEN
UNITED STATES DISTRICT JUDGE

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DISCOVERY ORDER NO. 1
MAY 29-30, 2003 - 6