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November 10, 2004

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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

Major Step Toward Trial

Court Grants Plaintiffs' Partial Summary Judgment Motion

Declares Hanford Abnormally Dangerous

On November 3rd, Judge Wm. Fremming Nielsen granted the plaintiffs' motion for partial summary judgment, finding that Hanford's plutonium separations operations constituted an abnormally dangerous activity. Under a special provision of Washington law, this finding imposes strict liability on the defendants. Thus, the plaintiffs do not have to prove that the defendants operated Hanford negligently.

This ruling is a major victory for the plaintiffs' case. It will significantly shorten the trial and allow us to focus all of our efforts on proving causation. The causation part of the case requires plaintiffs to establish that the health claims were caused, or resulted from, the

doses received from Hanford's operations.

In his order, Judge Nielsen concluded: "Even though Defendants likely made their best efforts to minimize risk, the war effort required that safety take a second seat to plutonium production. Defendants argue they should not be held strictly liable if they did nothing wrong. The Court's determination is not that Defendants did anything wrong, only that they were engaged in an activity that was abnormally dangerous and that in such cases Defendants can spread the risk more equitably allowing those who sustained harm to recover without having to prove that Defendants were negligent. The remaining issue for trial is whether Defendants' activities caused the Plaintiffs' alleged damages." (p. 28)

Judge Nielsen also said, "The innocent people who can prove they suffered harm should be compensated

by the entire nation who benefited from the activity.” (p. 18)

The entire text of Judge Nielsen's order is posted on the Court Orders page of the *Berg/Lumpkin* plaintiffs website (www.downwinders.com).

Next Status Conference Scheduled

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

The issues to be discussed in December include: “Scheduling of the Daubert motion hearings [admissibility of expert testimony], the summary judgment motions on the bellwether

Plaintiffs, and hearings on objections to trial exhibits.” The number of trial exhibits will be much less than planned due to the ruling on abnormally dangerous activity.

Thanks to all of you who attended the October status conference.

For our clients in the Spokane area, please consider attending the status conferences. Your physical presence in the courtroom will strengthen our case.

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.