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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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|------------------------|---|-----------------------------------|
| |) | |
| |) | NO. CV-91-3015-WFN |
| IN RE HANFORD NUCLEAR |) | |
| RESERVATION LITIGATION |) | ORDER RE: DAUBERT HEARINGS |
| |) | |
| |) | |
| |) | |

This Order relates to: All Cases

The Court held four *Daubert* hearings on January 25, February 1, February 8, and February 15-16, 2005. The Court heard argument on Defendants' 17 Motions to Exclude the Testimony of Plaintiffs' Expert Witnesses and on Plaintiffs' 4 Motions to Exclude the Testimony of Defendants' Expert Witnesses. Counsel present at the *Daubert* hearings are reflected in the Court's Minutes following each hearing and will not be repeated in this Order.

The parties advised the Court that they wished to continue the hearing on Plaintiffs' Motion to Exclude the Testimony of John Till, filed December 16, 2004 (Ct. Rec. 1632) and on Defendants' Motion to Exclude the Testimony of F. Owen Hoffman, filed September 1, 2004 (Ct. Rec. 1548-4) in regard to Plaintiff Wise. The parties will advise the Court early in the week of February 21, 2005, if these motions may be dismissed.

1 On January 21, 2005, the Court filed an Order Re: *Daubert* Standard
2 and Burden of Proof. See Ct. Rec. 1713. The Court ruled orally on the
3 *Daubert* motions during the *Daubert* hearings. This Order is entered to
4 memorialize the oral rulings of the Court. Accordingly, for the reasons
5 stated at the hearings,

6 **IT IS ORDERED** that:

7 1. Plaintiffs' Motion to Exclude Testimony of Robert Anderson, filed
8 December 21, 2004, **Ct. Rec. 1664**, is **DENIED with the qualification** that
9 any criticisms of Dr. Peters must be objective and that the witness would
10 be limited to setting forth opinions to those expressed in the expert
11 report.

12 2. Defendants' Motion to Exclude the Testimony of Anthony Choppa,
13 filed September 1, 2004, **Ct. Rec. 1548-13**, was **GRANTED IN PART and DENIED**
14 **IN PART**.

15 (a) Assuming the prerequisite testimony is in evidence that
16 radiation more probably than not caused a particular bellwether
17 Plaintiff's disease, this witness may testify to the accumulated data in
18 the life plan.

19 (b) The witness may also testify to his interaction with the
20 bellwether Plaintiffs but may not testify as to the Plaintiff's
21 credibility.

22 (c) Unless expert testimony is presented to support the need for
23 any future surgery, this section of the witness's report should be
24 removed.

25 3. Defendants' Motion to Exclude the Testimony of Inder Chopra,
26 filed September 1, 2004, **Ct. Rec. 1548-3**, was **DENIED**.

1 4. Defendants' Motion to Exclude the Testimony of Douglas Crawford-
2 Brown, filed September 9, 2004, **Ct. Rec. 1568-4**, was **DENIED**. The Court
3 has reconsidered this ruling and will **GRANT IN PART and DENY IN PART**.

4 The Court **GRANTS** the Motion to the extent that the expert
5 may not testify to his upper limit of scientifically plausible dose
6 at the 95 percentile confidence level. This ruling is consistent with
7 later rulings made regarding expert dose reconstructionists Goble and
8 Hoffman.

9 5. Defendants' Motion to Exclude the Testimony of Terry Davies,
10 filed September 1, 2004, **Ct. Rec. 1548-2**, is **GRANTED IN PART and DENIED**
11 **IN PART**. This expert witness may not testify to the dose response chart
12 that he created.

13 6. Defendants' Motion to Exclude the Testimony of Leslie DeGroot,
14 filed September 1, 2004, **Ct. Rec. 1548-1**, is **GRANTED IN PART and DENIED**
15 **IN PART**.

16 (a) The witness may not testify that there is a relationship
17 between radiation exposure below 40 rads and the development of
18 autoimmune thyroid disease.

19 (b) The witness may not testify in regards to bellwether
20 Plaintiffs Hope, Winslow, Workman and Reiss.

21 7. Defendants' Motion to Exclude the Testimony of Robert Goble,
22 filed September 1, 2004, **Ct. Rec. 1548-10**, was **GRANTED IN PART and DENIED**
23 **IN PART**.

24 (a) The witness may not testify to the four corrected doses and
25 associated confidence intervals.

26 (b) The witness may testify to the HEDR dose.

1 8. The Defendants' Motion to Exclude the Testimony of F. Owen
2 Hoffman, filed September 1, 2004, **Ct. Rec. 1548-4**, was **GRANTED IN PART**
3 **and DENIED IN PART** and the Court **RESERVED RULING IN PART**.

4 (a) The witness may not testify to his 97.5% confidence interval
5 on doses.

6 (b) The Court **RESERVES RULING** related to the witness's testimony
7 as to bellwether Wise.

8 9. Defendants' Motion to Exclude the Testimony of Raymond Carroll,
9 filed September 1, 2004, **Ct. Rec. 1548-8**, Sander Greenland, **Ct. Rec.**
10 **1548-7**, Duncan Thomas, **Ct. Rec. 1548-6**, James Rutenber, **Ct. Rec.**
11 **1548-9--HTDS** and F. Owen Hoffman, **Ct. Rec. 1548-4--HTDS** was **DENIED**.
12 These witnesses may testify to their Technical Review of the Final Report
13 of the Hanford Thyroid Disease Study.

14 10. Defendants' Motion to Exclude the Testimony of Robert Jervis,
15 filed September 9, 2004, **Ct. Rec. 1568-1**, is **DENIED**.

16 11. Defendants' Motion to Exclude the Testimony of Sara Peters, filed
17 September 1, 2004, **Ct. Rec. 1548-5**, is **GRANTED IN PART and DENIED IN**
18 **PART**.

19 (a) The witness may not testify that radiation exposure was a
20 substantial factor contributing to the etiology of Ms. Goldbloom's
21 thyroid disorder.

22 (b) The witness may not opine that any exposure above back-
23 ground is a substantial factor in the causation of autoimmune thyroid
24 disease.

25 12. Plaintiffs' Motion to Exclude the Testimony of Risk Assessment
26 Corporation, filed December 16, 2004, **Ct. Rec. 1636**, was **GRANTED IN PART**

1 **and DENIED IN PART.** Testimony related to and the figure on page 19 of
2 the Risk Assessment Corporation Declaration 2005 is **EXCLUDED.**

3 13. Defendants' Motion to Exclude the Testimony of James Ruttenber,
4 filed September 1, 2004, **Ct. Rec. 1548-9**--as to autoimmune thyroid
5 disease--is **GRANTED.** The witness may not testify that radiation levels
6 below 40 rads can cause hypothyroidism or autoimmune thyroiditis.

7 14. Plaintiffs' Motion to Exclude the Testimony of Arthur Schneider,
8 filed December 1, 2004, **Ct. Rec. 1612**, is **DENIED.**

9 15. Defendants' Motion to Exclude the Testimony of Douglas Stewart,
10 filed September 9, 2004, **Ct. Rec. 1568-3**, is **DENIED.**

11 16. The Court **RESERVES RULING** on Plaintiffs' Motion to Exclude the
12 Testimony of John Till, filed December 16, 2004, **Ct. Rec. 1632.**

13 17. The Court **TAKES UNDER ADVISEMENT** the issue of whether Plaintiffs'
14 dose reconstruction experts may testify as to a confidence range that is
15 narrower than those submitted in the expert reports.

16 The District Court Executive is directed to file this Order and
17 provide copies to Liaison Counsel; Mediator Gary Bloom; **AND TO** pro se
18 Plaintiffs Noreen L. Wynne, Carmela M. Destito-Buttice (for late John P.
19 Destito, Jr.), and Marylin F. Mlnarik.

20 **DATED** this 22nd day of February, 2005.

21
22 s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
23 SENIOR UNITED STATES DISTRICT JUDGE

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