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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IN RE HANFORD NUCLEAR RESERVATION LITIGATION)	NO. CV-91-3015-WFN
)	THIRTEENTH STATUS CONFERENCE:
)	FEBRUARY 16, 2005 AND TRIAL
)	SCHEDULING ORDER

This Order relates to: All Cases

A thirteenth status conference was held February 16, 2005, in Spokane, Washington following the *Daubert* motion hearing regarding Group IV. The following counsel were present representing the listed parties.

Plaintiffs	Counsel	
Jaros	Roy S. Haber	
Matthies		
Seaman		
Hamilton/Criswell	Louise Roselle ¹	Peter Nordberg
Evenson	Tom Foulds Arnold Levin	Richard Pierson Jill Olson
Berg	Richard Eymann Connie Powell	Steven Jones

¹Lead Counsel for Plaintiffs.

Berg/Lumpkin	David Breskin
Going	
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.), and Marylin F. Mlnarik were not present.

The Court discussed the items on the previously filed Agenda and set all trial related deadlines and hearings, as well as a firm trial date of April 25, 2005.³ This Order is entered to memorialize and supplement the oral rulings of the Court. Accordingly,

IT IS ORDERED that:

1. **Summary Judgment Motions.** The parties may file and serve motions for summary judgment (not to exceed ten pages) no later than **March 4, 2005.**

(a) Responses to the summary judgment motions (not to exceed ten pages) shall be filed and served no later than **March 25, 2005.**

(b) Replies on the summary judgment motions (not to exceed five pages) shall be filed and served no later than **April 1, 2005.**

(c) The hearing on the summary judgment motions shall be set for **April 13, 2005, at 8:00 a.m., in Spokane,** Washington.

²Lead Counsel for Defendants.

³A calendar is attached to this Order setting forth the dates.

1 (d) The parties' statement of facts shall conform to the
2 requirements of Local Rule 56.1 and shall not exceed ten pages.

3 (e) Any expert reports, expert depositions or expert witness
4 affidavits or declarations which were filed on the *Daubert* motions **shall**
5 **not be refiled** but may be referenced by the statement of facts or
6 memorandum in support of the summary judgment motions.

7 (f) Any additional documents or materials relied upon shall be
8 filed but counsels' attention is drawn to the Administrative Procedures
9 for Electronic Case Filing in Civil Cases (effective date October 4,
10 2004), § 5(a), page 10, which states that

11 Attorneys shall submit only those excerpts of the referenced
12 exhibits that are directly germane to the matter under
13 consideration. Excerpted material must be clearly and promin-
14 ently identified as such. Parties who file excerpts do so
without prejudice to their right to timely file additional
excerpts of the exhibit. Responding parties may also timely
file additional excerpts of the exhibit that they believe are
directly germane.

15 (g) On the summary judgment motions the parties shall provide
16 the Court with **two Court copies of all motions, briefing, statement of**
17 **facts and attachments**. These Court copies shall be sent by **overnight**
18 **mail to arrive the morning after the day they are electronically filed**.

19 2. **Trial Date, Deadlines and Hearings**. The parties advised the
20 Court that a four week trial is anticipated. Trial will be set to allow
21 an additional one week for jury deliberations prior to June 1, 2005.

22 The parties advised that the exchange of tentative exhibit
23 lists and the exhibits should be completed within the next several
24 days.

25 The parties shall provide the Court with **two Court copies of**
26 **all filed substantive materials**. These Court copies shall be sent by

1 overnight mail to arrive the morning after the day they are
 2 electronically filed as scheduled below.

DESCRIPTION OF EVENT	DEADLINE/HEARING DATE
Exchange tentative witness list (including fact witnesses)	March 1, 2005
File Defendants' reply on Motion for Reconsideration of Abnormally Dangerous Activity	March 4, 2005
File motions for summary judgment	" "
File trial materials: <ul style="list-style-type: none"> • Trial briefs (not to exceed 20 pages) • Motions in limine (not to exceed 8 pages) • Proposed voir dire • Joint proposed jury instructions 	March 14, 2005
Exchange: <ul style="list-style-type: none"> • Testimony by deposition (<i>see</i> LR 32.1) • Final exhibit list 	March 18, 2005
File responses to trial briefs (not to exceed 5 pages)	March 21, 2005
File responses to motions in limine (not to exceed 5 pages)	" "
File responses on motions for summary judgment	March 25, 2005
File objections to trial exhibits	" "
File objections to testimony by deposition	" "
File replies on motions for summary judgment	April 1, 2005
File responses to objections to trial exhibits	" "
File responses to objections to testimony by deposition	" "
District Court Executive's Office to provide juror questionnaires to trial counsel	April 8, 2005
File proposed pretrial order	April 11, 2005
Exchange expert witness document list	" "
Hearing on motions for summary judgment	April 13-14, 2005, 8:00 a.m.
Final pretrial conference	" "
Hearing on motions in limine and objections	" "
Courtroom technology training	" "

Parties to provide to Court and Counsel: <ul style="list-style-type: none"> • Final witness lists • Marked exhibits • Exhibit list on court form 	April 18, 2005
Final In-Court Hearing	April 25, 2005, 8:00 a.m.
Jury Selection	April 25, 2005, 9:00 a.m.

3. **Objections to Exhibits.** The objection to an exhibit must refer to the challenged exhibit with a brief statement as to the basis of the objection, with citation to the Federal Rule of Evidence or case upon which the objection is based.

4. **Joint Proposed Jury Instructions.** The parties shall confer regarding jury instructions. Jury instructions shall only address issues that are unique to this case, and shall include instructions regarding the elements of each claim, any necessary definitions and a proposed verdict form.

The Joint Proposed Jury Instructions shall include:

(a) The instructions on which the parties agree; and

(b) Copies of instructions that are disputed (i.e., a copy of each party's proposed version of an instruction upon which they do not agree). All jury instructions from the most current edition of the Ninth Circuit Manual of Model Jury Instructions may be proposed by number. The submission of the Joint Proposed Jury Instructions will satisfy the requirements of LR 51.1(c).

The parties shall address in their trial briefs any objections they have to instructions proposed by any other party. The parties shall identify the specific portion of any proposed instruction to which they object and shall elaborate the basis for the objection.

1 Objections asserting that an instruction sets forth an incorrect
2 statement of law shall describe the legal authority that supports this
3 objection. Failure to make an objection and supporting argument may be
4 construed as consent to the adoption of an instruction proposed by
5 another party.

6 5. **Exchange of Testimony by Deposition, Objections to Deposition and**
7 **Exhibits.** The parties shall serve, **but not file**, a list of those
8 witnesses whose testimony may be by deposition along with a purged
9 transcript of deposition testimony (see Local Rule 32.1). Any objection
10 to use of a deposition or an exhibit proposed by an opponent must be made
11 by the date indicated above. A failure to object will be considered a
12 waiver and all items listed and not objected to will be considered
13 admitted.

14 6. **Juror Notebooks.** The Court has previously advised that juror
15 notebooks will be prepared. The Court will insert dividers with each
16 Plaintiff's name on a divider. The Court is considering whether the
17 jurors will be required to leave the juror notebooks in the courtroom.

18 7. **Agreed Statements before Witness Testimony.** In order to assist
19 the jurors, the parties shall prepare brief agreed statements that are
20 a preview of the witness's testimony. The statement will be read by the
21 Court before a witness testifies.

22 8. **Robert Goble Reliance Materials.** The parties advise that the
23 issue related to Plaintiffs' provision of reliance materials regarding
24 the testimony of Robert Goble has been resolved.

25 9. **Supplemental Jury Questionnaire.** The Court has reviewed the
26 parties' joint submission of a supplemental jury questionnaire. The

1 questionnaire will be edited to incorporate the Court's suggestions. The
2 edited questionnaire will be duplicated and sent to prospective jurors
3 by the Court. The federal jury questionnaire and the supplemental jury
4 questionnaire will be available for distribution to trial counsel on
5 April 8, 2005. The Court will provide two sets of juror questionnaires
6 for Plaintiffs and for Defendants.

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

11 11. **Trial Exhibit Numbering.** All exhibits shall be pre-marked as
12 follows:

13 (a) Joint exhibits shall be numbered 1 through 199;

14 (b) Plaintiffs' exhibits shall be numbered 200 through 999;

15 (c) Defendants exhibits shall be numbered 1000 through 1499;

16 (d) Plaintiffs' demonstrative exhibits (which includes documents
17 upon which the expert witnesses relied) shall be numbered 1500 through
18 1799; and

19 (e) Defendants' demonstrative exhibits (which includes documents
20 upon which the expert witnesses relied) shall be numbered 1800, *et seq.*

21 12. **Plaintiffs' Experts Re: HTDS.** Defendants requested that the
22 number of experts testifying for Plaintiffs on the critique of the HTDS
23 be limited. Plaintiffs objected to any limitation on the number of
24 witnesses. The parties shall confer on this issue and place a call to
25 the Courtroom Deputy Joanna Knutson, 509.353.3163, if the issue cannot
26 be resolved.

1 13. Plaintiffs' Rebuttal Expert Robert Gale. The Defendants object
2 to the Plaintiffs' designation of rebuttal expert Robert Gale. The
3 Defendants have permission to file a motion to exclude the expert and his
4 report.

5 14. Thé Report. The Defendants object to use of the Thé Report at
6 trial. The Defendants advise that this may be the subject of a motion
7 in limine.

8 15. CM/ECF. All counsel associated with this case are requested
9 to register for electronic filing as this will be required beginning
10 **April 5, 2005.** This includes all pro hac and associated counsel. Those
11 who have not done so will be receiving a letter from the Court shortly.

12 To date, the following counsel have not registered for electronic
13 filing:

14	Michael D. Axline	Daniel Berger
15	John Bergland	Michael H. Bloom
16	Michelle Browdy	Stanley M. Chesley
17	Eric L. Cramer	Elizabeth L. Crooke
18	John J. Cummmings, III	Merrill Davidoff
19	Brian D. Depew	Frank C. Dudenhefer, Jr.
20	Carrie Groskopf	Scott A. Johnson
21	Thomas B. Johnson	Todd M. Johnson
22	Walter J. Lack	Monica Mitchell
23	John C. Moore	James Albert Oliver
24	Joseph Russell	Kendall S. Zylstra

25 The District Court Executive is directed to file this Order and the
26 attached calendar and provide copies to Liaison Counsel; Mediator Gary

1 Bloom; **AND TO** pro se Plaintiffs Noreen L. Wynne, Carmela M. Destito-
2 Buttice (for late John P. Destito, Jr.), and Marylin F. Mlnarik.

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

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

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