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Berg/Lumpkin Plaintiffs Newsletter

Published periodically by the law firms of Short Cressman & Burgess PLLC, Engstrom Lipscomb & Lade, 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.

Judge Nielsen Denies Defendants' Summary Judgment Motion

On July 22nd, Judge Nielsen denied the defendants' motion for summary judgment based on the statute of limitations. The defendants had been asking the Court to dismiss any plaintiff whose claim was based on a disease that was diagnosed prior to February 1986, when the first batch of declassified documents concerning Hanford's operational history were released. Under Washington law, a person has three years from the time they were aware they had a claim against an entity before filing a lawsuit.

Judge Nielsen concluded that "material questions of fact preclude summary judgment. . . . As to any given Plaintiff material questions of fact exist as to: (1) whether the Plaintiff's diagnosis, media reports and other lawsuits triggered a duty to inquire; and (2) whether an inquiry would have revealed facts supporting all the elements

of the Plaintiff's claim prior to August 6, 1987" (p. 15).

Judge Nielsen's order is posted on the Court Orders page of the downwinder website (www.downwinders.com).

Next Two Status Conferences Scheduled

The next status conference before Judge Nielsen will take place on Tuesday, September 14th, starting at 8:00 a.m. It will be held at the Spokane federal building, 920 W. Riverside Ave., (ninth floor).

The following status conference is tentatively set for October 28, 2004. At the October conference, the court plans to hear oral presentations on the plaintiffs' motion to have the Court declare Hanford's operations as being ultra-hazardous (the motion will be filed on Sept. 1st). Such a legal finding would simplify what plaintiffs would have to prove during next year's trial.

Settlement Talks Stall

Attorneys representing the plaintiffs and the defendants met separately with the Court-appointed mediator for the second time in early June. No other sessions have been scheduled. That the process has stalled is not necessarily a bad sign for us. The defendants may need extra time to consider the impact of the Court's recent rulings – nearly all have been beneficial to the plaintiffs.

Downwinders Litigation Website Redesigned and Updated

Our website has been redesigned. Hopefully, you will find it easier to use. The new format allows us to update the material more quickly. This will really be useful as the pace quickens the closer we are to trial.

You will find recent decisions from Judge Nielsen, such as the one striking the government contractor defense (see the Court Orders page). We have added

the report of our experts that critically reviewed the Hanford Thyroid Disease Study (see the Thyroid Study page).

Please send any comments or suggestions to Jim Thomas via e-mail: jthomas@scblaw.com.

Defendants' Expert Reports Due Soon

Much of the effort since March has been focused on the expert reports submitted by the plaintiffs. On August 16th, the attention will shift to the scientific and medical experts on behalf of the defendants. We will have three months to analyze their reports and depose their experts.

Remember – Please Help Us if You Move

Please be sure 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:

- *Short Cressman & Burgess PLLC: David Breskin or Jim Thomas*
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Please visit our web page, 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.