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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In Re: Hanford Nuclear
Reservation Litigation,

NO. CV-91-3015-WFN
ORDER RE: RHODES' TRIAL
SCHEDULING AND
PROCEDURES AND DURFEY
APPEAL

This Order Relates to: All Cases

Also to be filed in: *Durfey, CV-93-3087-WFN*

A hearing was held July 26, 2005 in Spokane, Washington. The following attorneys represented the listed parties:

Plaintiffs	Counsel
Jaros	Roy S. Haber
Matthies	
Seaman	
Hamilton/Criswell	Peter Nordberg Louise Roselle ¹ (Telephonic)
Evenson	Richard Pierson
Berg	Richard Eymann Steven Jones
Berg/Lumpkin	David Breskin

¹Lead Counsel for Plaintiffs.

Defendants	Counsel
E.I. DuPont DOE Nemours & Co. [DuPont]	Kevin T. Van Wart ² Tim Duffy
General Electric Co. [GE]	
UNC Nuclear Industries, Inc. [UNC]	

Pro se Plaintiffs Noreen L. Wynne, Carmela M. Destito-Buttice (for late John P. Destito, Jr.), Marylin F. Mlnarik and Kerry Todd were not present.

The Court denied Defendants' Renewed Motion for Judgment as a Matter of Law and granted Plaintiffs' oral request to set a trial date for the claims of Shannon Rhodes. The Court also discussed with counsel the appropriateness of entering final judgment on the *Durfey* Plaintiffs' claims (CV-93-3087-WFN). The Order memorializing and supplementing the Court's ruling on the Defendants' Renewed Motion will appear separately. This Order is entered to memorialize and supplement the oral rulings of the Court related to the scheduling and procedures for the Rhodes' trial and the final judgment on the *Durfey* Plaintiffs' claims. Accordingly,

IT IS ORDERED that:

1. Plaintiffs' oral request for a trial date for Shannon Rhodes is **GRANTED**. A second trial addressing only the claims of Shannon Rhodes shall be set for **November 7, 2005, at 9:00 a.m., in Spokane, Washington**.
2. A final pretrial conference shall be set for **November 7, 2005, at 8:00 a.m., in Spokane, Washington**. The Court will address motions in limine and objections to exhibits and deposition testimony at this hearing.
3. All rulings of the Court made on issues prior to the first trial represent the law of the case and the issues shall not be raised again prior to the second trial. **Motion practice**

²Lead Counsel for Defendants.

1 **and pretrial objections shall be limited to only those issues raised by the new evidence**
2 **that developed during or after the first trial.**

3 4. The following procedures will be used at the Rhodes' trial:

4 • The Court will read the same historical presentation to the jury at the beginning
5 of the Rhodes' trial as was read at the first trial. Statement filed 4/25/05, Ct. Rec. 1893.

6 • The Court will conduct the majority of jury voir dire but allow counsel 30-45
7 minutes to ask additional questions or to do more in depth exploration of issues raised by the
8 Court.

9 • A total of 12 jurors will be selected. FED. R. CIV. P. 48, LOCAL RULE 47.1.
10 Plaintiffs shall have three (3) peremptory challenges; Defendants shall have three (3)
11 peremptory challenges. Local Rule 47.1. The challenges shall be exercised simultaneously.
12 All jurors will participate in the verdict. FED. R. CIV. P. 48, LOCAL RULE 47.1.

13 • Prior to the first trial counsel stipulated, pursuant to Rule 48, that provided at
14 least nine (9) jurors deliberated, a verdict supported by all but one dissenting juror would be
15 accepted. Order Re. Final Pretrial Conference . . . , filed 4/18/05, Ct. Rec. 1874. That same
16 stipulation shall apply in the Rhodes' trial.

17 • Regular trial hours shall be from 8:30 a.m. to 12:00 noon, and 1:30 to 4:30 p.m.,
18 Monday through Thursday, with a fifteen minute break in the morning and afternoon.
19 Regular trial hours on Friday shall be from 8:00 a.m. to 2:00 p.m., with two twenty minute
20 recesses.

21 • A conference with counsel shall be held at 8:00 a.m. and 4:30 p.m., Monday
22 through Thursday. The conferences on Friday will be at 7:30 a.m. and 2:00 p.m. These
23 conferences will be used to discuss the current or next day's witnesses/exhibits and address
24 issues outside the presence of the juror. At the afternoon conference the parties
25 shall exchange and provide the Court with a witness list for the following trial day with a list
26 of exhibits that will be used with that witness.

1 • The jurors will be provided with notebooks for note-taking and a copy of the
2 Historical Presentation and preliminary instructions.

3 • Documents published to the jury by counsel shall be collected at the conclusion
4 of trial each day or following a witness's testimony regarding the published document.

5 • A single photograph shall be taken of all witnesses, on the witness stand, prior
6 to their testimony for use by the jury to correlate a witness with the testimony he or she
7 provided. The photographs shall be maintained in a three-ring binder by the Court. The
8 photograph will have the witness's name on it and the date of the witness's testimony. The
9 photographs will be provided to the jury to assist them during deliberations. Following
10 deliberations, the photographs will be destroyed by the Court and **will not** be a part of the
11 record.

12 • Examination of witnesses shall be limited to direct, cross, redirect and re-cross.
13 FED. R. EVID. 611(a). Only one attorney may participate in the examination or cross-
14 examination of a witness. LOCAL RULE 43.1.

15 • Counsel are encouraged to limit requests for sidebars by anticipating legal and
16 evidentiary issues so that the issues may be addressed during the daily conferences with the
17 Court outside the presence of the jury.

18 • Counsel shall have the next witness to be called to testify available on the Ninth
19 Floor, to avoid delay.

20 • An attorney's room for the Plaintiffs and for the Defendants is available on the
21 Ninth Floor. Counsel may checkout keys from chambers staff to the counsel rooms for use
22 during days of trial.

23 5. The parties' attention is drawn to Local Rule 1.1 which provides for the assessment
24 of juror costs against the parties if the District Court Executive's office is not notified of
25 settlement at least one full business day prior to the day on which the action is scheduled
26 for trial.

1 6. Counsel may not contact jurors after the trial. LOCAL RULE 47.1.

2 7. The parties shall provide the Court with **two Court copies of all filed substantive**
 3 **materials**. These Court copies shall be sent by **overnight mail to arrive the morning after**
 4 **the day they are electronically filed** as scheduled below.

DESCRIPTION OF EVENT	DEADLINE/HEARING DATE
Plaintiff's Provide New Expert 26(a)(2)Reports	August 8, 2005
Defendants' Provide New Expert 26(a)(2) Reports	August 29, 2005
Completion of all expert depositions	September 26, 2005
File <i>Daubert</i> Motions related to new expert testimony (limited to 12 pages)	October 3, 2005
Exchange <ul style="list-style-type: none"> • Final witness list (including fact and expert witnesses) • Final exhibit list (including the expert witnesses' reliance documents) • Testimony by deposition (<i>see</i> LR 32.1) File Response to <i>Daubert</i> Motions (limited to 12 pages)	October 11, 2005
District Court Executive's Office to provide juror questionnaires to trial counsel	October 14, 2005
File reply to <i>Daubert</i> Motion (limited to 6 pages)	October 17, 2005
Exchange Supplemental Final Witness and Final Exhibit Lists	October 18, 2005
File trial materials: <ul style="list-style-type: none"> • Trial briefs (not to exceed 10 pages) • Motions in limine (not to exceed 8 pages) • Proposed voir dire • Proposed pretrial order File objections to: <ul style="list-style-type: none"> • Trial exhibits • Testimony by deposition 	October 24, 2005

1 2 3	Telephonic • Hearing on <i>Daubert</i> Motions • Conference re: juror questionnaires	October 26, 2005, at 1:00 pm. Counsel may call 509-353-3180 at 1:00 pm PDT to participate on the call.
4 5 6	File responses to • Trial briefs (not to exceed 5 pages) • Motions in limine (not to exceed 5 pages)	October 31, 2005
7 8	File responses to objections to • Trial exhibits • Testimony by deposition	
9 10	Parties to provide Court with • Marked exhibits • Exhibit list on court form	October 31, 2005
11	Final In-Court Hearing	November 7, 2005, 8:00 a.m.
	Jury Selection	November 7, 2005, 9:00 a.m.

12 8. **Exhibits.** The parties may use the exhibits previously marked and numbered for
13 the first trial. Any new exhibits shall be numbered sequentially from the last assigned
14 number used by the party during the first trial. Any objection to an exhibit must refer to the
15 challenged exhibit with a brief statement as to the basis of the objection, with citation to the
16 Federal Rule of Evidence or case upon which the objection is based. Any objections to
17 exhibits not made in advance of trial (except those based on relevance or prejudice) shall be
18 deemed waived. Exhibits not objected to or to which pretrial objections were overruled are
19 admitted without formal offering and ruling.

20 9. **Jury Instructions.** The parties did not object to the Court's suggestion that the
21 Preliminary and Final Jury Instructions used in the first trial would be modified by the Court
22 as necessary to be used for the Rhodes' trial.

23 10. **Exchange of New Testimony by Deposition, Objections to Deposition and**
24 **Exhibits.** The parties shall serve, **but not file**, a list of those witnesses whose testimony may
25 be by deposition (not used at the first trial) along with a purged transcript of deposition
26 testimony (*see* Local Rule 32.1). Any objection to use of a deposition or an exhibit proposed

1 by an opponent must be made by the date indicated above. A failure to object will be
2 considered a waiver and all items listed and not objected to will be considered admitted.

3 11. **Supplemental Jury Questionnaire.** The same supplemental jury questionnaire
4 developed for the first trial will be sent to prospective jurors. The Court will provide two sets
5 of juror questionnaires for Plaintiffs and for Defendants.

6 12. **Pretrial Order.** Local Rule 16.1 sets forth a sample pretrial order. The parties
7 are advised that they may alter the format and omit the sections on exhibits and witnesses.
8 The parties are filing separate witness and exhibit lists and objections will be dealt with
9 separately.

10 13. The Court gave Plaintiffs permission to file a Motion pursuant to Rule 54(b) for
11 Appeal of this Court's Order Dismissing the *Durfey* Plaintiff's medical monitoring claims.
12 Order filed 3/5/05, CV-93-3087-WFN, Ct. Rec. 52. The Court had also Denied a *Durfey*
13 Interlocutory Appeal. Order filed 6/16/04, CV-93-3087, Ct. Rec. 60. Now that the Court's
14 concerns regarding piecemeal appeals of these matters has resolved there is no reason to
15 further delay the *Durfey* appeal. Rather than require additional time to brief and hear a
16 Motion the Court will construe the *Durfey* Plaintiffs' request to File a Rule 54(b) Motion as
17 such a Motion and will **GRANT the oral motion. Final Judgment shall be entered**
18 **pursuant to Federal Rule of Civil Procedure 54(b), dismissing all of the *Durfey***
19 **Plaintiffs' claims, with a notation to see Orders filed 3/5/05, Ct. Rec. 52 and 6/16/04,**
20 **Ct. Rec 60.**

21 The District Court Executive is directed to:

- 22 • File this Order;
- 23 • Enter Judgment as noted in ¶ 13 above; and
- 24 • Provide copies to Liaison Counsel; Mediator Gary Bloom; **AND TO** pro se
25 Plaintiffs Noreen L. Wynne, Carmela M. Destito-Buttice (for late John P. Destito, Jr.),
26 Marilyn F. Mlnarik, and Kerry L. Todd.

1 The District Court Executive is directed to file this Order and provide copies to
2 counsel.

3 **DATED** this 28th day of July, 2005.

4
5 s/ Wm. Fremming Nielsen
6 07-2605C WM. FREMMING NIELSEN
7 SENIOR UNITED STATES DISTRICT JUDGE
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