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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

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8 In Re: Hanford Nuclear
9 Reservation Litigation,

NO. CV-91-3015-WFN

ORDER RE: FINAL PRETRIAL
CONFERENCE AND HEARING
ON MOTIONS: APRIL 13-14, 2005
(RE: TRIAL PROCEDURES;
MOTIONS IN LIMINE)

**UNITED STATES MARSHAL
ACTION REQUIRED**

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13 **This Order Relates to: All Cases**

14 A final pretrial conference was held April 13 - 14, 2005, in Spokane, Washington. The
15 following counsel were present representing the listed parties on April 13, 2005. Those
16 counsel listed in bold typeface were also present on April 14, 2005.

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Plaintiffs	Counsel
Jaros	Roy S. Haber
Matthies	
Seaman	
Hamilton/Criswell	Louise Roselle¹ Merrill Davidoff Peter Nordberg
Evenson	Tom H. Foulds Richard Pierson John Cummings (Tele)* Arnold Levin Jill Olson *Participated for a short portion of hearing.

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26 ¹Lead Counsel for Plaintiffs.

Berg	Richard Eymann Steven Jones Connie Powell
Berg/Lumpkin	David Breskin Brian Depew
Defendants	Counsel
E.I. DuPont DOE Nemours & Co. [DuPont]	Kevin T. Van Wart² Wm. (Randy) Squires Michelle Browdy Tim Duffy
General Electric Co. [GE]	
UNC Nuclear Industries, Inc. [UNC]	

The Court heard argument on Defendants' Motions for Summary Judgment; both parties' Motions in Limine; discussed trial procedural issues; and ruled on objections to exhibits and testimony by deposition. A technology training for counsel was also held.

This Order is entered to memorialize and supplement the oral rulings of the Court regarding trial procedural issues and both parties' Motions in Limine. Separate Orders will be entered by the Court regarding (1) Defendants' Motions for Summary Judgment and (2) objections to exhibits and testimony by deposition. Accordingly,

IT IS ORDERED that:

TRIAL PROCEDURAL ISSUES

1. **April 18, 2005 Deadline.** The previous requirement that parties provide marked exhibits to the Court on April 18, 2005 is **STRICKEN**. The Court should receive the Final Witness List and Final Exhibit List on **April 18, 2005**.

2. **Pretrial Order--Length of Trial.** Counsel filed a Joint Submission re: Pretrial Order on April 8, 2005, **Ct. Rec. 1865**. They agree a classic pretrial order is not required in this case due to the extensive hearings previously held and the prior Orders of the Court. Counsel estimate a total trial length (including deliberations) of four to five weeks.

²Lead Counsel for Defendants.

1 3. **Jury Issues.**

2 (a) **Juror Questionnaires.** Questionnaires from 70 potential jurors were reviewed
3 by the Court and counsel. For cause challenges were made. Fifteen prospective jurors will
4 not be asked to report for this trial based upon their responses on the questionnaires. All
5 original and copies of the juror questionnaires shall be **RETURNED** to the Courtroom
6 Deputy, Joanna Knutson, after the jury selection process is complete.

7 (b) **Number of Jurors.** The Court confirmed that 12 jurors would be selected.

8 (c) **Glossary.** The jurors will not receive a glossary unless the parties are able to
9 submit a joint document.

10 (d) **Rule 48--Less than Unanimous Jury.** Counsel stipulate that, provided at least
11 nine (9) jurors deliberate, a verdict supported by all but one dissenting juror will be accepted.

12 (e) **Jury Dismissal.** The jury will not be dismissed until the verdict is reviewed
13 and it is determined that there are no inconsistencies.

14 4. **Exclusion of Witnesses.** Defendants' oral request for the exclusion of witness
15 pursuant to Rule 615 is **GRANTED**. No witness who will testify may be present in
16 the courtroom or in the Seventh Floor jury assembly room where trial proceedings may
17 also be viewed, nor may they review any transcript prepared of the testimony. This
18 exclusion applies to the spouses of a party who will be a testifying witness. This ruling
19 does not apply to the Plaintiffs as they are parties to the litigation.

20 5. **Court's Proposed Preliminary Jury Instructions.** The Court provided Proposed
21 Preliminary Jury Instructions to counsel. Counsel commented on the Instructions and
22 accepted the revised instructions without exceptions.

23 6. **Historical Presentation.** The parties submitted proposed statements from which
24 the Court drafted a presentation. The parties commented on the Court's draft and accepted
25 the revised statement. The Court will read the Historical Statement after it reads the
26 Preliminary Instructions. Each juror will receive a copy of the Historical Statement.

1 7. **Opening Statements.** Each side anticipates opening statements of between
2 1 to 1½ hours. Counsel will advise each other of the demonstrative exhibits to be used no
3 later than **April 20, 2005**, so that any disputes regarding the exhibits may be resolved at the
4 final pretrial conference on April 25, 2005. The opening statements will be made on the same
5 day. Jurors may take notes during opening statements.

6 8. **Evidence Presentation.**

7 (a) Only one attorney for each party may participate with a single witness.

8 (b) At trial an objection made by one attorney will be considered as an objection
9 by all unless the objection is disclaimed.

10 9. **Exhibits.** The parties have agreed that unless a document is discussed at trial,
11 it will not be submitted to the jury, even if admitted into evidence. Such a document
12 would, however, be a part of the record on appeal.

13 10. **Expert Testimony**

14 (a) **Exchange of Witness Lists and Reliance Materials.** At the afternoon
15 conference with the Court during trial, counsel shall share a witness list for the following day
16 and the reliance materials for expert witnesses. On Friday, the reliance materials and
17 witnesses may be identified **Sunday afternoon by 4:00 p.m.**

18 (b) **Re: Narrower Confidence Ranges.** Experts who wish to testify regard-
19 ing a 90% confidence range regarding a dose must also provide their best estimate of
20 dose.

21 11. **Parties' Joint Statements Prior to Witnesses' Testimony.** The parties
22 have agreed that they do not wish to make joint statements prior to a witness's testi-
23 mony.

24 12. **Proposed Final Jury Instructions.** The Court's Proposed Final Jury Instructions
25 were distributed to counsel. An informal session will be scheduled during trial to discuss the
26 instructions. Formal exceptions will be placed on the record.

1 • Motion to Exclude Reference to Plaintiffs' Failure to Call a Witness, Ct.
2 **Rec. 1815-5**, is **DENIED with a right to renew**.

3 • Motion to Exclude Undisclosed Evidence, Ct. **Rec. 1815-6**, is
4 **GRANTED**. If evidence was specifically requested or subject to disclosure under Rule 26
5 but was not disclosed, it will be excluded for all purposes.

6 If the evidence was never requested and was not subject to Rule 26
7 disclosure, then such evidence that was not disclosed may be used by the opposing
8 party.

9 • Motion to Exclude Any Reference to Settlement, Ct. **Rec. 1815-7**, is
10 **GRANTED**. No reference shall be made to settlement negotiations or offers of compromise.

11 • Motion to Exclude Undisclosed Technological Evidence, Ct. **Rec. 1815-8**,
12 is **GRANTED**. Evidence previously undisclosed that was requested or subject to disclosure
13 by Rule 26 such as photographs, video, computer programs or motion picture film is not
14 admissible.

15 • Motion to Exclude Argument that Money Will Not Repair the Injury, Ct.
16 **Rec. 1815-9**, is **GRANTED**. There shall be no argument or evidence to the effect that it is
17 futile for the jury to award compensation under the circumstances because money will not
18 repair the injury.

19 • Motion to Exclude Questions Re: Plaintiffs' Attorneys, Ct. **Rec. 1815-10**,
20 is **GRANTED**. There shall be no argument or questioning concerning the time or
21 circumstances of the employment of Plaintiffs' attorneys or questions regarding advice or
22 handling of the case by the Plaintiffs' attorneys.

23 • Motion to Exclude Any Reference to the Government Contractor Defense,
24 **Ct. Rec. 1815-11(a)**, is **GRANTED**. In addition, the Plaintiffs may not offer evidence or
25 argue that the Defendants were negligent; Defendants may not argue or produce evidence that
26 the Defendants were not negligent or exercised due care.

1 • Motion to Exclude Evidence Re: Reasonableness of Defendants' Conduct,
2 **Ct. Rec. 1815-11(b)**, is **GRANTED**. There are no negligence issues in this case and
3 the reasonableness of the Defendants' conduct or the exercise of due care are not relevant.

4 • Motion to Exclude Contributory Negligence, Ct. Rec. 1815-11(c), is
5 **GRANTED**. Evidence is excluded with regard to any Plaintiff's alleged contributory
6 negligence.

7 • Motion to Exclude Any Evidence Related to Compensation Paid to
8 Defendants, Ct. Rec. 1815-11(d), is **GRANTED**. Any evidence related to the amount
9 of compensation paid to the Defendants for their operation of the Hanford facility is
10 not relevant.

11 • Motion to Exclude Any Reference to Plaintiffs' Request to Exclude
12 Evidence, Ct. Rec. 1815-12, is **GRANTED**. There shall be no reference made to any pretrial
13 motions.

14 • The Court **RESERVES RULING** on the Motion to Exclude Mortality
15 Study of Dr. Boice, Ct. Rec. 1815-11(g).

16 (b) Plaintiffs': Motion to Preclude Evidence of Other Causes of Thyroid Disease
17 Beyond Exposure to Hanford Radiation, filed March 15, 2005, **Ct. Rec. 1807**, and Motion
18 to Exclude Other Causes of Injuries, filed March 15, 2005, **Ct. Rec. 1815-11(e)**, and Motion
19 to Exclude Evidence of Alternative Causes, filed March 15, 2005, **Ct. Rec. 1815-11(f)**, are
20 **DENIED**. The Defendants may raise other possible causes of disease as long as they have
21 some expert opinion to support the basis for the causation.

22 (c) Plaintiffs' Motion to Exclude Material Outside the Scope of the RAC
23 2004 Report, filed March 14, 2005, **Ct. Rec. 1798**, is **GRANTED**. There shall be no
24 testimony or admission of the following pages from the RAC 2005 Declaration which
25 raised new material not included in the earlier RAC Report: Pages 14-19, which use
26 Stewart's air disbursement factors with the historical air concentration values; pages 24-26, which

1 discuss the alleged contradiction between Dr. Jarvis and Dr. Crawford-Brown; and
2 pages 34-35, the organic iodine calculations in comparison with McCormack 1963
3 Hanford document.

4 **16. Defendants' Motions in Limine.**

5 (a) Defendants' Motion in Limine (General), filed March 15, 2005, **Ct. Rec. 1812**,
6 has multiple parts which will be ruled on individually:

7 • Motion to Exclude Conditions Unrelated to Plaintiffs' Thyroid Conditions,
8 **Ct. Rec. 1812-1**, is **GRANTED**.

9 • Motion to Exclude Evidence Related to Defendants' Negligence, **Ct.**
10 **Rec. 1812-2**, is **GRANTED**, **however** Plaintiffs may produce evidence that the measure-
11 ments taken were not complete nor sufficient to reconstruct releases from Hanford and
12 doses.

13 • Motion to Exclude Family Testimony, **Ct. Rec. 1812-4**, is **GRANTED**
14 **IN PART and DENIED IN PART**. The family members may testify as to their obser-
15 vations of the physical and emotional effects of the bellwether Plaintiffs' thyroid
16 diseases.

17 The family members may not testify that some diseases were caused by
18 radiation. Also, Mr. Rhodes and Mrs. Stanton may not testify how they have been affected
19 by their spouses' conditions. The Plaintiffs advised the Court that loss of consortium claims
20 are not being pursued at this trial.

21 • Motion to Exclude Evidence Regarding Government and Government
22 Indemnification, **Ct. Rec. 1812-3**, is **GRANTED**. Evidence regarding indemnification is not
23 relevant.

24 • Motion to Exclude *Evenson* Attack on HEDR, **Ct. Rec. 1812-5**, is
25 **DENIED**. The Plaintiffs may present evidence and question regarding the credibility or bias
26 of the HEDR study.

1 • Defendants' oral motions to reconsider, for an evidentiary hearing on the
2 issue, and to strike Mr. Foulds' statements made during day one regarding defense counsel;
3 were **DENIED**.

4 (b) Defendants' Motion to Exclude the Testimony of Patricia Pritikin, filed
5 March 15, 2005, **Ct. Rec. 1803**, is **DENIED AS MOOT**. The Plaintiffs have withdrawn Ms.
6 Pritikin as a witness.

7 (c) Defendants' Motion to Exclude the Testimony of Ronald M. Klein, filed
8 March 14, 2005, **Ct. Rec. 1799**, is **DENIED**. Dr. Klein appears to be a qualified witness who
9 performed mental status examinations as well as MMPI--II testing and draws clinical
10 impressions from the testing related to Plaintiffs Buckner, Goldbloom, Rhodes and Wise. His
11 testimony, which should be restricted to injury caused by Hanford emissions, is not
12 cumulative and is relevant to the issue of damages.

13 **17. Other Evidentiary Rulings.**

14 (a) Evidence should be tailored to be specific to the six Plaintiffs and their
15 respective thyroid diseases. Evidence of other Plaintiffs and other diseases is **NOT** relevant.

16 (b) Evidence should be tailored to address Hanford emissions of radiation.
17 Some mention of other releases of radiation such as at Chernobyl may relate to
18 epidemiologic studies, but is otherwise **NOT** relevant. Evidence re: TMI is also **NOT**
19 relevant.

20 **OTHER MOTIONS**

21 **18. Defendants' Motion to Strike Plaintiffs' Reply Briefs Regarding the**
22 **Motions in Limine**, filed April 8, 2005, **Ct. Rec. 1864**, is **GRANTED**. Plaintiffs'
23 Reply Briefs, **Ct. Recs. 1845 and 1858**, are **STRICKEN**. The Court did not contemplate
24 replies and even if replies had been contemplated, neither reply was timely under Local
25 Rule 7(d). Plaintiffs are not prejudiced as the issues were sufficiently addressed by the
26 motions and responses.

