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Berg/Lumpkin Plaintiffs Newsletter

Published periodically by the law firms of Short Cressman & Burgess PLLC, Engstrom Lipscomb & Lack, Girardi and Keese, Robinson Calcagnie & Robinson, and the Johnson Law Group.

This update is a general summary of recent events and is not intended to serve as legal advice or an attorney client communication.

Both Sides File Appeals – Oral Argument Scheduled

Stemming from the two trials that occurred in 2005, both sides filed appeals. The plaintiffs filed appeals with the U.S. Court of Appeals for the Ninth Circuit on behalf of the four bellwether plaintiffs who lost during the trials. The four are Shannon Rhodes (who suffers from metastatic thyroid cancer) and three others who suffer from hypothyroidism.

The basis of their appeals concerns matters that occurred during the trials and several pretrial decisions made by the trial court judge. In Ms. Rhodes' appeal, there is also the issue of misbehavior by two members of the jury for the November 2005 re-trial.

As for the defendants, they filed appeals regarding the two plaintiffs who were awarded damages by the first jury in May 2005. However, the basis for their appeal stems from two legal rulings Judge Nielsen made. One held that the government contractor defense does not apply in this case (March 2004). In the

other ruling, Judge Nielsen found that Hanford's operations had been abnormally dangerous and therefore imposed strict liability on the defendants (November 2004). Both of these decisions can be found on our website.

The next step will be oral argument with attorneys from both sides appearing before a three-judge panel. The oral argument is scheduled for Wednesday, February 7, at 2:00 p.m. in Pasadena, California. It will be held in Courtroom No. 1 of the U.S. Court of Appeals, 125 S. Grand Avenue. The judges usually need many months after oral argument to prepare their opinion. The panel is expected to release their decision in about a year from now.

No Change in Make-Up of Appellate Panel

The Ninth Circuit has announced the three judges who will hear the current round of Hanford appeals. They are the same three judges who heard and decided the last round of appeals that

were filed in 1998 and 1999. Their decisions were released in June 2002 and can be found on our website on the Court Orders page.

The three judges are Mary M. Schroeder, Chief Judge, Alfred T. Goodwin and Michael Daly Hawkins, Circuit Judges.

A word of caution is probably in order. While the 2002 decisions were generally favorable to the plaintiffs, please keep in mind that the issues on appeal are different now and there is no way to tell how the panel will rule this time.

Settlement/Mediation Efforts On-Hold Pending Appeal

After several discussions with the defendants and the mediator, the plaintiffs determined that further efforts toward reaching a settlement to the Hanford downwinder litigation would not be fruitful until the Ninth Circuit issues a decision.

We remain committed to achieving a just and equitable resolution to the Hanford downwinder litigation.

Client Newsletter Less Frequent During Appeal Process

Because there is so little in the way of new information to report during the appeal process, we have decided to send out our client newsletter much less frequently. During the active litigation phase, we sent the newsletter to our clients three or four times a year. The fewer newsletters will also help us to conserve our resources.

Please Remember to Help – Tell Us if You Move

Especially during this long appeal process, it is very important for you to notify us if your name, address or telephone number changes. We cannot effectively represent you if we cannot contact you.

Call Us for Information

If you have any questions about the status of the case or your files, please contact us:

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Please visit our website, located at <http://www.downwinders.com>.

If you do not have access to the Internet, check with your local library.

Many libraries offer free Internet access to the public.