

AP - 002

**STAGE 1 & 2
REPORTS**

DATE:

1998

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

CONCEPCION and ROSARIO ACOSTA, et al.,

Plaintiffs,

vs.

No. CV-99-00509-G

SHELL OIL COMPANY, et al.,

Defendants.

**DEFENDANTS' MOTION AND MEMORANDUM FOR
ENTRY OF A CASE MANAGEMENT ORDER**

Pursuant to Rule 1-016 NMRA (1999) and LR-5-106, Defendants Shell Western E & P Inc. ("SWEPI"), Shell Oil Company ("Shell"), and Los Cuatro, Inc. ("Los Cuatro") move this Court for entry of a case management order in the form of that order attached at Tab "A" of the appendix filed with this motion.

I. Introduction.

The sixty-four Plaintiffs in this case, residents of the Westgate Addition of Hobbs ("Westgate"), seek recovery for a litany of alleged personal and emotional injuries and property damages allegedly caused by SWEPI and Shell's operation of the Grimes oil and gas lease located in Lea County, New Mexico ("Grimes Lease"). These claims have been made even though: (1) SWEPI and Shell have been engaged in investigative and remediation activities at the Lease under the supervision (and with the approval) of the New Mexico Oil Conservation Division; (2) based on the current data developed as part of the on-going investigative and clean-up effort, no contaminants have been found on or under any of the Plaintiffs properties with one exception (the property of Plaintiff Evelyn Rising); and (3) almost two years ago the New Mexico Department of

Health conducted an investigation of health complaints in Westgate (including a door-to-door health survey of area residents and air monitoring in numerous homes) and preliminarily concluded that there is no evidence of any increased rate of health concerns caused by contamination and apparently concluded that there is no immediate threat to public health. To the best of Shell's knowledge, since 1998 the Health Department has taken no further action on this matter.

To simplify the issues in this case and to conserve the resources of the Court and the parties, SWEPI, Shell, and Los Cuatro request that this Court enter a case management order so that the innumerable claims of the Plaintiffs can be addressed in an orderly and efficient manner.

II. Background.

A. The Grimes Lease.

The Grimes lease consists of the Southwest Quarter (SW/4) of Section 28, Township 18 South, Range 38 East. Beginning in at least the 1940s, Shell (or its predecessors) operated the Grimes Lease. On around 1978, Shell committed a subsurface portion of the Grimes Lease to the North Hobbs (Grayburg-San Andres) Unit (the "Unit"). In 1984, Shell assigned all of its interest in the Grimes Lease and the Unit to SWEPI. On March 5, 1997, SWEPI conveyed all of its interest in the Grimes Lease and the Unit to Altura Energy. Altura is not a party in this lawsuit.

B. The Westgate Addition.

Westgate is located within Section 28, Township 18 South, Range 38 East. Plaintiffs are current or former residents of various locations throughout the subdivision, many of whom did not reside anywhere near the Grimes Lease or any oil and gas operations. The Westgate subdivision was developed in the 1970's by Defendant Los Cuatro. Neither Shell nor SWEPI developed Westgate. Until August of 1998, neither ever owned any part of the surface estate of Section 28. Neither had the right to use the surface estate in Section 28 except as necessary to conduct oil and

gas operations. Furthermore, the oilfield practices that are alleged by Plaintiffs to have caused their injuries were discontinued long before the development of Westgate.

C. Plaintiffs' Claims.

Plaintiffs allege that they were exposed to "toxic substances" as a result of SWEPI and Shell's operation of the Grimes Lease and the Unit. Investigation has disclosed, however, that (with one exception) the crude oil contamination associated with the Grimes tank battery is not present on any of the Plaintiffs' properties. Nevertheless, according to the Complaint, Plaintiffs allege that they have sustained a great variety of personal injuries and property damages including "medical problems which had their onset only after they moved into the subdivision, or intensified after they moved into the Subdivision." Complaint ¶17. Plaintiffs allege auto-immune symptoms, auto-immune disorders, neurological injury and damage, respiratory damage, cancer, fear of cancer, heart disease, genetic damage, kidney damage, liver damage and "other related health problems." Complaint ¶17. Plaintiffs also complain of emotional distress and mental anguish including: "fear of cancer, fear of auto-immune disease, fear of respiratory disease, fear of liver and kidney disease, fear of the other medical problems that are related to exposure to Toxic Substances, fear of the environmental stigma now attached to their subdivision, fear of the unmarketability of their homes and/or limited marketability of their homes, and fear that the SHELL Defendants and [Los Cuatro] have not fully and adequately identified and assessed the full extent and locations of the Toxic Substances contamination located within the Subdivision and immediately adjacent to the Subdivision." Complaint ¶57.

D. Technical Background.

SWEPI and Shell admit that crude oil or constituents thereof were found on a piece of undeveloped property in Section 28 and on portions of four nearby properties in Westgate. Answer ¶¶ 19, 20. Crude oil or constituents thereof were found on the properties of Mr. and Mrs. Perry

(1331 Tasker Drive), Mr. and Mrs. Casey (1341 Berry Drive), Mr. and Mrs. Patton (1326 and 1328 Tasker Drive) and Mrs. Rising (1330 Tasker Drive). Answer ¶19. Mrs. Rising is a Plaintiff in this case. Answer ¶19. The Perrys, Caseys, and Pattons are not. SWEPI and Shell also admit that crude oil or constituents thereof have been found in the groundwater under parts of Section 28. However, groundwater contamination is limited to a very small area within the subdivision. Chemical analysis of groundwater under property owned by one Plaintiff indicates that, although there may be some evidence of contamination under the property, it is well within acceptable state standards. See Answer ¶¶ 19, 20. Moreover, Defendants understand that Plaintiffs do not use area groundwater. There are no groundwater wells in Westgate. Plaintiffs use city water.

SWEPI and Shell are conducting environmental assessments and remediation activities under the supervision and with the approval of the NMOCD. Stage 1 assessment activities have included taking soil vapor surveys with mobile laboratory analysis, drilling soil borings, installing monitoring wells, removing free product from four monitoring wells located in close proximity to the Grimes tank battery (not within the Westgate Subdivision), sampling and analysis of groundwater and soil including near surface soils, and assessing and remediating soil. These activities have been underway since July 1998 and have generated a large volume of technical information about the site and its environmental conditions. This technical information is on file with the NMOCD and is available to the public. SWEPI and Shell have recently submitted to the NMOCD a Stage 2 proposal for additional abatement activities at the Grimes Lease. This information is also on file with NMOCD and has been made available to the public. The required public notice and comment period for Shell's proposal is currently underway. Plaintiffs have filed with the OCD comments on Shell's proposal and have requested from the OCD a hearing on it.

Additionally, almost two years ago, the New Mexico Department of Health conducted an investigation of health complaints in Westgate (including a door-to-door health survey of area

residents and air monitoring in numerous homes). The Health Department preliminarily concluded (1) that there were no reports of cancers typically associated with exposure to petroleum products; (2) that air monitoring in a number of Westgate homes tested by the Health Department showed hydrocarbon levels at zero except in homes where people smoked tobacco, used hair spray, or had gasoline in their garage; and (3) that there was no evidence of any increased rate of health concerns caused by contamination. Although more than two-thirds of the occupied homes in Westgate participated in the health survey and although the Health Department announced in advance that results would be reported at the next community meeting, only one Westgate resident attended the Health Department's community meeting on June 4, 1998 at which the results of the health survey were announced. However, counsel for Plaintiff attended and videotaped the meeting and, therefore, knew the results long before this lawsuit was filed.

To the best of Shell's and SWEPI's knowledge, there is no current or ongoing investigation in Westgate by the New Mexico Department of Health. Apparently, the Department of Health concluded that there is no immediate threat to public health in Westgate.

E. Proposed Case Management Order.

The proposed case management order would require the Plaintiffs to provide the following information:

- Written authorizations for the release of relevant records;
- Answers to a questionnaire;
- A physician's affidavit;
- An environmental engineer's affidavit; and
- A real estate appraiser's affidavit.

The proposed case management order would also require that discovery be stayed for a period of time and that a plaintiff's failure to comply would result in dismissal of that plaintiff's claims.

III. Authorities

A. Entry of the Proposed Case Management Order will Facilitate Orderly Resolution of this Case.

The requested order recognizes that multi-plaintiff toxic tort cases involving alleged exposure to chemical substances should begin with an inquiry into each Plaintiff's injuries and the existence of expert opinions casually linking those injuries to the complained-of operations. After all, to establish any basis for recovery for their alleged personal injuries, toxic tort plaintiffs must show, at a minimum, that they were actually exposed to the alleged "toxic substances" and, even more significantly, that they received a dose of those substances sufficient to cause the harm they have allegedly suffered. *See, e.g., Abuan v. General Elec. Co.*, 3 F.3d 329, 334 (9th Cir. 1993) and *Renaud v. Martin Marietta Corp.*, 972 F.2d 304, 306 (10th Cir. 1992).

To recover for their alleged personal injuries and property damages, Plaintiffs bear the burden of showing that Defendants' actions were a proximate cause of their claimed damages. *See Ramos v. Rodriguez*, 118 N.M. 534, 537, 882 P.2d 1047, 1050 (Ct. App. 1994) (liability for negligence predicated upon fact finders' determination that plaintiff has proven both the defendant's negligence and that one or more of the claimed acts of negligence proximately caused plaintiff's damages); *Camino Real Mobile Home Park Partnership v. Wolfe*, 119 N.M. 436, 442, 891 P.2d 1190, 1196 (1995) (plaintiff purchaser's burden of proof in action for breach of warranty of quality or condition of real property requires that purchaser prove causation and damages); see also UJI 13-302A, 302B; 13-305 NMRA (2000).

In this case, the causation issues require each Plaintiff to establish a number of facts, all of which require expert testimony. These facts, among others, need to be established:

- (a) the medical condition of each plaintiff;
- (b) the identification of chemicals capable of causing each condition;
- (c) the identification of chemicals allegedly present at the Grimes Lease and in Westgate;
- (d) the alleged exposure by each plaintiff to sufficient doses of the alleged substances to cause the alleged effects;
- (e) the manner in which each plaintiff developed his or her alleged injury, and whether the development is consistent with the way in which the substances at issue are known to affect people; and
- (f) alternative causes (i.e., smoking, diet, family history, prescription medication, etc.) of the Plaintiffs' alleged problems.

In any toxic tort case encompassing a large number of plaintiffs, obtaining and reviewing all of the Plaintiffs' medical and other applicable records and deposing all the Plaintiffs is extremely expensive and burdensome to all the parties. To do so in this case, before the Plaintiffs have made a *prima facie* showing of causation, would be not only expensive and burdensome, but also wasteful of the parties' and the Court's resources. In essence, the Plaintiffs have alleged numerous different ailments that they think might be attributable to the oil and gas operations at the Grimes Lease. Forcing the Defendants to depose all of the Plaintiffs and their health care providers on the large number of injuries alleged before Plaintiffs provide any expert causation evidence would serve no useful purpose and simply waste the resources of the parties and the Court. Such a course would needlessly drive up the costs of litigation, benefitting lawyers and consultants but not serving justice.

The proposed case management order focuses on causation issues specific to each individual Plaintiff and to the specific chemical substances at issue. The order would be fair, expeditious and economical for the Court and all parties. The proposed order also specifically provides that any party may move to modify the order at any time.

The information required by the proposed order is clearly information that the plaintiffs will have to present at trial to recover on their claims. Defendants do not seek to impose an unreasonable burden on plaintiffs, but rather only to require them to properly evaluate their case now and to focus the case on the real claims and real issues. The information covered by the proposed order constitutes information that is properly discoverable during the discovery process. For example, following a pretrial conference, Rule 1-016 NMRA (2000) authorizes the Court to enter an order requiring the disclosure of the identity of expert witnesses, the subject of each expert's testimony and the opinions that will be proffered by each expert. In addition, Rule 1-016 NMRA (2000) allows the Court to order experts to prepare and provide a report to opposing parties within a reasonable time before trial. Because the plaintiffs in this case unquestionably will be required to produce the requested information at the time of trial, and because the production of such evidence is necessary now to simplify the issues in this case, the Court should now establish a reasonable schedule, such as the one set forth in the proposed case management order, pursuant to which the information will be provided to the Defendants.

The proposed order also furthers the Court's gatekeeper function established by the Supreme Court in *State v. Alberico*, 116 N.M. 156, 861 P2d 192 (1993) and by the U.S. Supreme Court in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993). Likewise, the proposed order is entirely consistent with the mandates of Rule 1-011 NMRA (2000). If the Plaintiffs' claims pass muster under Rule 11, the proposed phased scheduling order will present no meaningful obstacle.

Requiring Plaintiffs to demonstrate at this juncture that they have some minimal level of support for their personal injury claims is not unreasonable; it provides a screening mechanism to avoid creating an unmanageable procedural morass. Prior to the institution of massive toxic tort cases, attorneys for plaintiffs must be prepared to substantiate, to a reasonable degree, the allegations of personal injury, property damage, and proximate cause.

In this case, there is certainly reason for concern about whether Plaintiffs can substantiate their claims given the results of the Health Department's investigation and of Shell's OCD-supervised investigation. Plaintiffs' complaint does not allege that their claims are based upon any expert or medical testimony. It would be a complete waste of the resources of this Court and the parties to proceed with discovery and trial preparation concerning Plaintiffs' possible exposure to "toxic substances" if Plaintiffs do not have and cannot obtain expert testimony to support their claims. Detailed, accurate, and consistent information concerning exposure to a chemical is a prerequisite to any expert opinion concerning the health effects of such a chemical. *See, e.g., Christophersen v. Allied-Signal Corp.*, 939 F.2d 1106, 1114 (5th Cir. 1991), *cert denied*, 503 U.S. 912 (1992) (insufficient basis for expert's opinion that exposure to chemical caused plaintiff's disease where opinion was based on incomplete and inaccurate data regarding dosage of harmful chemical and duration of exposure to it); *Thompson v. Southern Pacific Transportation Co.*, 809 F.2d 1167, 1169 (5th Cir.), *cert denied*, 484 U.S. 819 (1987) (insufficient factual basis for expert's opinion that plaintiff's disease caused by dioxin where expert had no knowledge about amount or duration of plaintiff's exposure). Requiring the information in the proposed order will allow the court to winnow out the insupportable claims from the colorable claims, if any.

Additionally, as noted above, in toxic tort cases from other jurisdictions, Plaintiffs have the burden to show that they were exposed to allegedly toxic substances, and even more significantly, that they received a dose of those substances sufficient to cause the harm that they allegedly

suffered. See, e.g., *Abuan v. General Elec. Co.*, 3 F.3d 329, 334 (9th Cir. 1993); *Renaud v. Martin Marrieta Corp.*, 972 F.2d 304, 306 (10th Cir. 1992).

Because of the nature of their claims, Plaintiffs are in the best position to provide the basic information necessary to establish a prima facie case and the causal connections between each plaintiff's alleged injuries and the respective chemicals being attributed to the Defendants.

B. Other Courts, Including New Mexico Courts, Routinely Enter Similar Case Management Orders.

The order sought by the Defendants is neither new nor unique. Similar orders routinely have been entered for many years by courts of various jurisdictions, particularly in cases similar to the instant case. Illustrative cases in which such orders have been entered include the following:

- *Atwood v. Warner Electric Brake & Clutch Co.*, 605 N.E. 2d 1032 (App. Ct. Ill. 1992), *pet. denied*, 612 N.E. 2d 510 (Ill. 1993) (Order required plaintiffs to provide reports of medical examinations by plaintiffs' doctors or experts and required that plaintiffs submit to medical examination by defendants' doctors or experts before the depositions of the plaintiffs were scheduled);
- *Grant v. E. I. du Pont de Nemours & Co.*, 7 Toxics L. Rep. (BNA) 1231 (E.D. N.C. 1993) (Order required plaintiffs to submit affidavits and reports of physicians, psychiatrists, and psychologists on personal injury claims, including future harm and emotional distress. Physicians' affidavits were required to specify nature, duration and amount of exposure (including blood levels) of each plaintiff to specific chemicals, when exposure occurred, and the nature and extent of injury);
- *Lowrance v. Liquid Waste Disposal Co.*, 7 Toxics L. Rep. (BNA) 978 (Jan. 27, 1993) (Livingston County, Ky) (Order required each plaintiff to provide (a) evidence of groundwater contamination with a specific itemization of the constituents by which the groundwater was contaminated by any of the defendants, (b) evidence of any particulate fall-out with a specific itemization of the constituents by which the plaintiff's property was contaminated by any defendants, (c) evidence of air contamination characterized by offensive aromas or corrosive properties, with a specific itemization of the constituents by which the property was contaminated, (d) the date(s) on or during which each plaintiff's property was contaminated, (e) the date and method of any sampling or testing used to support plaintiff's responses, and (f) evidence supporting plaintiff's claims of damages and causation by substances emanating from defendants' plants, including all experts' reports);
- *Alston v. Atlantic Richfield Co.*, C. A. No. 1:90 CV 626 (E.D. Tex.) (Aug. 28, 1991) (Order required each of 171 plaintiffs in waste site case and their physician to

provide affidavits supporting exposure and personal injury claims, together with supporting literature);

- *Dolan v. Humacid-MacLeod*, 5 Toxics L. Rep. (BNA) 787 (Cal. App. 1990) (Order required each plaintiff with personal injury claims to report the chemical or toxic substances to which the plaintiff was exposed, the date(s) of exposure, the method of exposure, the nature of exposure, the nature of the injuries, the identity of each medical expert supporting the claim and all reports of physical exams, lab tests or diagnostic procedures);
- *Albertson v. Dow Chemical Co.*, C.A. No. 65212 (D.C. 7th Jud. Dist., Natrona County, WY) (April 10, 1990) (Order required each plaintiff to provide an affidavit from a physician stating his or her opinion, based on a reasonable degree of medical probability, that the plaintiff had suffered injuries as a result of exposure to chemicals. The affidavit was required to list all injuries, illnesses or conditions suffered by the plaintiff that, in the opinion of the physician, were caused by the alleged exposure and specify the chemical or chemicals that, in the opinion of the physician, caused each injury, illness, and condition listed);
- *Eggar v. Burlington Northern Railroad Co.*, 4 Toxics L. Rep. (BNA) 283 (D. Mont. 1990) (Order required each plaintiff to submit (1) a statement describing the circumstances of his alleged exposure to chemicals and specifying the chemical(s) believed to have caused his injury or condition, and (2) a physician's affidavit, based on a reasonable degree of medical certainty, on the issues of injury and causation, together with a statement of the scientific and medical bases for the physician's opinion);
- *Whiting v. Boston Edison Co.*, 5 Toxics L. Rep. (BNA) 584 (D. Ma. 1990) (Order required plaintiff to file a statement of evidence containing a representation of specific competent testimony establishing a causal relationship between plaintiff's exposure and his disease);
- *Renaud v. Martin Marietta Corp.*, 2 Toxics L. Rep. (BNA) 1361 (D. Colo. 1988) (Order required plaintiffs to provide opinions of medical experts that their plaintiffs have probably suffered injury as a result of exposure to toxic chemicals");
- *Pannick v. New Jersey*, 4 Toxics L. Rep. (BNA) 117 (July 5, 1989) (Mercer County, N.J.) (Order required the plaintiffs to provide medical experts' reports asserting a causal connection between plaintiffs' injuries and specific contaminants allegedly in their well water);
- *Adinolfi v. PJP Landfill*, 2 Toxics L. Rep. (BNA) 506 (Sept. 30, 1987) (Hudson County, N.J.) (Order required eighty plaintiffs residing near waste site to each provide information about the manner of their alleged exposure to chemicals at the site, the identity of the chemicals, the dates of the exposure and the nature of their medical condition);

- *Allen v. Agrico Chemical Co.*, C.A. No. 86-360 (D. LA. 1987) (Order required each plaintiff to provide a statement detailing the facts of each exposure to alleged hazardous/toxic substances and reports of treating physicians and medical or other experts supporting that plaintiff's claims of injury and causation by substances; with respect to alleged property damages, order required reports of real estate or other experts supporting each plaintiff's claim of property damage or diminution, including the timing, degree and causation of such damage or diminution); and
- *Cherry v. Air Products & Chemicals*, 3 Toxics L. Rep. (BNA) 1279 (March 14, 1989) (Delaware County, PA) (Order precluded plaintiffs from taking any discovery until plaintiffs provided the defendants with admissible expert opinions establishing that each plaintiff's exposure caused his particular illness);

Many of the orders referred to above were reported in the Toxics Law Reporter. Copies of these reports are in the appendix at Tab "B".

The use of a case management order is recognized by Rule 1-016 NMRA (2000). The justification behind Rule 16 is to prevent surprise and to get away from the "sporting" theory of justice. *State ex. Rel. Hwy Dept. v. Brachau*, 90 N.M. 496, 565 P.2d 1013 (1977).

New Mexico courts have entered case management orders incorporating aspects of the case management order proposed in this case. For example, in the context of settlement discussions in a case alleging an airborne release of toxic substances from a rail car, Federal Magistrate Leslie Smith ordered Plaintiffs to complete a detailed questionnaire, provide expert reports on causation, and a medical and employment records release in advance of the initial settlement conference. The scheduling order and questionnaire are in the appendix at Tab "C". Moreover, Judge William D. Johnson of the Fifth Judicial District, presiding over the diet drug litigation, has required Plaintiffs to respond to detailed questionnaires and provide medical, mental health, educational, tax, social security, military, employment, insurance and workers compensation records. Additionally, as indicated above, numerous other trial courts around the country have also entered case management orders in cases of this kind. Examples of actual case management orders – some from the cases mentioned above and some from other cases – are in the appendix at Tab "C".

IV Conclusion

SWEPI, Shell, and Los Cuatro respectfully request that this Court enter a proposed case management order for the following reasons:

1. To simplify the case by screening out invalid claims;
2. To conserve the resources of this Court and all parties by streamlining the case in discovery to address only Plaintiffs who can establish a *prima facie* case;
3. To conserve the resources of the parties by allowing the parties to test for and investigate only those substances that might have caused the injuries alleged in this case; and
4. To aid this Court in the efficient handling and disposition of this case.

Before filing this motion, counsel for Defendants requested counsel for Plaintiffs to agree to the entry of the proposed order. Counsel for Plaintiffs oppose the entry of the proposed order.

WHEREFORE, Defendants Shell Western E & P Inc., Shell Oil Company, and Los Cuatro, Inc. respectfully move the Court to enter the proposed case management order to require Plaintiffs to provide background information and provide expert reports before proceeding with any discovery against any Defendant in this case, and for such other and further relief, at law or in equity, to which Defendants may show themselves justly entitled.

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I hereby certify that a copy of the
foregoing was mailed to the following
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APPENDIX

Proposed Case Management Order Tab A

**Reports of Cases in Which Case Management Orders
have been Entered Tab B**

Actual Case Management Orders from Other Courts Tab C

FIFTH JUDICIAL DISTRICT COURT
COUNTY OF LEA
STATE OF NEW MEXICO

CONCEPCION and ROSARIO ACOSTA, et al.,

Plaintiffs,

VS.

No. CV-99-00509-G

SHELL WESTERN E & P INC., et al.,

Defendants.

CASE MANAGEMENT ORDER

The Motion of Defendants Shell Oil Company and Shell Western E & P Inc. for Entry of a Case Management Order is granted.

1. IT IS ORDERED that within thirty (30) days of the date this order is signed, each plaintiff shall provide to opposing counsel a written authorization for the release of (a) all health care records (physical and mental) of any kind including but not limited to physician, hospital, and laboratory records; (b) all employment records; (c) education records; (d) all Social Security Administration, Medicare, and disability records; (e) all military and Veteran's Administration records; (f) Internal Revenue Service records, and (g) all union records. Each authorization shall include the plaintiff's typewritten name, address, date of birth and social security number, and the plaintiff's original signature. Each plaintiff shall also provide with the authorizations the name, address, and telephone number of each entity (physicians, hospitals, employers, unions, etc.) that has custody of plaintiff's records. Form authorizations are attached as Exhibit "A" to this order.

2. IT IS ORDERED that within forty-five (45) days of the date that this order is signed, the Plaintiffs shall file with the Court and serve on opposing counsel answers to the questions in the Questionnaire, which is Exhibit "B" to this order;

3. IT IS FURTHER ORDERED that within one hundred and twenty (120) days of the date that this order is signed, each plaintiff shall file with the Court and serve on opposing counsel an affidavit signed by a qualified and duly licensed physician supporting his personal injury claims. The affiant must attach to his or her affidavit a copy of his or her current curriculum vitae. Specifically, the physician must state under oath (with respect to each plaintiff claiming personal injuries) that the plaintiff's injuries or symptoms were caused by exposure to one or more of the substances described in the Original Complaint in this case ("Chemicals"). Moreover, the physician must specify:

- (1) each specific injury and ailment that each plaintiff has allegedly suffered as a result of exposure to the Chemicals and the date on which such injury was allegedly first suffered;
- (2) each Chemical that, in the opinion of the physician, caused the plaintiff to suffer an alleged injury, illness, condition or symptom;
- (3) the manner in which the plaintiff was allegedly exposed to each Chemical (i.e., ingestion, inhalation or skin absorption);
- (4) the duration of time over which the plaintiff was exposed to each Chemical, including the date(s) of exposure and the total amount of time exposed;
- (5) all medical and/or scientific literature, data, studies, theories and/or facts relied upon by the physician in forming his or her opinions regarding the plaintiff; and
- (6) the basis for the physician's medical opinion (i.e., epidemiological studies, toxicological studies, in vitro testing, animal studies, etc.);

4. IT IS FURTHER ORDERED that within one hundred twenty (120) days from the date this order is signed, each plaintiff shall file with the Court and serve on opposing counsel an affidavit signed by a qualified environmental engineer supporting plaintiff's contamination claims. The affiant must attach to his or her affidavit a copy of his or her current curriculum vitae. Specifically, the engineer must state under oath (with respect to each plaintiff claiming

contamination) that the plaintiff's property is in fact contaminated. Moreover, the engineer must specify:

- (1) the particular Chemical that is contaminating the property;
- (2) the source of the contamination;
- (3) the amount or concentration of such Chemical in the property;
- (4) the normal, background level of the Chemical that should be in and around the property; and
- (5) the length of time that the Chemical has been present on the property;

5. IT IS FURTHER ORDERED that within one hundred twenty (120) days of the date this order is signed, each plaintiff shall file with the Court and serve on opposing counsel an affidavit signed by a qualified and duly licensed and certified real estate appraiser. The affiant must attach to his or her affidavit a copy of his or her current curriculum vitae. Specifically, the appraiser must state under oath (with respect to each plaintiff who is claiming a diminution in property value) that plaintiff's property has sustained a diminution in value. Moreover, the appraiser must specify:

- (1) the amount of the diminution in value;
- (2) when the diminution in value occurred;
- (3) the value of the property before the diminution; and
- (4) the cause of the diminution in value;

6. IT IS FURTHER ORDERED that nothing contained herein shall preclude the parties from moving for a modification of this case management order or from moving for further case management orders dealing with the conduct of discovery, the trial, or of any other matter not addressed in this case management order. Moreover, nothing herein shall preclude any party from moving for summary judgment on any issue in this case;

7. IT IS FURTHER ORDERED that all discovery in this case (including any discovery requests already filed and served) is hereby stayed until each plaintiff complies with this case management order; and

8. IT IS FURTHER ORDERED that the failure of any plaintiff to timely comply with this case management order will result in the dismissal with prejudice of each such plaintiff's claims.

SIGNED this _____ day of _____, 2000.

JUDGE PRESIDING

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AUTHORITY TO RELEASE MEDICAL RECORDS

TO WHOM IT MAY CONCERN:

This will authorize you to allow the firms of Dow, Cogburn & Friedman, P.C. and Miller Stratvert & Torgerson, or any of their representatives, agents or employees, to inspect the originals of any and all medical records, x-rays or other medical information (including mental health records) on _____, Social Security #: _____, Date of Birth: _____, which are in your possession or subject to your control, and to allow copies to be made of such records. Please also be advised that:

1. Information obtained by this authorization is for use in pending litigation, and shall not be disseminated for any other purposes; and
2. You are specifically and expressly authorized to accept a copy of this authorization as though it were an original.

Printed Name: _____

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2000.

NOTARY PUBLIC, STATE OF NEW MEXICO

EXHIBIT "A"

AUTHORITY TO RELEASE EMPLOYMENT RECORDS

TO WHOM IT MAY CONCERN:

This will authorize you to allow the firms of Dow, Cogburn & Friedman, P.C. and Miller Stratvert & Torgerson, or any of their representatives, agents or employees, to inspect the originals of any and all employment records, or other employment information on _____, Social Security #: _____, Date of Birth: _____, which are in your possession or subject to your control, and to allow copies to be made of such records. Please also be advised that:

1. Information obtained by this authorization is for use in pending litigation, and shall not be disseminated for any other purposes; and
2. You are specifically and expressly authorized to accept a copy of this authorization as though it were an original.

Printed Name: _____

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2000.

NOTARY PUBLIC, STATE OF NEW MEXICO

AUTHORITY TO RELEASE EDUCATION RECORDS

TO WHOM IT MAY CONCERN:

This will authorize you to allow the firms of Dow, Cogburn & Friedman, P.C. and Miller Stratvert & Torgerson, or any of their representatives, agents or employees, to inspect the originals of any and all educational records on _____, Social Security #: _____, Date of Birth: _____, which are in your possession or subject to your control, and to allow copies to be made of such records. This Release includes, but is not limited to, any application for enrollment and all documents and transcripts regarding the classes taken and level of education completed during the time the undersigned attended your institution. Please also be advised that:

1. Information obtained by this authorization is for use in pending litigation, and shall not be disseminated for any other purposes; and
2. You are specifically and expressly authorized to accept a copy of this authorization as though it were an original.

Printed Name: _____

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2000.

NOTARY PUBLIC, STATE OF NEW MEXICO

**AUTHORITY TO RELEASE SOCIAL SECURITY,
MEDICARE, AND DISABILITY RECORDS**

TO WHOM IT MAY CONCERN:

This will authorize you to allow the firms of Dow, Cogburn & Friedman, P.C. and Miller Stratvert & Torgerson, or any of their representatives, agents or employees, to inspect the originals of any and all Social Security, Medicare, and disability benefit records and information on _____, Social Security #: _____, Date of Birth: _____, which are in your possession or subject to your control, and to allow copies to be made of such records. Please also be advised that:

1. Information obtained by this authorization is for use in pending litigation, and shall not be disseminated for any other purposes; and
2. You are specifically and expressly authorized to accept a copy of this authorization as though it were an original.

Printed Name: _____

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2000.

NOTARY PUBLIC, STATE OF NEW MEXICO

AUTHORITY TO RELEASE TAX RECORDS

TO WHOM IT MAY CONCERN:

This will authorize you to release copies of all tax forms and information filed by or concerning _____, Social Security #: _____, Date of Birth: _____, for the years 1989 through 1999 to the firms of Dow, Cogburn & Friedman, P.C. and Miller Stratvert & Torgerson, or any of their representatives, agents or employees. Please also be advised that:

1. Information obtained by this authorization is for use in pending litigation, and shall not be disseminated for any other purposes; and
2. You are specifically and expressly authorized to accept a copy of this authorization as though it were an original.

Printed Name: _____

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2000.

NOTARY PUBLIC, STATE OF NEW MEXICO

AUTHORITY TO RELEASE MILITARY AND VETERAN'S RECORDS

TO WHOM IT MAY CONCERN:

This will authorize you to release copies of all military and Veteran's records and information on _____, Social Security # _____, Service Identification # _____, Date of Birth: _____, to the firms of Dow, Cogburn & Friedman, P.C. and Miller Stratvert & Torgerson, or any of their representatives, agents or employees. This Release includes, but is not limited to, the dates of service; the place of induction and discharge; the name and location of every temporary or permanent duty station to which the undersigned was assigned; the dates of such assignment; the duties performed at such station; the type of discharge given; and all medical records. Please also be advised that:

1. Information obtained by this authorization is for use in pending litigation, and shall not be disseminated for any other purposes; and
2. You are specifically and expressly authorized to accept a copy of this authorization as though it were an original.

Printed Name: _____

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2000.

NOTARY PUBLIC, STATE OF NEW MEXICO

AUTHORITY TO RELEASE UNION RECORDS

TO WHOM IT MAY CONCERN:

This will authorize you to release copies of all union records and information on _____, Social Security # _____, Service Identification # _____, Date of Birth: _____, to the firms of Dow, Cogburn & Friedman, P.C. and Miller Stratvert & Torgerson, or any of their representatives, agents or employees. This Release includes, but is not limited to, the dates of service; the place of induction and discharge; the name and location of every temporary or permanent duty station to which the undersigned was assigned; the dates of such assignment; the duties performed at such station; the type of discharge given; and all medical records. Please also be advised that:

1. Information obtained by this authorization is for use in pending litigation, and shall not be disseminated for any other purposes; and
2. You are specifically and expressly authorized to accept a copy of this authorization as though it were an original.

Printed Name: _____

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, 2000.

NOTARY PUBLIC, STATE OF NEW MEXICO

QUESTIONNAIRE

A. GENERAL INFORMATION

QUESTION NO. 1:

Please state your full name, including all names you have been known by, current and all previous addresses including dates of residence at each address, date of birth, place of birth, Social Security number, Medicare number, and your driver's license number.

ANSWER:

QUESTION NO. 2:

If you have ever made a claim or filed a lawsuit against any person, individual, company, or organization for money damages including, but not limited to, workers' compensation, please identify each such person, individual, company or organization by name and address, and state further the date and general subject matter of the claim, the cause number, the court in which the lawsuit was filed, and details on the disposition of the lawsuit (including the amount paid, if any, in settlement or at the conclusion of the lawsuit).

ANSWER:

QUESTION NO. 3:

If you have ever made a claim or application for disability benefits, please identify the firm or corporation by name and address, the date of the claim, the nature of the claimed disability, whether the claim or application was approved for benefits, and the benefits received.

ANSWER:

QUESTION NO. 4:

Identify the name and address of each person, firm, company or corporation for whom you have worked, and as to each employer state:

- a. Your job title or description;
- b. The beginning and ending dates of your employment with each employer;
- c. Your duties while employed, including the types of chemicals used in your job specifically and in the workplace in general;
- d. The average number of hours you worked per week during your employment;
- e. The reason you left; and
- f. Any injuries suffered by you on the job.

ANSWER:

QUESTION NO. 5:

If you have served in the armed forces, reserves or Coast Guard of the United States, state which service (Army, Navy, etc.); the branch of that service; your service identification number; the dates of your service; the place of induction and discharge; the name and location of every temporary or permanent duty station to which you were assigned; the dates of such assignment; the duties performed at such station; the type of discharge given.

ANSWER:

QUESTION NO. 6:

Do you now or have you ever had a home garden? If so, please provide the following information:

- a. Year(s) of gardening;
- b. Types of fruits and vegetables grown by year;
- c. Amount of fruits and vegetables consumed by year;
- d. The address at which the garden was located;
- e. Source of water used for gardening; and
- f. List of chemicals used in the garden.

ANSWER:

B. CHEMICAL EXPOSURE AND ENVIRONMENTAL INFORMATION

QUESTION NO. 7:

Please describe all the hobbies in which you have ever engaged, including:

- a. Date(s) of hobbies (i.e. which years);
- b. Frequency with which you engaged in each hobby; and
- c. Specific activities of the hobby, including the materials used.

ANSWER:

QUESTION NO. 8:

Do you engage in any home engine repair work including, but not limited to, car repair, motorcycle repair, small engine repair and/or appliance repair? Please describe:

- a. Date(s) of activities (i.e. which years)?
- b. Frequency with which you engaged in such activity; and
- c. Specific activities, including the materials used.

ANSWER:

QUESTION NO. 9:

Do you engage in any home repair or maintenance projects including, but not limited to, furniture repair, refinishing, paint stripping, or construction activities? Please describe:

- a. Date(s) of activities (i.e., which years);
- b. Frequency with which you engaged in such activity; and
- c. Specific activities, including the materials used.

ANSWER:

QUESTION NO. 10:

Do you use self-service gas stations to purchase gasoline? If yes, please describe.

- a. Number of years;
- b. Average number of times per week you use these stations; and
- c. Approximately how long each re-fueling takes.

ANSWER:

QUESTION NO. 11:

For each substance, chemical, material or pollutant alleged to be attributable to the Defendants which you claim caused damage or injury to you or your property provide the following information:

- a. Identify the substance, chemical, material, compound or pollutant;
- b. Date(s) of exposure or contact;

- c Duration of each exposure or contact;
- a. The levels or concentrations of each exposure or contact;
- b. The information upon which you rely to establish that each exposure or contact caused damage;
- f. The environmental medium (*i.e.* soil, water, air, etc.) in which the substance, chemical, material, or pollutant was found;
- g. The source from which the substance, chemical, material, compound or pollutant was derived;
- h. Describe the location where you encountered such substance, chemical, material or pollutant; and
- i. Describe how you came into contact with the substance, chemical, material, or pollutant.

ANSWER:

QUESTION NO. 12:

Describe in detail when and how you first became aware of the possible release or presence of the substances, chemicals, materials or pollutants on property owned by you or on which you resided that you contend caused your injuries.

ANSWER:

QUESTION NO. 13:

If you are claiming that you have come into contact with soil contaminated with the substances, chemicals, materials or pollutants identified in your response to Question No. 11, identify every location of such soil contact or encounter and every date on which you came into contact with such soil at that location.

ANSWER:

QUESTION NO. 14:

If you are claiming that you have come into contact with air contaminated with the substances, chemicals, materials or pollutants identified in your response to Question No. 11, identify every location of contact or encounter and every date on which you came into contact with such air at that location.

ANSWER:

QUESTION NO. 15:

If you are claiming that you have come into contact with water, including surface and subsurface water, contaminated with the substances, chemicals, materials or pollutants identified in your response to Question No. 11, identify every location of such water and every date on which you came into contact with such water at that location.

ANSWER:

QUESTION NO. 16:

If you are claiming that you have come into contact with the substances, chemicals, materials or pollutants identified in your response to Question No. 11 in any manner other than those described in Question Nos. 13, 14, and/or 15, describe how the contact occurred.

ANSWER:

QUESTION NO. 17:

Please identify any photographs, videotapes, audiotapes, aerial photographs, and prints of original photographs in your care, custody or control concerning the facts, occurrences or exposures made the basis of your claim against the Defendants, stating who took the photographs or made the prints, when and where they were taken, and generally what they depict.

ANSWER:

QUESTION NO. 18:

Please identify and describe any test that has been performed on any sample of soil, surface or ground water, air, or any other substance taken on your property or any other location where you contend you were exposed to any substance, chemical, material or pollutant. Your answer should include the following information:

- a. The location from which the sample was taken;
- b. The date that the sample was taken;
- c. The date of the test;
- d. The nature of the substance tested; and
- e. The nature and results of such test.

ANSWER:

QUESTION NO. 19:

With regard to each test identified in your answer to Question No. 18, please provide the following information:

- a. Identify each person who performed each test;
- b. Identify any other person with knowledge of the testing;
- c. Identify the laboratory or other facility where each test was performed;
- d. Identify all documents referring or relating to the tests or test results; and
- e. Identify who took the sample and describe how the sample was taken.

ANSWER:

C. HEALTH AND WELLNESS INFORMATION

QUESTION NO. 20:

Identify and describe all personal injuries, diseases, illnesses, disorders, health problems, health concerns, and/or symptoms which you allege were caused by the exposures and contacts identified in your answer to Question Nos. 11, 13, 14, 15 and 16.

ANSWER:

QUESTION NO. 21:

For each personal injury, disease, illness, disorder, health problem, health concern, and/or symptom identified in your answer to Question No. 20, please provide the following information:

- a. Identify the specific substance, chemical, material, compound or pollutant which you contend caused or contributed to each injury;
- b. The date or dates on which you first noticed any adverse health effects or symptoms;
and

- c. Identify every medical professional or other health care provider that you contacted for the purpose of diagnosis and treatment of such adverse health effects or symptoms.

ANSWER:

QUESTION NO. 22:

Identify all medications that you currently take (In addition to prescription medication, your response should include over the counter items such as aspirin, vitamins, laxatives, nutritional supplements, etc.). Your answer should include how long these medications have been taken, frequency and dosage, and the name, address and phone number of any prescribing physician.

ANSWER:

QUESTION NO. 23:

If you are claiming personal injuries including medical monitoring, fear of future illness or increased risk of illness, identify all of your health care providers for the past ten (10) years, including, but not limited to, psychiatrists, psychoanalysts, medical doctors, osteopaths, chiropractors, counselors, nurses and physician's assistants.

ANSWER:

QUESTION NO. 24:

If you are claiming damages for pain and suffering and/or mental anguish, identify all of your health care providers for the past ten (10) years, including, but not limited to, psychiatrists, psychoanalysts, medical doctors, osteopaths, counselors, nurses and physician's assistants.

ANSWER:

QUESTION NO. 25:

Do you have any known allergies? If so, please list below.

ANSWER:

QUESTION NO. 26: If you smoke or use tobacco products, which of the following do you use/consume and if so, what amount of each do you consume, how often do you consume each product? Please also list the brands consumed.

1. Cigarettes: _____
2. Cigars: _____
3. Pipe Tobacco _____
4. Chewing Tobacco _____
3. Other: _____

QUESTION NO. 27: Please indicate the problems you have experienced.

A. Hand & Neck

1. Headaches _____
2. Head Injuries _____

B. Eyes

1. Visual difficulties _____
2. Need glasses _____
3. Glaucoma _____
4. Cataracts _____
5. Dry Eyes _____

C. Ears/Hearing

1. Trouble hearing _____
2. Need hearing aid _____
3. Dizziness _____
4. Ear infections _____

D. Nose & Sinuses

1. Nasal stuffiness/congestion _____
2. Nosebleeds _____
3. Sinusitis _____

E. Mouth & throat

1. Trouble with teeth or gums _____
2. Dentures _____
3. Dry mouth _____

4. Frequent sore throat or tonsilitis _____

F. Neck

- 1. Goiter _____
- 2. Lump in neck _____
- 3. Pain or stiffness _____

G. Skin

- 1. Rashes _____
- 2. Itching _____
- 3. Dryness _____
- 4. Cancer _____
- 5. Sun Sensitivity _____

H. Breasts

- 1. Lumps _____
- 2. Pain or discomfort _____
- 3. Discharge from nipple _____
- 4. Cancer _____

I. Lungs

- 1. Cough _____
- 2. Wheezing _____
- 3. Asthma _____
- 4. Pneumonia _____
- 5. Pleurisy _____
- 6. Emphysema _____
- 7. Cancer _____

J. Heart

- 1. Heart trouble _____
- 2. High blood pressure _____
- 3. Heart murmurs _____
- 4. Chest pain _____
- 5. Palpitations _____
- 6. Shortness of breath _____
- 7. Swelling of legs or feet _____
- 8. Date of last electrocardiogram ____/____/____

K. Gastrointestinal

1. Sudden weight loss or gain _____
2. Difficulty swallowing _____
3. Heartburn _____
4. Nausea _____
5. Vomiting _____
6. Ulcers _____
7. Blood in stools _____
8. Rectal bleeding _____
9. Diarrhea _____
10. Constipation _____
11. Hepatitis _____
12. Jaundice _____
13. Gallbladder trouble _____
14. Cancer _____

L. Kidneys & Urinary Tract

1. Frequent urination _____
2. Burning or pain in urination _____
3. Blood in urine _____
4. Incontinence _____
5. Infections of kidney or bladder _____
6. Kidney stones _____

M. Male Genitalia

1. Discharge or sores on penis _____
2. Pain or swelling of testicles _____
3. History of syphilis or gonorrhea _____

N. Female Genitalia

1. Age at onset of menses _____
2. Age at menopause _____
3. Frequency and regularity of menses _____
4. Bleeding between periods _____
5. Post menopausal bleeding _____
6. Discharge or sores _____
7. Number of pregnancies _____
8. Number of deliveries _____
9. Number of abortions _____
10. History of syphilis or gonorrhea _____
11. Birth control method _____

O. Blood Vessels

1. Pain in legs when walking _____
2. Cramps _____
3. Varicose veins _____
4. Blood clots in veins _____
5. Vascular disease _____

P. Musculoskeletal

1. Backache _____
2. Pain or stiffness in muscles _____
3. Joint pains or arthritis _____
4. Limitation of movement or activity _____
5. History of rheumatoid arthritis or Lupus (SLE) _____
6. Gout _____

Q. Neurological

1. Fainting _____
2. Seizures _____
3. Paralysis _____
4. Numbness _____
5. Loss of sensation _____
6. Tremors _____
7. Dizziness _____

R. Blood

1. Anemia _____
2. Easy bruising or bleeding _____
3. Blood transfusions _____

S. Endocrine

1. Diabetes _____
2. Thyroid trouble or goiter _____
3. Intolerance to heat or cold _____
4. Excessive thirst or urination _____

T. Psychiatric

1. Nervousness _____
2. Depression _____

- 3. Mood swings _____
- 4. Loss of memory _____

QUESTION NO. 28:

Generally, how would you describe your present state of health?

ANSWER:

QUESTION NO. 29:

Have you had any major illnesses? If so, please list those illnesses. Include in your answer the approximate date of the illness.

ANSWER:

QUESTION NO. 30:

Have you had any major accidents or injuries? If so, please describe those accidents and injuries. Include in your answer the approximate date of the accidents or injuries.

ANSWER:

QUESTION NO. 31:

Have you had any major operations or surgeries? If so, please list all major operations and surgeries. Include in your answer the approximate date of the operations and surgeries.

ANSWER:

QUESTION NO. 32:

Have you ever been hospitalized? If so, please describe the circumstances under which you were hospitalized. Include in your answer the approximate date of such hospitalization.

ANSWER:

QUESTION NO. 33:

Please provide the age and condition of health of your parents, siblings, spouse and/or children. If deceased, please state the cause of and date at death.

ANSWER:

QUESTION NO. 34:

Please indicate if your parents, siblings, spouse and/or children have had any of the following: diabetes; heart disease; stroke; high blood pressure; kidney disease; cancer; arthritis; anemia; epilepsy; mental illness; alcoholism; or drug addiction.

Mother	<hr/>
Father	<hr/>
Brother	<hr/> <hr/> <hr/>
Sister	<hr/> <hr/> <hr/>
Son	<hr/> <hr/> <hr/>

Daughter

QUESTION NO. 35:

Do you consume alcoholic beverages? If so, please indicate the type of beverage and the approximately the number of drinks per day.

ANSWER:

QUESTION NO. 36:

Do you consume tea or coffee? If so, please indicate the approximate number of cups per day.

ANSWER:

D. PROPERTY DAMAGE INFORMATION

QUESTION NO. 37:

Identify each parcel of property you claim has been damaged or lost value. This request encompasses all property in which you have any ownership or leasehold interest, including any interest in the surface, subsurface or mineral estate. Your answer should include the following:

- a. The street address and legal description of the property;
- b. The subdivision in which the property is located;
- c. The nature of your interest in such property, *i.e.*, ownership, leasehold, etc.;
- d. The nature of any interest held by any other person or entity, the names and addresses of such party, and their relationship to you, if any;
- e. The principal use of the property (*e.g.*, personal residence, residential rental property for lease to others, commercial or business, or agriculture);
- f. Under what name, account number or taxpayer identification/account number is this property currently recorded;
- g. From whom the present owner acquired ownership (full name and address), if any;
- h. The full name, current address, and relationship to you, if any, of each person known by you to have resided on the property and give the approximate dates each person lived there;
- i. The date(s) and manner in which you acquired and/or disposed of your interest in the ownership or possession of the property in which you have such an interest, and, if applicable, the date such interest was acquired or disposed of by you and the purchase or sales price for same;

ANSWER:

QUESTION NO. 38:

For each parcel of property identified in your answer to Question No. 37, please provide the following information:

- a. Whether the present owner has attempted to sell the property, the date of such attempted sale, the listing agent, if any, the asking price, and any offers received;
- b. Whether a business was ever conducted on the property, the nature of the business and the dates the business was conducted;
- c. For any liens outstanding on the property, state the approximate amount and the lien holder;
- d. A description of any repairs and/or improvements made on or to the property in the last ten (10) years;
- e. Whether the property has been appraised, and, if so please provide the following information for any appraisal:
 - i. the date of each appraisal;
 - ii. who performed each appraisal;
 - iii. the appraisal value in each appraisal;
- f. The fair market value of the property, at the following dates:
 - i. the date of acquisition by the present owner;
 - ii. the date immediately preceding the injuries or damage claimed in this Lawsuit; and
 - iii. as of today's date.

ANSWER:

QUESTION NO. 39:

Describe all damage known to you to each parcel of property identified in your answer to Question No. 37. Your answer should include the following information:

- a. The cause of damage;
- b. The date of damage;
- c. A description of the damage;

- d. The amount of monetary damages you now seek, itemized to reflect the following allegations:
- i. Temporary property damage to the surface;
 - ii. Permanent property damage to the surface;
 - iii. Temporary property damage to the subsoil;
 - iv. Permanent property damage to the subsoil;
 - v. Temporary damage to the aquifer; and
 - vi. Permanent damage to the aquifer.

ANSWER:

QUESTION NO. 40:

Describe each building, dwelling or structure (including trailer homes) on each parcel of property for which you claim was damaged (including loss of value): the type of building (e.g., one story, two bedroom single family residence), the type of construction (e.g., wood frame), the total number and type of rooms and the number of square feet in the building, dwelling or structure.

ANSWER:

QUESTION NO. 41:

For each building, dwelling or structure identified in your answer to Question No. 40 please state the following information:

- a. Current condition and state of repair;
- b. Whether anyone currently resides in such building, dwelling or structure, and if not, why;
- c. Approximately when each building, dwelling or structure was built; and
- d. Whether it is currently rented or has ever been rented since the time of your acquisition, and, if so:
 - i. Identify each person to whom it has been rented;
 - ii. The dates during which it was rented; and
 - iii. The monthly amount of rent.

ANSWER:

QUESTION NO. 42:

With respect to your property, identify, to your knowledge, the source of the water (*i.e.*, water well, city water supply, rural water supply, etc.) used for any and all purposes (*e.g.*, drinking, cooking, bathing, laundering, gardening, livestock, irrigation, car washing/equipment cleaning, etc.).

ANSWER:

QUESTION NO. 43:

If you have applied for a loan from a bank, credit union, finance company, mortgage company or other lender, that in any way listed, involved or made reference to the property which is the subject of this lawsuit, (including loans which the property was intended to secure or to be pledged as collateral), provide the following information for each loan application you submitted:

- a. Identify each lender to whom you applied and the approximate date of each application;
- b. The amount you sought to borrow under each application and how you planned to use the loan proceeds;
- c. Whether you submitted a financial statement or other statement of assets and liabilities in connection with any of your loan applications;
- d. For each loan application listed in "c" above, identify each lender to whom you submitted such statement;
- e. Each lender from whom you borrowed money and the amount you borrowed; and
- f. Identify all documents from which you obtained information in answering this Question.

ANSWER:

QUESTION NO. 44:

If you are claiming that you have lost profits, devaluation of business, or other lost earnings, please state the following for each period during which you allegedly suffered such injuries or damages:

- a. Identify the nature of the business or employment to which your claim is related;
- b. Identify the dates upon which each such period began and ended;
- c. Identify the total amount of damages allegedly lost during each period up to and including the date of this answer; and
- d. Describe the reason why such damages occurred; or
- e. If you assert that the requested information cannot be provided, explain why.

ANSWER:

QUESTION NO. 45:

If you are claiming loss of future earnings, or business value, please identify the following:

- a. The nature of business or employment to which your claim is related;
- b. The date upon which you claim such damages began; and
- c. The total amount of damages that you attribute to the occurrences referred to in your claim.

ANSWER:

QUESTION NO. 46:

Please state whether you are claiming any business damage or business loss as a result of the alleged occurrences made the basis of this suit, and if so, please provide the following information for each business:

- a. The name and address of the business;
- b. The type or nature of the business;
- c. The full name, social security number and current address of each owner of the business;

- d. How the damage or loss occurred;
- e. The dates when the damage or loss occurred; and
- f. The amount of damages or loss.

ANSWER:

QUESTION NO. 47:

With respect to your property, describe, to your knowledge, each water well (whether active, inactive, plugged, abandoned or otherwise) known or suspected to be on the property, providing a complete history of such well, *i.e.*, the location, depth, maximum pumping rate, average water usage rate (daily or annual), date installed, date abandoned, by whom the well was installed, and past/present purposes for which the water was/is used.

ANSWER:

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TAB "B"

Reports

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JOHN L. ATWOOD et al., Plaintiffs-Appellants, v. WARNER
ELECTRIC BRAKE AND CLUTCH COMPANY, INC., Defendant-Appellee
(John L. Atwood et al., Plaintiffs-Appellants, v. Ethyl
Corporation et al., Defendants-Appellees; Kristopher E.
Johnson et al., Plaintiffs-Appellants, v. Ethyl Corporation
et al., Defendants-Appellees)

No. 2-91-0930

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

239 Ill. App. 3d 81; 605 N.E.2d 1032; 1992 Ill. App. LEXIS
2028; 179 Ill. Dec. 18

December 15, 1992, Filed

SUBSEQUENT HISTORY: [***1] Released
for Publication January 29, 1993. Petition for
Leave to Appeal Denied March 31, 1993.

PRIOR HISTORY: Appeal from the Circuit Court of
McHenry County. Nos. 85-L-0118, 86-L-0184, 89-L-415.
The Honorable Michael J. Sullivan, Judge, Presiding.

DISPOSITION: Affirmed in Part and Remanded.

CORE TERMS: discovery, certification, summary
judgment, personal injury, certify, exposure, causally,
consolidated, partial, barring, individual causes of action,
extensions of time, question certified, plaintiffs filed, cause
of action, date certain, contaminated, certificate, residents,
prognosis, disease, water, genuine issue of material fact,
willful disregard, discovery process, supervise, flexible,
purposes of discovery, personal injury claim, questions
certified

COUNSEL: For APPELLANT: Leonard M. Ring, Leonard
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JUDGES: DUNN, INGLIS, McLAREN

OPINIONBY: DUNN

OPINION: [*84] [**1034] JUSTICE DUNN delivered the opinion of the court:

This cause involves a number of toxic tort cases consolidated for the purposes of discovery. Plaintiffs, approximately 120 residents of Roscoe, Illinois, filed suit against eight [***4] defendants, including Warner Electric Brake & Clutch Company (Warner), for damages allegedly sustained as a result of long-term exposure to trichlorethylene (TCE), an industrial cleaning solvent. Plaintiffs appeal pursuant to Supreme Court Rule 308.

The questions certified for appeal are:

"I. Whether the trial court operating under discovery schedule orders and case management orders in these cases consolidated for discovery purposes and involving approximately 120 separate plaintiffs had the authority and/or discretion to:

(A) Require the plaintiffs in this cause to certify by a date certain that each plaintiff's medical or personal injury claims have been identified and the cause of those claims have [sic] been identified and that the cause of those claims have [sic] been the exposure to materials which are the subject of these cases as required in the order of April 5th, 1990;

(B) Upon failure of the individual plaintiffs to certify as required in subparagraph A above, to order that any medical or personal injury claim that is not fully identified in these reports, including but not limited to prognosis of any injury or disease, and which is not identified as [***5] being causally related to the exposure to the materials which are the subject of these cases is barred?

II. Is the order of partial summary judgment of July 12th [sic] 1991, an appropriate manner in determining whether the claims should be barred; and, if so, whether the order was justified under the circumstances of this case?"

In April 1983, the Winnebago County Department of Public Health notified affected residents of Roscoe that the department found high concentrations of TCE and other

volatile organic chemicals in the groundwater serving the wells of the community. The department informed residents that TCE had been found to be carcinogenic to animals and, as such, should be assumed human carcinogens. In their complaint, plaintiffs allege defendant Warner operated a manufacturing plant which used TCE in large volume degreasing operations of newly manufactured parts and for cleaning floors and machinery at the plant. Plaintiffs allege the residue water containing TCE was directed through plant drains to untreated lagoons on Warner's [*85] property and percolated through the ground into the aquifer which supplied the City of Roscoe's fresh water.

Plaintiffs [***6] filed the first of these consolidated cases, Atwood v. Warner Electric Brake & Clutch Co., in 1985. In July 1986, in Atwood v. Ethyl Corp. plaintiffs filed suit against the other seven defendants all of which were manufacturers or distributors of industrial solvents. The cases were consolidated for the purposes of discovery.

The first complaints filed in the Warner and Ethyl cases alleged one cause of action against defendants, rather than individual causes of action. On October 1, 1987, the trial court ordered plaintiffs to file individual [**1035] causes of action in the Warner case. In their second amended complaint, filed January 13, 1988, although plaintiffs complied with the trial court's order to file individual causes of action, each individual's allegations merely incorporated identical counts of the complaint. Thus, each plaintiff alleged identical injury. Plaintiffs alleged that through their ingestion and use of the contaminated well water they had been continuously exposed to large concentrations of TCE and other volatile organic chemicals from the time they set up residence in Roscoe through July 1984. Plaintiffs alleged that as a direct result of defendants' [***7] conduct they suffered rashes, dizziness, fatigue and prolonged malaise. They further alleged that through their ingestion of the contaminated water and the inhalation of the contaminated vapors therefrom they had suffered and will continue to suffer

"injury to [the] central nervous system, peripheral nervous system, cardiovascular system, reproductive system, genitourinary system and hypatic damage, and other injuries; that by reason of said injuries sustained, plaintiffs [have] and will continue to suffer great pain. By reason of said injuries plaintiffs [have] sustained emotional distress and mental anguish including fear of contracting and dying from cancer."

On October 1, 1987, the parties entered into a discovery schedule agreement. The court put the agreement into the form of a discovery schedule order. That schedule required in part that plaintiffs produce reports of medical

examinations by plaintiffs' doctors or experts, and that plaintiffs submit to medical examinations by defendants' doctors or experts before the depositions of the plaintiffs were scheduled. Plaintiffs agreed to produce reports identifying the injuries for approximately one-half of the plaintiffs [***8] by October 18, 1987, and for the remaining plaintiffs by February 10, 1988. This schedule was later made applicable to the cases against the remaining defendants.

On December 11, 1989, after plaintiffs received numerous extensions of time to comply with the discovery schedule, plaintiffs produced [*86] some, but not all, of the reports identifying their injuries. Because of the tremendous task discovery posed in the case and the delays which ensued, the trial court stated:

"One thing we may have to consider would be that the plaintiffs file some kind of a certificate, something as to each plaintiff, that you have completed all the examinations and that person is ready to be deposed and that you have provided all the reports so that way we are not going to be going back on anyone. If you have something else you have to get done or you feel needs to be done on a specific person, you get it done."

The court suggested that defendants file a motion requesting some sort of certification.

On January 10, 1990, defendants filed a motion to compel plaintiffs to certify that each plaintiff had identified personal injury claims. In that motion, defendants requested, pursuant [***9] to Supreme Court Rule 219(c) (134 Ill. 2d R. 219(c)), that the court set a date certain by which each plaintiff would certify that he or she had identified his or her medical or personal injury claims and the cause of those claims. After hearing arguments and receiving proposed orders from both plaintiffs and defendants, the trial court granted defendants' motion on April 5, 1990.

The April 5 order was entered pursuant to Supreme Court Rule 219(c). (134 Ill. 2d R. 219(c).) It provided in pertinent part:

"IT IS HEREBY ORDERED that on or before July 5, 1990[,] each individual plaintiff and his or her attorney shall certify that:

(a) each plaintiff has been examined by each medical professional that the plaintiff, his or her attorney and/or his or her retained medical professionals, consulting or otherwise, deem necessary to evaluate each individual plaintiff's medical, or personal injury, [sic] claims causally

related to this case;

(b) each plaintiff has identified all of his or her medical, or personal injury, [**1036] [sic] claims causally related to this case by way of the expert reports.

(c) each plaintiff is ready to be deposed. It is further ordered that any [***10] medical, or personal injury, [sic] claim that is not fully identified in these reports[,] including, [sic] but not limited to, the prognosis of any injury or disease, and which is not identified as being causally related to exposure to materials which are the subject of these cases shall be barred."

[*87] Each plaintiff was required to file a separate certification. The order excluded any newly developed personal injuries not ascertainable at the date of the filing of the certifications.

After plaintiffs were granted a number of extensions of time to file their certificates, the trial court granted its final extension on February 14, 1991. The trial court ordered plaintiffs to file the medical certificates by April 1, 1991. The court admonished plaintiffs that this was their final extension in this regard. Plaintiffs filed a number of certifications by April 1, 1991.

On June 5, 1991, defendants filed a number of motions for partial summary judgment, two of which are relevant to this appeal. The first motion sought summary judgment for certain plaintiffs' personal injury claims included in plaintiffs' complaint, but not listed in plaintiffs' certifications. The [***11] second motion sought summary judgment for certain claims listed in plaintiffs' certifications which were not supported by the requisite medical reports.

The trial court granted defendants' motions on July 8, 1991, and scheduled a hearing for July 12, 1991, to determine the precise language to be used in the order. In granting the motion, the court stated that it looked upon the situation as the enforcement of a prior order rather than a partial summary judgment. On July 12, the trial court entered its order which provided in part that there were no genuine issues of material facts raised by defendants in their motion and that, accordingly, defendants were entitled to judgments regarding those motions as a matter of law.

Specifically, the trial court found that any claims for personal injury not contained in plaintiffs' medical certifications were dismissed with prejudice, as well as any claims contained in the certifications for which no medical report had been produced. Attached to the court's order was a listing of plaintiffs' claims to which the cause of action would be limited. The court also stated that its order was intended to be consistent with and implement the April

[***12] 5, 1990, order.

Plaintiffs sought reconsideration of both the summary judgment order and the April 5, 1990, order. The trial court declined to reconsider either order and certified the issue for appeal.

I

We turn now to our discussion of the first question certified on appeal. The first portion of that question asks:

"I. Whether the trial court operating under discovery schedule orders and case management orders in these cases consolidated [*88] for discovery purposes and involving approximately 120 separate plaintiffs had the authority and/or discretion to:

(A) Require the plaintiffs in this cause to certify by a date certain that each plaintiff's medical or personal injury claims have been identified and the cause of those claims have [sic] been identified and that the cause of those claims have [sic] been the exposure to materials which are the subject of these cases as required in the order of April 5th, 1990[.]"

We conclude that it did.

Under the supreme court rules, trial courts have broad powers to supervise the discovery process. (*Amoco Oil Co. v. Segall* (1983), 118 Ill. App. 3d 1002, 1012, 74 Ill. Dec. 447, 455 N.E.2d 876.) The rules make it [***13] clear discovery procedures were designed to be flexible and adaptable to the infinite variety of cases and circumstances appearing in the trial court. (*Mistler v. Mancini* (1982), 111 Ill. App. 3d 228, 232, 67 Ill. Dec. 1, 443 N.E.2d 1125.) Moreover, the [**1037] increasing complexity and volume of litigation involves frequent recourse to discovery procedures. (*Mistler*, 111 Ill. App. 3d at 232.) In a case such as this, where the issues are as numerous and complex as the parties are plentiful, it is important to grant the trial court flexibility in managing the discovery process.

Supreme Court Rule 201 gives a trial court the authority to supervise all or any part of any discovery procedure. (134 Ill. 2d R. 201(c)(2).) In addition, Rule 201 grants a trial court the authority to sequence discovery for the convenience of the parties and witnesses and in the interests of justice. (134 Ill. 2d R. 201(e).) Rule 201 also provides that the trial of a case shall not be delayed to permit discovery unless due diligence is shown. 134 Ill. 2d R. 201(f).

Here, the trial court initially required plaintiffs to identify their injuries and produce medical reports [***14] in October 1987. When plaintiffs failed to comply with that discovery schedule order after numerous extensions of time, the trial court responded with its order of April 5, 1990, requiring plaintiffs to certify their injuries and causally relate them to exposure or be barred from bringing those claims, pursuant to Rule 219(c). Five years into the litigation, the defendants were still unaware of the exact nature of the claims against them. The trial court determined that it was imperative for plaintiffs to identify their claims and causally relate them to the cause of action before defendants began deposing the large number of plaintiffs' experts and witnesses. We cannot say the trial court exceeded its authority under the discovery rules by requiring plaintiffs to comply with the April 5, 1990, order or be barred from asserting those claims.

[*89] Plaintiffs argue the trial court's order required them to make a prima facie showing of injury and proximate cause as a condition precedent to discovery and that such a requirement violated their right to due process. We disagree.

Due process is not a technical concept unrelated to time, place, and circumstances, but, rather, [***15] is a flexible concept which calls for such procedural protections as a particular situation demands. (*People v. Webb* (1989), 182 Ill. App. 3d 908, 912, 131 Ill. Dec. 369, 538 N.E.2d 744.) Plaintiffs in this case were not denied due process. Defendants attempted to obtain full discovery for nearly five years by means of numerous requests and interrogatories prior to the trial court's April 5 order. Plaintiffs were given ample opportunity to comply with all discovery orders entered in this case. Because the litigation was making little progress after five years in the discovery stage, the trial court entered an order designed to implement full discovery, not to bar plaintiffs from bringing certain claims against defendants. Such an order did not violate plaintiffs' right to due process.

Section (B) of the first question certified for review asks whether the trial court had the authority, upon the failure of the individual plaintiffs to certify as required, to order that any medical or personal injury claim that was not fully identified in these reports, including but not limited to prognosis of any injury or disease, and which was not identified as being causally related to the exposure [***16] to the materials which are the subject of these cases, be barred. We conclude the trial court acted within its authority.

Discovery rules establish guidelines for a fair and orderly procedure whereby discovery and full disclosure may be accomplished. The rules permit the imposition of sanctions

upon a party deemed by the trial court to have abused or disregarded discovery rules or procedures. (*Harris v. Harris* (1990), 196 Ill. App. 3d 815, 819, 144 Ill. Dec. 113, 555 N.E.2d 10.) Rule 219(c) provides that when a party fails to comply with an order entered under the discovery rules, the court may enter any just order, including the dismissal of that party's action, with or without prejudice. (134 Ill. 2d R. 219(c).) The appropriate sanction for a party's noncompliance is a matter within the broad discretion of the trial court and absent abuse will not be disturbed on appeal. *Harris*, 196 Ill. App. 3d at 819-20.

[**1038] Plaintiffs argue the barring of their claims is too drastic a sanction. They argue the courts have found the barring of a claim to be a severe sanction, not to be invoked except where the actions of the parties show a deliberate and [***17] willful disregard of the court's authority. See *Gallo v. Henke* (1982), 107 Ill. App. 3d 21, 62 Ill. Dec. 766, 436 N.E.2d 1068.

[*90] However, Illinois courts are becoming less tolerant of violations of discovery rules, even at the expense of a case being decided on the basis of the sanction imposed, rather than on the merits of the litigation. (*Harris*, 196 Ill. App. 3d at 820.) Clearly, the purpose of sanctions is to accomplish the goal of discovery, not to punish. At the same time, courts have an interest in promoting the unimpeded flow of litigation. *Harris*, 196 Ill. App. 3d at 820.

We conclude the trial court acted within its authority under Rule 219(c) and did not abuse its discretion by barring plaintiffs' claims for which no certifications and medical reports had been filed. While it is true the record does not reveal plaintiffs acted in willful disregard of the trial court's authority, considering the complex nature of the case and the large number of parties involved, the six-year delay in compliance with the discovery order was excessive and indicative of a lack of diligence or an inability to produce the [***18] required information.

II

The second and last question certified for review is whether the use of an order of partial summary judgment of July 12, 1991, was an appropriate manner to determine whether the claims should be barred and, if so, whether the order was justified under the circumstances of this case.

We have concluded the claims for which no certification was filed and claims not supported by the required medical

reports were properly dismissed as a sanction under Rule 219(c). Although the trial court granted summary judgment as to these claims, we have the authority to affirm the trial court on any basis supported by the record. (See *Bell v. Louisville & Nashville R.R. Co.* (1985), 106 Ill. 2d 135, 148, 88 Ill. Dec. 69, 478 N.E.2d 384.) However, as to claims defendants asserted were insufficient, despite the fact the required certifications and medical reports were filed, summary judgment may have been proper.

The law is clear that a defendant may move for summary judgment at any time as to all or any part of the relief sought against him or her. (Ill. Rev. Stat. 1991, ch. 110, par. 2-1005(b).) While a plaintiff need not prove his or her case at the summary judgment stage, [***19] he or she must at least come forward with enough evidence to adequately create a genuine issue of material fact. (*Estate of Henderson v. W.R. Grace Co.* (1989), 185 Ill. App. 3d 523, 530, 133 Ill. Dec. 594, 541 N.E.2d 805.) It is possible plaintiffs failed to establish a genuine issue of material fact regarding certain certified individual claims.

Thus, we conclude the trial court has the authority under Rule 219(c) to bar claims of plaintiffs who failed to file the required certifications [*91] and medical reports pursuant to the April 5, 1990, order of the trial court. We also conclude that the use of partial summary judgment proceedings under section 2-1005 of the Code of Civil Procedure (Ill. Rev. Stat. 1991, ch. 110, par. 2-1005), and not sanctions under Rule 219(c), is the appropriate procedure to determine summarily the disputed claims of plaintiffs who complied with the April 5, 1990, order by filing certifications and medical reports.

However, the propriety of the summary dismissal of the personal injury claims of each of the plaintiffs who filed the required certifications and medical reports was not certified to us in this appeal, nor do we find the July 12, 1991, order [***20] as applied to these plaintiffs to be final and appealable at this time. We therefore do not review the summary dismissal of their individual claims in this appeal.

Accordingly, we affirm the April 5, 1990, order and remand the cause to the trial [**1039] court for further proceedings consistent with the opinions set forth herein in answer to the questions certified to this court for review.

Affirmed in part; remanded for further proceedings.

INGLIS, P.J., and McLAREN, J., concur.

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SECTION: TOXIC TORTS: PENDING LITIGATION: ENVIRONMENTAL EXPOSURE: Ground Water Contamination.

TITLE: 'LONE PINE' ORDER ISSUED IN \$ 1.3 BILLION SUIT REQUIRES MEDICAL PROOF OF EMOTIONAL DISTRESS.

TEXT:

A federal court in North Carolina issued a 'Lone Pine' order in a \$ 1.3 billion ground water contamination action Feb. 18, requiring 22 homeowners to prove their emotional distress claims through medical documentation. A defense attorney called the 12-page case management order "very thorough and comprehensive" (*Grant v. E.I. du Pont de Nemours and Co.*, DC ENC New BernDiv, No. 91-55-CIV-4-M, case management order 2/18/93).

In a four-page opinion accompanying the order, Judge Charles K. McCotter Jr. of the U.S. District Court for the Eastern District of North Carolina agreed with the plaintiffs that North Carolina law does not require proof of physical injury to succeed on emotional distress claims, but rejected the residents' contention that the need for physician affidavits "appears to imply or impute" that requirement.

Although the order requires affidavits from physicians, rather than non-medical experts, attesting to the residents' emotional distress claims, McCotter said he would allow the plaintiffs to produce affidavits from "competent expert witness[es] . . . specifying the nature and extent of each plaintiff's emotional injuries in addition or in lieu of physician affidavits."

The consolidated action involves 12 separate suits filed against E.I. du Pont de Nemours and Co. in May 1991 by lead plaintiffs Edward and Janice Grant and 20 other residents of Lenoir County, N.C. The suits contend DuPont injured the homeowners and contaminated their properties by allowing certain chemicals to be released from its facility into the air and ground water near their homes.

Exception To Need For Diagnosis Noted

The opinion rejected the plaintiffs' arguments that the use of medical experts to establish personal injury contravened North Carolina law. According to McCotter, the state supreme court held in *Waddle v. Sparks* (414 SE2d 22, NC SupCt 1992) that in order for an emotional distress claim to reach the jury, plaintiffs must show either medical documentation of severe emotional distress or other evidence of a severe and disabling psychological problem.

"Waddle does not require an actual medical diagnosis or medical treatment as a matter of law . . . where a plaintiff has presented sufficient evidence of 'severe and disabling' psychological problems for some period of time subsequent to the triggering event," McCotter said. "Accordingly, . . . the order does not imply or impute a requirement of physical injury for an emotional distress claim," he said.

McCotter added that he "has no problem" with the plaintiffs complying with his order by "producing an affidavit from a competent expert witness specifying the nature and extent of each plaintiff's emotional distress . . . in addition or in lieu of that of a physician." The defendants have the same prerogative, he said.

Management Order Sets Schedule, Requirements

The case management order stated:

- o Deposition discovery is to continue through June;
- o Plaintiffs must file names of their experts along with statements on the substance of their testimony by Aug. 15. Defense depositions of plaintiffs' experts to end by Oct. 15;
- o Defense must file names of their experts along with statements on the substance of their testimony by Nov. 15. Plaintiffs' depositions of defense experts to end by Jan. 15, 1994;
- o Plaintiffs to complete scientific testing of their properties, including soil, ground water, surface water, and air by May 31. Results to defense by June 15, specifying each chemical by name, date of testing, level and concentration of chemical, testing methodology, and connection to manufacturer. Failure to comply may result in dismissal of action;
- o Defense to complete its testing by Sept. 30. Results to plaintiffs by Oct. 15, stating names of testers, nature, duration, and level of contamination, names of substances, methodology and testing limits, and route of chemical from plant to property. Failure to comply may result in preclusion of defense evidence at trial;
- o Plaintiffs to complete property appraisal by April 30. Results to defense by May 15, stating names of appraisers, value of property, impairment if any, and methodology of appraisal. Failure to comply may result in dismissal of property damage claims.
- o Defense to complete its appraisals by July 31. Results to plaintiffs by Aug. 15. Same requirements as for plaintiffs' appraisals;
- o Plaintiffs to consult with experts on remediation costs by July 31. Results to defense by Aug. 15, including all analyses, conclusions, and other expert data, timetable for clean-up, estimate of costs, and methodology. Failure to comply may result in remediation claim barred;
- o Defense to consult with clean-up experts by Oct. 31. Results to plaintiffs by Nov. 15. Same criteria as for plaintiffs;
- o Plaintiffs to consult with physicians, psychiatrists, psychologists, and other health care providers by May 31 on personal injury claims, including future harm and emotional distress. Results to defense by June 15, including all analyses. Physician affidavits must specify nature, duration, and amount of exposure (including blood levels) of each plaintiff to specific chemicals, when exposures occurred, and nature and extent of injury. Physician affidavits mandatory but may be supplemented with affidavits of non-medical experts. Physician affidavits must include expert qualifications, medical opinion to degree of reasonable certainty, listing of specific injuries, opinion as to causation, specific contaminants, and date future injuries will manifest themselves if at all. Failure to comply will bar personal injury claims.

o Defense to consult with medical experts by Sept. 30. Results to plaintiffs by Oct. 15. Same requirements as for plaintiffs;

o Plaintiffs to consult with experts by June 30 on claims for inconvenience, annoyance, and damage to quality of life. Results to defense by July 15, including conclusions and data, duration, and level of harm. Failure to comply bars these claims;

o Defense to consult with experts on inconvenience and annoyance claims by Sept. 30. Results to plaintiffs by Oct. 15. Same criteria as for plaintiffs;

o Final discovery must be completed by Dec. 31. Pre-trial motions are due Feb. 28, 1994. Responses by March 31, 1994.

o Next case management is scheduled for September 1993. Final case management conference set for June 1994. Trial before Judge Malcolm J. Howard set for July 1994.

Jonathan D. Sasser and David E. Fox of Moore & Van Allen in Raleigh, N.C., represent DuPont. Marvin Blount Jr. and James Hopf of Greenville, N.C., represent the plaintiffs.

(**Grant v. E.I. du Pont de Nemours and Co.**, DC ENC NewBernDiv, No. 91-55-CIV-4-M, case management order 2/18/93).

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SECTION: TOXIC TORTS: COURT DECISIONS: ENVIRONMENTAL EXPOSURE: Toxic Chemicals.

TITLE: PLAINTIFFS DROP SUIT AGAINST MANUFACTURERS AFTER COURT ISSUES CASE MANAGEMENT ORDER.

TEXT:

A Kentucky contamination suit was voluntarily dismissed Dec. 22, 1992, after a judge issued a case management order that required the plaintiffs to submit proof that specific toxic chemicals manufactured at nine nearby chemical plants damaged their property (*Lowrance v. Liquid Waste Disposal Co.*, Ky CirCt LivingstonCnty, No. 89-CI-053, claims voluntarily dismissed 12/22/92).

The action in the Kentucky Circuit Court for Livingston County was filed in 1989 by six current Kentucky residents and on behalf of nine other residents -- all of whom have cancer or died from the disease. The plaintiffs' homes are located within a three-mile radius of a complex of nine chemical manufacturing plants (4 TXLR 198).

According to defense attorney W. Gordon Hamlin, the dismissal of the suit with prejudice was a major victory for the manufacturers, which expended a "substantial amount" of time trying to get the order entered. It is "particularly noteworthy that the defendants never produced any documents and never had to present any witnesses for depositions" during the 3-1/2-year life of the case, Hamlin told BNA.

The Dec. 22, 1992, dismissal involved all remaining property claims against seven companies that owned chemical plants at the Calvert City Industrial Complex on the Tennessee River in Calvert City, Ky. The defendants were: Air Products and Chemicals Inc., Atochem North America Inc., B.F. Goodrich Co., BOC Group Inc., GAF Chemical Corp., Liquid Waste Disposal Co., and SKW Alloys Inc. Claims for personal injuries against those defendants were voluntarily dismissed in January 1992.

Residents Resided Downwind From Plants

According to the May 1989 complaint, for many years the defendants discharged toxic chemicals known to cause cancer or serious reproductive and neurological disorders into the air, ground, and water near their facilities. As a result, the plaintiffs were injured and their homes, which were downwind of the plant, became contaminated.

The suit contained counts in trespass, assault, negligence, strict liability, and nuisance. The action also sought punitive damages, contending the discharges were intentional and indicated a flagrant indifference to the plaintiffs' health and property.

In July 1989, a stipulation was filed limiting the plaintiffs' personal injury claims to a count alleging defendants increased the residents' risk of cancer. The defense moved for dismissal of that claim in August 1989, but Judge Willard B. Paxton denied the motion in September 1989.

After a 1991 study by the U.S. Health Department found no evidence that residents near the plant suffered from an increased risk of cancer, the defendants again moved to dismiss the remaining personal injury claim. In January 1992, the plaintiffs agreed to proceed only with property damage claims for trespass and nuisance. In voluntarily dismissing other claims, the plaintiffs cited their inability "to secure the necessary financing to proceed with the broad scope of litigation outlined in the original complaint."

Defense Sought Case Management Order

The defense moved for a case management order in May 1992, contending the remaining property damage claims were "broad and conclusory" and failed to identify any particular toxic chemical or to link any identifiable substance to a particular defendant or to a particular harm.

The order approved by Judge Tommy W. Chandler in May 1992 required plaintiffs to provide the following proof:

(ii) evidence of groundwater contamination with a specific itemization of the constituents by which this groundwater was contaminated by any of the defendants;

(iii) evidence of any particulate fall-out with a specific itemization of the constituents by which plaintiff's property was contaminated by any defendant;

(iv) evidence of air contamination characterized by offensive aromas or corrosive properties, with a specific itemization of the constituents by which plaintiff's property was contaminated by any defendant;

(v) for each item of real and personal property, the date(s) on or during which each plaintiff or plaintiff's decedent contends his/her property was contaminated by the alleged contaminants;

(vi) the date and a description of the method of any sampling or testing which plaintiff relies upon to support its responses to (ii) through (v); and

[vii-b] evidence supporting plaintiffs' claims of damages and causation by substances emanating from the defendants' plants, including . . . reports of environmental chemists, soil scientists, hydrogeologists, air dispersion modelers, land value appraisers and reports of all experts that provide information about expert testimony.

Richard H. Peek of Smithland, Ky., and Len W. Ogden of Paducah, Ky., represented the plaintiffs.

Hamlin and Lee Ann Jones, with Powell, Goldstein, Frazer & Murphy in Atlanta, and Richard C. Roberts of Whitlow, Roberts, Houston & Russell in Paducah, represented Air Products, Atochem, B. F. Goodrich, and BOC Group. C. Christopher Hagy of Sutherland, Asbill & Brennan in Atlanta, and B. M. Westberry of Westberry & Roberts in Marion, Ky., represented LWD.

Jerrold S. Brown of Hodgson, Russ, Andrews, Woods & Goodyear in Buffalo, N.Y., and Wanda Ballard of Stites & Harbison in Louisville, Ky., represented SKW Alloys. Peter N. Tassie of Woodward, Hobson & Fulton also in Louisville represented GAF.

(Lowrance v. Liquid Waste Disposal Co., Ky CirCt LivingstonCnty, No. 89-CI-053, claims

voluntarily dismissed 12/22/92).

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Toxics Law Reporter

November 21, 1990

Vol. 5, No. 25; Pg. 787

LENGTH: 201 words

SECTION: TOXIC TORTS: PENDING LITIGATION: ENVIRONMENTAL EXPOSURE: Toxic Chemicals.

TITLE: CALIFORNIA JUDGE ISSUES MANAGEMENT ORDER IN \$ 3.5B SUIT OVER EX-OIL WASTE. DISPOSAL SITE.

TEXT:

A California judge issued a case management order Nov. 7 in a \$ 3.5 billion suit brought by 175 plaintiffs alleging injury from drilling muds disposed of at what later became a residential subdivision. Trial is scheduled for Aug. 5, 1991 (*Dolan v. Humacid-Macleod*, Calif Super Ct Ventura Cnty, No. 95460, order issued 11/7/90).

Judge Melinda A. Johnson of the Ventura County Superior Court ordered each plaintiff with personal injury claims to submit to the court by Dec. 31 the chemical or toxic substance to which that plaintiff was exposed, the date(s) and place of exposure, the method of exposure, the nature of the plaintiff's injuries, and the identity of each medical expert who will support the claims.

Property damage plaintiffs also have until Dec. 31 to submit their lot number and address, the percentage and nature of their ownership interest, the identity of the chemical substance that caused the alleged property damage, the nature and extent of the contamination and the means of confirming its presence, the amount of damages based on diminished value, anticipated cleanup cost, and the identity of each expert who will testify about the toxic contamination and property damage.

Personal injury plaintiffs have until Feb. 1, 1991, to file and serve their list of designated experts with a current curriculum vitae for each and any reports of physical exams, lab tests, or diagnostic procedures. Property damage plaintiffs must also file statements indicating their experts' qualifications, the present value of their property, and the value of the property absent the contamination claimed by the plaintiff.

The defendants have until April 1, 1991, to depose the plaintiffs experts and identify their own. Defense experts must complete medical examinations by May 15 and produce and serve those reports by June 1. Motions in limine must be filed by July 15.

Glen Reiser, lead defense counsel for the original landowners, told BNA Nov. 15 that the "Lone Pine" order will require the plaintiffs to "put up or shut up." Three earlier attempts to get a case

management order failed because of the judge's concern that a Lone Pine order would supplant California summary judgment law, Reiser said.

Commenting that the defendants are "in deep caca," plaintiffs' attorney Conrad G. Tuohey disputed the characterization of the ruling as a "Lone Pine" order. The statement of damages required by the court is no more than an offer of proof, Tuohey told BNA Nov. 19. Unlike a Lone Pine order, it does not have to be under oath or verified, he said.

"The only thing that disturbs me in the sequence" of the seriatim disclosure, Tuohey said, emphasizing "We're still in the case."

The real battle was not over the case management order, Tuohey continued, but over whether three would be a single trial. The judge concluded that "the interests of judicial economy and consistency in rulings and findings will be fostered by a single trial," and refused to sever any issues of law or fact from that trial.

Oil Field Disposal Site

According to Reiser, the suit was filed in January 1987 by residents and owners of Oxnard Dunes, 200 yards from the beach in Ventura County. The Dunes property had been used for disposal of drilling muds in the 1950s, he explained. Drilling muds -- a mix of oil and clay used to lubricate drilling rigs -- contain trace amounts of benzene, xylene, toluene, and barium sulfate. The waste disposal site opened in 1955 and closed in 1960. In the early 1960s, the property was sold to a developer, and the muds were bulldozed into the sand.

The property was then sold as empty lots, Reiser continued, and some 50 out of 100 lots were built. In 1985, during a compaction test for further building, the odor of petroleum led to its discovery.

Tuohey told BNA that the developer used the muds to increase the weight-bearing capacity of the land, and deliberately sold the lots empty for that reason. Many of the houses in the subdivision are now sinking, he said. Further, he said, the developers never disclosed that the area had been used as a dump site, with as much as 13.5 feet of the drilling muds in some locations.

According to Reiser, the Environmental Protection Agency investigated but took no action because of the oil exclusion to the Comprehensive Environmental Response, Compensation, and Liability Act. The California Department of Health Services also concluded, in a preliminary report, that the site posed no health risk, he said. The final report is due out this month.

Each of the original 133 plaintiffs, including both tenants and property owners, in the personal injury and property damage lawsuit sought \$ 20 million, Reiser said. According to an October 1988 statement of damages, each plaintiff is seeking \$ 1 million for property damage, \$ 2 million for personal injury, \$ 1 million for loss of spousal or parental consortium, \$ 1 million for present and future medical expenses, \$ 5 million for loss of earnings, \$ 5 million for future loss of earnings, \$ 1 million for emotional distress, \$ 2 million for other general damages, \$ 2 million for other special damages, and \$ 100,000 in attorney's fees.

The suit contained "hundreds of causes of actions versus literally hundreds of defendants," including the developer, operator Humacid-Macleod, the property owners, the owners of the mineral rights in the property, the city of Oxnard, the state, and the alleged generators, including Chevron U.S.A. Inc. and Mobil Oil Corp., Reiser said. The suit was immediately designated as complex litigation, he added -- the first and only in the county. A second group of plaintiffs filed suit and were consolidated with the first in early 1989. In late 1989, an application for a class action was denied, he said.

\$ 200,000 Settlement

In other action in the suit, defendants Chevron U.S.A. and Mobil Oil and cross-defendant Oryx Energy Co., predecessor in interest to Sun Refining and Marketing Co. moved for an order Nov. 13 confirming good faith in a \$ 200,000 settlement among the parties.

The movants want the court to dismiss claims against them with prejudice and to bar claims by joint tortfeasors based on equitable indemnity or comparative fault.

According to the motion, scheduled to be heard on Dec. 3, the companies' oil-field waste did not go to the Humacid-Macleod Oxnard Dunes site, but to a disposal site approximately one-third of a mile south of it.

Even assuming th plaintiffs could implicate the moving parties in the site, they cannot sustain any theory of liability, the motion stated. Because Chevron, Mobil, and Oryx are not in possession or control of the subdivision or interfering with the plaintiffs' use and enjoyment of their property, they cannot be liable for public or private nuisance.

Further, they contended, "Even if nuisance liability can survive thirty years after the settling defendants discontinued their alleged activities at the Humacid-Macleod site, there is no actionable nuisance."

Nor was the disposal of oil well drilling wastes an ultrahazardous activity, the motion argued -- the disposal was neither unusual nor risky and was located in an area appropriate for the activity.

Based on the lack of any direct evidence that they ever used the site, and because there is no viable legal theory against them even if they did, the settlement sum "more than represents a good faith settlement," the settling defendants told the court.

Tuohey said the plaintiffs are negotiating only with "peripheral defendants," and that the focus of the case has always been and will continue to be on those who owned the land and took royalties for the oil waste disposal.

Reiser is with the Oxnard, Calif., firm of Nordman, Cormany, Hair & Compton. The settling defendants are represented by Kenneth L. Waggoner with the Los Angeles firm of Brobeck, Phleger & Harrison. The plaintiffs are represented by Santa Ana, Calif., attorney Conrad G. Tuohey.

(Dolan v. Humacid-Macleod, Calif SuperCt Ventura Cnty, No. 95460, order issued 11/7/90).

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March 14, 1990

Vol. 4, No. 40; Pg. 1143

LENGTH: 137 words

SECTION: TOXIC TORTS: PENDING LITIGATION: ENVIRONMENTAL EXPOSURE: Case Management.

TITLE: COURT ORDERS SUBMISSION OF INFORMATION ESTABLISHING EXPOSURE, INJURIES FROM TOXICS.

TEXT:

Railroad workers alleging injury from toxic fumes and chemicals must produce documents establishing exposure and physicians' affidavits linking exposure to specific injuries, according to a case management order issued Feb. 26 by a federal district court in Montana (*Eggar v. Burlington Northern R.R. Co.*, DC Mont, No. CV 89-159-BLG-JFB, case management order 2/26/90).

The U.S. District Court for the District of Montana granted a defense motion for a case management order -- popularly referred to as a "Lone Pine" order -- sought by the defendant, the Burlington Northern Railroad Co. The order takes its name from *Lore v. Lone Pine Corp.*, a New Jersey case where a state court ordered plaintiffs to provide documentation sufficient to establish a prima facie case for personal injuries (1 TXLR 1272).

The plaintiffs are 27 former railroad workers who claim they were exposed on the job to toxic fumes and chemicals that caused various injuries, including nervous system damage and loss of memory, coordination, balance, and hearing (3 TXLR 1352). The workers are seeking damages under the Federal Employers Liability Act. The first case, filed by plaintiff Duane Chapman and captioned *Chapman v. Burlington Northern R.R. Co.*, has been consolidated with other similar suits and captioned *Eggar v. Burlington Northern R.R. Co.*

Railroad Applauds Order

Attorneys for the railroad applauded the court's decision. "We're very happy with the case management order because up until now this case has been entirely unfocused," Richard S. Cornfeld, an attorney for Burlington told BNA March 13. "We've had a difficult time learning what chemicals the plaintiffs were exposed to, when they allegedly were exposed, and what injuries they claim to have sustained."

Under the order the plaintiffs must submit an affidavit from a physician setting forth a diagnosis of an injury the physician believes to a "reasonable degree of medical certainty" was caused by a toxic chemical, Cornfeld said. The chemical must be specified, he added.

Plaintiffs' attorney Patrick J. Foley told BNA March 13 his clients will "have no problem complying with the order."

"We would not have sued if we were not able to establish a case," Foley said. "Obviously we have to be organized, submit papers, psychological and neurological evaluations, and other documents from physicians discussing cause and effect. But those have been made or are being made."

Defendant Seeks Detail On Chemicals, Injury

The allegations of all 27 plaintiffs involve complex issues of medicine, toxicology, and chemistry and "possess the potential to consume vast and unjustified amounts of judicial and private resources if not carefully managed," the railroad argued in its motion in support of a case management order.

"The 22 original plaintiffs have, in answers to interrogatories, identified a total of over 163 separate medical injuries which they allege were caused by chemical exposure . . ." the railroad said. "However, according to medical records produced to date, the vast majority of these alleged injuries have not been attributed to chemical exposure by the plaintiffs' physicians. It is therefore unclear whether plaintiffs have any basis for contending that these alleged injuries are due to exposure to chemicals while employed at Burlington Northern."

Similar case management orders have been used in other toxic exposure cases, the railroad said, referring to *In re Paoli Railroad Yard PCB Litigation*, 706 FSupp 358, 4 TXLR 283 (DC EPa 1988) and *In re Agent Orange Product Liability Litigation*, 611 FSupp 1267, 3 TXLR 246 (DC ENY 1988).

Plaintiffs Object To Request

The plaintiffs, however, objected to the railroad's request for the order, arguing that the proposed order was like a summary judgment motion.

"The defendant would like to impose on plaintiff's counsel the onerous burden of establishing all of these affidavits to prove good faith," the plaintiffs said in a brief opposing the defendants' motion. "[I]t would be no more proper for the Court to require the plaintiffs to submit affidavits as to exposure, damage, or causal relationship than it would be for the Court to impose on the defendant the obligation to establish the good faith defense of showing non-use of the chemicals, non-toxicity of the chemicals, non-exposure of any of the plaintiffs, and non-causal relationship. Summary judgment is not the appropriate vehicle for resolving complex toxic tort litigation when it is all designed to be one-sided by this defendant's proposals."

Rather than affidavits, the plaintiffs recommended they be asked instead to file a statement as to alleged exposure; an attorney's statement subject to Fed.R.Civ.P. 11; and a physician's statement that to a reasonable degree of medical certainty, the plaintiffs sustained injury as a result of exposure to chemicals.

"There is no need in obtaining a medical opinion that a physician has every detail that is ordinarily presented at a trial," the plaintiffs said.

The court granted the defendant's request for the affidavits and other supporting documents and ordered that the information be submitted within 90 days. The court also required both parties to submit suggestions for selecting six "test-case" plaintiffs for the first trial, with the court making the final selection. The plaintiffs argued they should make the selection.

The plaintiffs are represented by Foley of DeParcq, Hunegs, Stone, Koenig & Reid P.A. of Minneapolis, Minn., and by John R. Davidson of Davidson & Poppler P.C. of Billings, Mont.

Burlington Northern is represented by Cornfeld and J. William Newbold of the St. Louis, Mo., firm of

Coburn, Croft & Putzell; William A. Brasher of the Law Offices of William A. Brasher of St. Louis; and J. Daniel Hoven of the Helena, Mont., firm of Browning, Kaleczyc, Berry & Hoven, P.C.

(**Eggar v. Burlington** Northern R.R. Co., DC Mont, No. CV-89-159-BLG-JFB, case management order 2/26/90).

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October 3, 1990

Vol. 5, No. 18; Pg. 584

LENGTH: 141 words

SECTION: OCCUPATIONAL EXPOSURE: Radiation.

TITLE: COURT GIVES DECEASED WORKER'S WIDOW 30 DAYS TO SUBMIT EVIDENCE RADIATION CAUSED LEUKEMIA.

TEXT:

The widow of a worker for contractors at the Pilgrim Nuclear Power Plant in Plymouth, Mass., has 30 days to produce evidence establishing a causal relationship between the radiation the deceased was exposed to and his development of acute lymphocytic leukemia, the U.S. District Court for the District of Massachusetts decided Sept. 24 (*Whiting v. Boston Edison Co.*, DC Mass, No. 88-2125-Mc, 9/24/90).

An expert's affidavit, a Nuclear Regulatory Commission inspection report, and an article cited in the *Journal of the American Medical Association* titled "Leukemia in Utah and Radioactive Fallout From the Nevada Test Site" are insufficient to establish a causal relationship, the court declared. The article only showed such a relationship in persons younger than 20 years at the time of exposure to radiation, the court noted.

According to the opinion, decedent Gary Whiting periodically worked for contractors at the plant from July 28, 1977, through May 2, 1980. In 1983, he developed the leukemia that caused his death at age 31. Whiting died in December of that year.

His widow sued Boston Edison Co. individually and on her son's behalf, alleging wrongful death, strict liability for ultrahazardous activity, loss of consortium for the time between Whiting's diagnosis and death, and nuisance. She sought compensatory and punitive damages.

After considering motions to strike various expert evidence filed by both sides, the court concluded the evidence was insufficient to survive a summary judgment motion because Whiting was older than 20 when he began working at Pilgrim.

In "the interest of justice," however, the court gave the plaintiff extra time to file a statement of evidence containing a representation of specific, competent testimony establishing a causal relationship between Whiting's exposure to radiation and his disease. The court warned that if the widow fails to do so, summary judgment will be granted to Boston Edison Co. on her claims for negligence and punitive damages.

The court granted the defendants' summary judgment on nuisance and strict liability claims, ruling that the Massachusetts Wrongful Death Act does not permit recovery based on those theories.

The court denied the defendant's motion for summary judgment on the consortium claim, finding that Massachusetts law does permit recovery for the period of time between injury and death, providing causation is established.

James P. Keane, of the Boston firm of Keane & Klein, represents the plaintiffs. Michael R. Heyison, with Hale & Dorr, also of **Boston**, represents the defendant.

(**Whiting v. Boston Edison Co.**, DC Mass, No. 88-2125-Mc, 9/24/90).

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May 11, 1988

Vol. 2, No. 49; Pg. 1361

LENGTH: 176 words

SECTION: TOXIC TORTS: PENDING LITIGATION: ENVIRONMENTAL EXPOSURE: Groundwater Contamination.

TITLE: PLAINTIFFS ORDERED TO PROVIDE PROOF OF CAUSAL LINK OF ALLEGED TOXIC INJURIES.

TEXT:

DENVER -- (By a BNA Staff Correspondent) -- A magistrate April 22 ordered plaintiffs suing Martin Marietta Corp. over alleged groundwater contamination near a company plant southwest of Denver to provide "the causal linkage of the plaintiffs' claimed injuries as they related to the toxic claims" (*Renaud v. Martin Marietta Corp.*, DC Colo, No. 87-Z-42, 4/22/87).

Thirty-three residents or former residents of a subdivision near the area sued Martin Marietta, the Denver Water Board, and the U.S. Air Force in January 1987 for wrongful death and injuries allegedly resulting from exposure to the contaminated groundwater. The suit, filed in U.S. District Court for the District of Colorado, charges that Martin Marietta contaminated groundwater used by a Denver water treatment plant and allegedly distributed to residents of the Friendly Hills subdivision. Six of the plaintiffs are children with birth defects or cancer, while other plaintiffs include the parents of three children who have died from cancers and other injuries (1 TXLR 885).

The April 22 order by Magistrate Donald Abram requires the plaintiffs to show that the substances to which they claim exposure "can cause the kinds of injuries" that the residents allegedly have, according to plaintiffs' attorney Anthony Roisman of Cohen, Milstein and Hausfeld. The order does not require the plaintiffs to show "linkage" or "true causation," Roisman told BNA.

Lone Pine Order Requested

In oral arguments during October 1987, Martin Marietta attorneys argued that the residents should be required to show prima facie evidence of the case before proceeding with discovery (2 TXLR 638). Company attorneys urged the magistrate to impose a case management order similar to that employed in *Lore v. Lone Pine Corp.*, 1 TXLR 1394 (NJ SuperCt 1987).

Daniel Dunn, attorney for Martin Marietta, told BNA that the magistrate's order was issued after he "was informed by us that despite voluminous amounts of interrogatories and medical records, there wasn't, as far as we could tell, any indication that any doctor had formed an opinion that plaintiffs had suffered injury as a result of exposure." As a result, Dunn said, Abram required the

plaintiffs by June 3 to "provide opinions of medical experts that these plaintiffs have probably suffered injury as a result of exposure to toxic chemicals."

The magistrate also ordered the parties to complete discovery by Aug. 20 on whether water from the water treatment plant was distributed to the plaintiffs, according to Roisman.

(**Renaud v. Martin Marietta Corp.**, DC Colo, No. 87-Z-42, 4/22/87).

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July 5, 1989

Vol. 4, No. 5; Pg. 117

LENGTH: 145 words

SECTION: TOXIC TORTS: PENDING LITIGATION: ENVIRONMENTAL EXPOSURE: Benzene.

TITLE: COURT DISMISSES FAMILY'S CANCER CLAIM; SECOND CANCER CLAIM PENDING IN N.J. COURT.

TEXT:

A claim by a New Jersey family that their son developed osteogenic sarcoma because of exposure to benzene in their drinking water supply has been dismissed by a New Jersey state court. However, their claim that benzene contamination from gasoline stations and other sources near their home caused a second son to develop non-Hodgkins lymphoma is still pending (*Pannick v. New Jersey*, NJ SuperCt LawDiv Mercer Cnty, No. L-86-5162, 4/28/89).

Judge Samuel D. Lenox Jr., of the New Jersey Superior Court, Law Division, Mercer County, in explaining his April 28 decision to grant the defendants' motion to dismiss the osteogenic sarcoma claim, cited the plaintiffs' failure to abide by several court-ordered case management orders. One such order asked for production of an expert report establishing causation between benzene exposure and each of the two cancers.

The plaintiffs, the Frank Pannick family, alleged their residential well in Hamilton Township is contaminated with benzene. The more than two dozen defendants in the case include a number of oil companies, such as Mobil Oil Corp., which operate gasoline stations in the vicinity of the Pannick family drinking water well. Also listed as a defendant is Hamilton Township, which operates a municipal sanitary landfill.

Court Issues 'Lone Pine' Order

Each of the two Pannick sons developed a different form of cancer prior to the alleged discovery of benzene in their drinking water, the plaintiffs alleged. The family filed suit seeking damages in February 1987, and amended complaints were subsequently filed to add additional parties.

On Nov. 25, 1987, the court issued what is commonly referred to as a "Lone Pine" order, ordering the plaintiffs to provide a medical expert's reports asserting a causal connection between the plaintiffs' injuries and specific contaminants allegedly in the well water.

When the plaintiffs failed to serve the required reports by a January 1988 due date, the court issued another case management order. In April 1988, the plaintiffs sent the court two reports by

their expert medical witness, Dr. G. John DiGregorio. At a case management conference, the court said the reports failed to indicate a causal connection between benzene and osteogenic sarcoma. The court directed in a third case management order that a further report be prepared to address the osteogenic sarcoma claim. The court asked that three questions be addressed:

- o Whether it is medically possible for there to be a causal relationship between ingestion of benzene contaminated well water or exposure to benzene fumes and osteogenic sarcoma;
- o What facts the plaintiffs' expert needed to render an opinion to a reasonable degree of medical probability that there is a causal connection in the case; and,
- o Assuming establishment of those facts, whether the expert has an opinion, to a medical certainty, that there is a causal connection in the case.

Court Awaits Epidemiological Evidence

In May 1988 the plaintiffs filed a response to those questions, according to a brief filed in support of the defendants' motion for partial summary judgment. "It was essentially the position of plaintiffs in response to the first question that there is no medical literature supporting the claim that there is a connection between benzene ingestion and osteogenic sarcoma," the defendants said. "In response to the second question, Dr. DiGregorio indicated that he could find a causal connection 'if an epidemiological study of the area where the plaintiffs resided revealed other osteogenic sarcomas or other types of cancers in the area.' He also indicated that if such cancers existed he would have to know whether those people were exposed to well water and if so whether the well water they were exposed to flowed from the same alleged sources of contamination as the plaintiffs."

If other osteogenic sarcomas were found in the area, DiGregorio indicated he would be of the opinion, to a reasonable degree of medical certainty, that the osteogenic sarcoma in the case was related to benzene ingestion, the defendants said.

The court ordered a fourth case management order in June 1988 asking that the plaintiffs supply the information needed to enable DiGregorio to render an opinion. A fifth, sixth, seventh, and eighth order were issued subsequently ordering the plaintiffs to provide evidence sufficient to establish a prima facie case connecting benzene and osteogenic sarcoma. The court also asked that the plaintiffs apprise all parties of any progress made in conducting an epidemiological study of the area.

Meanwhile the defendants filed a motion for partial summary judgment asking the court to dismiss the osteogenic sarcoma claims because of the plaintiffs' failure to abide by the numerous case management orders.

In the alternative, the defendants argued the claim should be dismissed because a study conducted by Hamilton Township in the vicinity of the Pannick family well revealed no evidence of benzene contamination in any other residential wells in the area.

"Therefore, the underlying premise which was the basis for the proposed epidemiological study by plaintiffs' medical expert could not, as a matter of law, be established," the defendants argued.

Court Converts Motion For Dismissal

The court ruled in an April 28 conference that the defendants failed to produce evidence to warrant partial summary judgment dismissing the claim, according to a transcript of the conference. The court, however, decided to convert the language of the defendants' motion for partial summary judgment to a motion for dismissal because of failure to comply with case management orders, and approved that dismissal motion.

"It is obvious to me that the plaintiff has no intention of hiring an expert to do that study," the court said. "If he did, he would have at least started it a year ago after being ordered to show some substantial progress."

The court said the "burden, a very extensive burden placed on defendants with regard to this case," should be lifted.

Defendant Mobil Oil was represented on its motion by T. Kevin Sheehy of Shanley & Fisher, P.C. in Morristown, N.J. The plaintiffs were represented by Thomas F. Chansky of Lynch, Martin & Philibosian in New Brunswick, N.J.

(**Pannick v. New Jersey**, NJ SuperCt LawDiv Mercer Cnty, No. L-86-5162, 4/28/89).

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September 30, 1987

Vol. 2, No. 18; Pg. 506

LENGTH: 224 words

SECTION: TOXIC TORTS: COURT DECISIONS: ENVIRONMENTAL EXPOSURE: Air Toxics.

TITLE: RESIDENTS' SUIT AGAINST LANDFILL OPERATORS, CONTRIBUTORS DISMISSED.

TEXT:

A New Jersey superior court Aug. 21 dismissed without prejudice claims brought by 80 residents living near the PJP Landfill in Jersey City, saying the plaintiffs failed to respond to case management orders requiring them to show how they were exposed to and injured by toxic chemicals emanating from the landfill.

In dismissing the case, Judge Burrell Ives Humphreys of the Superior Court of New Jersey, Hudson County, said counsel for the plaintiffs "repeatedly and flagrantly violated case management orders" requiring information about the manner of the plaintiffs' alleged exposure to the chemicals, the identity of the chemicals, dates of exposure, and the plaintiffs' medical conditions.

Since the plaintiffs themselves "do not appear to be at fault," the court said it would be improper to dismiss the case with prejudice, and instead provided for refiling of the suit on a showing that "new counsel for the plaintiff or plaintiffs will be able to, and will, comply with case management orders and court rules on discovery."

Humphreys said that to allow the case to continue despite plaintiffs' counsel's inability to comply with the court's case management orders would be to expend scarce judicial resources unnecessarily and "let the case linger interminably in the court system, becoming a modern *Jarndyce v. Jarndyce*."

Defendants' Motion to Dismiss

In response to a motion to dismiss filed by the defendants for the plaintiffs' failure to meet the court's deadlines for discovery and case management orders, counsel for the plaintiffs maintained that any delays in furnishing the court with the required information was "the inevitable result of unreachable court-imposed time limitations."

The defendants contended in their motion that the plaintiffs' failure to comply with case management orders left them with insufficient evidence of a prima facie case. As such, they argued, the court should dismiss the complaint in accordance with *Lore v. Lone Pine Corp.*, NJ SuperCt, Monmouth Cnty, No. L-33606-85 (1 TXLR 607).

The plaintiffs countered that delays in complying with discovery and case management orders were the result of difficulties in obtaining necessary information from New Jersey environmental authorities investigating the site, as well as the court's overly restrictive deadlines and the defendants' unrealistic requests for information not generally available to toxic tort plaintiffs.

It is "wholly unrealistic and unsupported by any legitimate authority" that the plaintiffs may be required to show prima facie evidence about "which defendants caused a specific substance to be in the landfill on a specific date and what damage these specific acts caused," the plaintiffs said.

They argued that their cause of action survives any inability to provide such information under the New Jersey Supreme Court's ruling in *Ayers v. Jackson Township*, 106 NJ 557 (1987) (1 TXLR 1395). Under *Ayers*, the plaintiffs said, causes of action are viable even though plaintiffs are asymptomatic and unable to reconstruct the history of their medical problems.

"Defendants ignore that due to the very nature of mass exposure cases, which involve plaintiffs' suffering over the course of many years without knowledge of the cause, plaintiffs may indeed, be factually precluded from reconstructing their medical histories," the plaintiffs argued.

Furthermore, the plaintiffs called *Lore* an "unapproved, unpublished writing [that] has no legal effect as a precedent nor can it be argued as a persuasive treatise affecting the instant case."

Ayers, on the other hand, "clearly disabuses anyone of the notion that the plaintiffs have the burden to establish a *prima facie* case, prior to the completion of discovery or at any stage prior to trial," the plaintiffs said.

Ayers Distinguished

In dismissing the case without prejudice, Humphreys responded to the plaintiffs' arguments by saying that the attorney who made them "seems to believe that he can rely on the fact that there was exposure to toxic chemicals and that is enough."

"The Court knows of no law which would support that view. And the Court notes that in a leading case, *Ayers*, there was extensive expert testimony presented at trial on behalf of the plaintiff," the judge said. Conversely, he said, the medical evidence and other information given in the plaintiffs' case is "glaringly meager, inadequate and incomplete."

Specifically, the court said the medical reports submitted by the plaintiffs, covered only 29 of the 80 plaintiffs and comprised one-page documents from a physician "who apparently has . . . never examined the plaintiffs, reviewed their medical records in any detail or presumably ever talked to them."

"As far as this court can see, plaintiffs at this point may have no experts to testify in this case or no experts who could withstand cross-examination, or no experts who, in fact, would even be able to supply admissible opinions under our case law. The clearly inadequate nature of these medical reports is apparent," the court said.

The court continued, "The foregoing is not a provable case, and *Ayers* does not so state, especially when one considers that 14 months after lawsuit begins, proof of a causal connection between the fumes and the injuries is non-existent, proof of causal connection between specific activities by specific defendants and the plaintiffs' alleged injuries appears to be non-existent, and proof that toxic chemicals produced toxic fumes and the effect thereof on the plaintiffs is non-existent."

Exposure From Fumes, Smoke

In the suit, which was brought against 171 defendants who allegedly contributed to hazardous waste at the landfill as well as its operator, the plaintiffs alleged they were injured by toxic

substances that emanated from the landfill in the form of fumes and smoke from burning fires.

As a result of their exposure to the chemicals, the plaintiffs alleged that they suffered physical injury of varying types and degrees, including blepharitis, bronchitis, cancer, emotional distress from their fear of developing cancer, emphysema, impaired immune systems, kidney malfunctions, sarcoidosis, sinusitis, skin afflictions, and urinary tract infections.

The PJP Landfill, which is located on the East Bank of the Hackensack River, is designated on the National Priorities List for cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act.

The site is still under investigation by the federal Environmental Protection Agency and the New Jersey Department of Environmental Protection, and response efforts at the site have focused on extinguishing underground fires, installing valves for emission of smoke from the landfill, and controlling ambient air contaminants escaping the site.

Lead counsel for the defendants was Hannoeh Weisman, P.C., of Roseland, N.J., with Nancy B. Rohn on the brief.

The plaintiffs were represented by Peter A. Allegra, Susan Nebelkoph, and Dominick Zero of Allegra, Paley & Forsman in Red Bank, N.J.

(**Adinolfi v. PJP Landfill**, NJ SuperCt, Hudson Cnty, No. L-066549-86, 8/21/87).

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Toxics Law Reporter

March 15, 1989

Vol. 3, No. 41; Pg. 1279

LENGTH: 164 words

SECTION: TOXIC TORTS: PENDING LITIGATION: ENVIRONMENTAL EXPOSURE: Toxic Chemicals.

TITLE: PARTIES DISPUTE ADEQUACY OF TESTIMONY OFFERED IN WASTE DUMP FIRE EXPOSURE SUIT.

TEXT:

Claims by emergency response workers that they were exposed to toxic chemicals while responding to a waste dump fire in Chester, Pa., should be dismissed because the plaintiffs failed to establish medical causation, the defendants said in a brief filed Feb. 13 (*Cherry v. Air Products and Chemicals Inc.*, Pa CtCommPls, Delaware Cnty, No. 85-447, 2/13/89.)

The plaintiffs based their claims on medical theories and other scientific assumptions that are not generally accepted by the medical and scientific communities, the defendants argued in a reply brief filed in the Pennsylvania Court of Common Pleas, Delaware County. The defendants were replying to the plaintiffs' response to a defense motion to dismiss the case.

The plaintiffs include firefighters, police officers, and others who responded to the Feb. 2, 1978, fire at the ABM Waste Dump site in Chester, Pa. The defendants include many of the companies that generated waste sent to the site before the fire.

Exposure To 'Carcinogenic Soup' Alleged

The firefighters and other city employees were exposed to a "carcinogenic soup," the plaintiffs claimed. They alleged that 18 men out of approximately 100 people exposed at the fire site have contracted cancerous and pre-cancerous conditions. Eight of the 18 have died, plaintiffs said.

"Plaintiffs concede that all of the ailments and conditions which they and decedents suffer from are not unique to the Waste Dump exposure and occur in the population at large," plaintiffs said in their response to the defendant's motion to dismiss, adding, "however, plaintiffs will be able to establish that there is a statistically significant increase in illnesses among the exposed population."

But the defendants argued in their reply brief that the plaintiffs have been "unable to identify the particular substance or substances inhaled, ingested or absorbed by each plaintiff which caused his specific disease."

Defense Challenges Plaintiffs' Experts

The defendants argued that reports offered by the plaintiffs' experts, Robert L. Rutman, Bertram Carnow, Harry Shubin, and James D. Lebedda failed to establish medical causation because their opinions: (1) are not based on generally accepted scientific principles; and (2) lack the scientific and factual foundation required for admissibility as expert opinions under Pennsylvania law. As an alternative to dismissing the plaintiffs' claims, the defendants asked that opinions offered by the experts be declared inadmissible. They also argued that an affidavit submitted by the plaintiffs from another scientist, Bruce Molholt, fails to support the testimony of plaintiffs' other experts.

The plaintiffs argued they have met the requirements of the court's orders. "Whether *Lone Pine* is good law or not, and we submit it is not, plaintiffs certainly have met the burden of overcoming the threshold set forth in *Lone Pine* and have thereby fulfilled the requirement of the Court as set forth in its orders," plaintiffs said (*Lore v. Lone Pine Corp.*, 1 TXLR 1272, NJ SuperCt 1986).

On June 17, 1987, in response to the plaintiffs' alleged failure to comply with a defendants' discovery requests, the court issued an order staying the plaintiffs discovery of the defendants until the plaintiffs produced admissible expert opinions establishing that each plaintiff's exposure caused his particular illness. The defendants referred to the court's order as a '*Lone Pine*' order, the popular name for a case management order staying discovery until admissible expert testimony is provided to show medical causation. The plaintiffs referred to the court order as a "sanction."

The court reaffirmed its order staying discovery in a June 24, 1988, order dismissing as inadmissible testimony from plaintiffs' expert Robert L. Rutman. The court also ruled that day to dismiss the defendants' first motion to dismiss the case. Four motions to dismiss have since been filed.

Standard Of Qualification

The plaintiffs argued that the Pennsylvania standard of qualification for an expert witness is a "liberal one." "If a witness has any reasonable pretension to specialized knowledge on the subject under investigation, he may testify, and the weight to be given to his evidence is for the jury," the plaintiffs said. "Using this standard, the plaintiffs' experts are clearly qualified.

The defendants disagreed, saying "The plaintiffs argue that Dr. Carnow, who is not an immunologist, may therefore base his opinions upon an unproven theory of immuno-suppression which has not achieved general acceptance in the scientific community and has in fact been rejected by leading segments of that community." They raised similar questions about the credentials and testimony of the other experts used by plaintiffs to establish causation.

The two parties disagreed over applicability of the *Frye* test or standard, a standard requiring that underlying scientific principles and methodology used by an expert be generally accepted by others in that field (*Frye v. U.S.*, 293 F2d 1013, CA DC, 1923).

The plaintiffs argued the *Frye* test is "inappropriate and misleading." "Defendants' attempt to use the 'generally accepted' language of *Frye* so as to manipulate the Court into a position where it is forced to discredit one expert's opinion on the basis of a second expert's opinion is an improper usurpation of the function of the jury," the plaintiffs said.

The defendants, however, responded that application of the *Frye* test is "particularly appropriate in this case because of the plaintiffs' reliance upon novel scientific theories and unorthodox methodology."

The two parties also disagreed over who has the burden of proving the composition of materials and liquids in the dump, with plaintiffs arguing the burden shifts to the defendants.

The plaintiffs are represented by Adler & Kops of Philadelphia, Pa. The defendants are represented by Wisler, Pearlstine, Talone, Craig & Garrity of Norristown, Pa.

(Cherry v. Air Products and Chemicals Inc., Pa CtCommPls, DelawareCnty, No. 85-447, 2/13/89).

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA
BILLINGS DIVISION

FILE

FEB 24 1990

LOW MEKON
Deputy Clerk

DICK EGGAR et al.,
Plaintiffs,

v.

BURLINGTON NORTHERN RAILROAD
COMPANY, a Delaware
corporation,
Defendant.

CASE MANAGEMENT ORDER

No. CV-89-159-BLG-JFB

Upon consideration of the Defendant's Amended Motion for A
Case Management Order, briefs and arguments of the parties,
this Court finds that the cases designated in Appendix A to
this Order warrant the entry of a Case Management Order as set
forth below. It is ordered that:

1. The cases designated in Appendix A hereto are
consolidated for pre-trial purposes under the above caption and
for separate trials as specified below.

2. Each plaintiff shall file, within 90 days of the entry
of this order, the following:

a) A statement describing the circumstances of
the plaintiff's alleged exposure to chemicals. If
the plaintiff claims exposure as a result of
general work activities in Livingston, the
statement shall describe the specific chemical or
chemicals to which the plaintiff claims exposure
and, as to each such chemical, the time period
during which plaintiff alleges exposure and the
activities which resulted in the exposure. If the
plaintiff claims exposure as a result of a
specific incident or incidents, the statement
shall include for each such incident the date and
location of the incident, the specific chemical

①

or chemicals involved, a detailed description of the incident, a detailed description of the manner in which that incident exposed the plaintiff to chemicals, and a description of the alleged route or routes of exposure. Chemicals shall be identified by chemical name or product name rather than generic name (e.g., "trichloroethylene" rather than "solvents"). This statement shall be signed by the plaintiff and his or her attorney and shall be subject to the provisions of Fed. R. Civ. P. 11.

b) An affidavit from a physician stating his or her opinion, based on a reasonable degree of medical certainty, that the plaintiff has suffered injuries as a result of exposure to chemicals. The affidavit shall list all injuries, illnesses or conditions suffered by the plaintiff that, in the opinion of the physician, were caused by the alleged exposure; shall specify the chemical or chemicals that, in the opinion of the physician, caused each injury, illness, and condition listed; and shall state the scientific and medical bases for the physician's opinions.

3. Within 30 days after the plaintiffs' reports have been filed, the parties will file suggestions as to which of the plaintiffs should be selected as the six "test-case" plaintiffs for the first trial. The Court will then select the six plaintiffs for the first trial.

4. After the Court has selected the six plaintiffs for the first trial, discovery will be conducted with respect to the trial plaintiffs according to a specific schedule to be set by the Court.

5. Nothing contained herein shall preclude the parties from moving for a modification of this Case

Management Order or moving for further case management orders dealing with the conduct of trial or any other matter not addressed in this case management order.

SO ORDERED

James F. Battin
Judge James F. Battin

2.26.90
Date

APPENDIX A

Original Cases

<u>Original Cases</u>	<u>Billings Nos.</u>
1. Dick Eggar v. BNRRCO	CV-89-2-H-CCL/CV-89-159-BLG-JFB
2. David Johnson v. BNRRCO	CV-89-3-H-CCL/CV-89-160-BLG-JFB
3. Ronald Hessler v. BNRRCO	CV-89-4-H-CCL/CV-89-161-BLG-JFB
4. Duane Chapman v. BNRRCO	CV-89-5-H-CCL/CV-89-162-BLG-JFB
5. John Adams v. BNRRCO	CV-89-6-H-CCL/CV-89-163-BLG-JFB
6. William Chapman v. BNRRCO	CV-89-7-H-CCL/CV-89-164-BLG-JFB
7. James Lavalley v. BNRRCO	CV-89-9-H-CCL/CV-89-165-BLG-JFB
8. Gordon Nelson v. BNRRCO	CV-89-10-H-CCL/CV-89-166-BLG-JFB
9. Bill Bauer v. BNRRCO	CV-89-17-H-CCL/CV-89-169-BLG-JFB
10. Ray Ellison v. BNRRCO	CV-89-18-H-CCL/CV-89-170-BLG-JFB
11. Bert Gentry v. BNRRCO	CV-89-19-H-CCL/CV-89-171-BLG-JFB
12. Dean Lindell v. BNRRCO	CV-89-20-H-CCL/CV-89-172-BLG-JFB
13. Jimmy Smith v. BNRRCO	CV-89-21-H-CCL/CV-89-173-BLG-JFB
14. Ronald Taylor v. BNRRCO	CV-89-22-H-CCL/CV-89-174-BLG-JFB
15. Donnell Trautman v. BNRRCO	CV-89-23-H-CCL/CV-89-175-BLG-JFB
16. John Bauer v. BNRRCO	CV-89-26-H-CCL/CV-89-176-BLG-JFB
17. Raymond Birkeland v. BNRRCO	CV-89-27-H-CCL/CV-89-177-BLG-JFB
18. Larry Bohne v. BNRRCO	CV-89-28-H-CCL/CV-89-178-BLG-JFB
19. H. Jerome Claar v. BNRRCO	CV-89-29-H-CCL/CV-89-179-BLG-JFB
20. David Colvin v. BNRRCO	CV-89-30-H-CCL/CV-89-180-BLG-JFB
21. Ben Mar v. BNRRCO	CV-89-31-H-CCL/CV-89-181-BLG-JFB
22. Donald Strong v. BNRRCO	CV-89-33-H-CCL/CV-89-182-BLG-JFB

New Cases

23. A. David Nelson v. BNRRCO	CV-89-225-BLG-JFB
24. James Halstead v. BNRRCO	CV-89-226-BLG-JFB
25. Maynard Young v. BNRRCO	CV-89-236-BLG-JFB
26. John Spaulding v. BNRRCO	CV-89-243-BLG-JFB
27. Vernon Miller v. BNRRCO	CV-89-248-BLG-JFB

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Case Management Order was served by first class mail, postage prepaid, on this 19th day of January, 1990, upon the following counsel of record:

Patrick J. Foley, Esq.
DeParcq, Hunegs, Stone,
Koenig & Reid
656 Northstar East
608 Second Avenue South
Minneapolis, MN 55402



NO. 91-45591

ELISEO MARTINEZ, JR., ET AL

Plaintiffs,

VS.

ARCO OF THE PANHANDLE INC.;
ET AL

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

55TH JUDICIAL DISTRICT

AGREED CASE MANAGEMENT ORDER

The Court finds that this case warrants the entry of a Case Management Order.

Therefore, it is ORDERED as follows:

On or before February 15, 1992, Martinez shall file the following with the Court:

1. An affidavit signed by Martinez, detailing his exposure to specific chemicals, and the dosage of each chemical to which he was exposed. The affidavit shall contain the following information:

- a. name of each chemical to which exposed;
- b. dosage of that chemical to which exposed;
- c. name of defendant responsible for that chemical;
- d. date, time and duration of each exposure to that chemical; and
- e. method of exposure, i.e., inhalation, skin contact, etc.

2. An affidavit signed by a qualified medical doctor which shall contain the following information:

- a. The doctor's medical opinion, based on a reasonable degree of medical probability, that the dosage indicated by Martinez of the chemical indicated by Martinez was the medical cause of Martinez's kidney cancer; and
 - b. The basis for that opinion, i.e., epidemiological studies, toxicological studies, in vitro testing, animal studies, etc.
3. Nothing contained herein shall preclude the parties from moving for a modification of this Case Management Order or moving for further case management orders dealing with the conduct or trial or any other matter not addressed in this Case Management Order.
4. All discovery is stayed pending the filing by Martinez of the above described statements.

SIGNED this _____ day of _____, 1991.

DISTRICT JUDGE

APPROVED:

HOFHEINZ, LONDON & FANT



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ETHYL CORPORATION; EL DUPONT
DE NEMOURS & CO.; FMC
CORPORATION; FINA, INC.;
GAF CORPORATION; HERCULES
INCORPORATED; HOECHST
CELANESE CORP.; ICI AMERICAS,
INC.; THE LUBRIZOL CORPORATION,
MOBIL CHEMICAL COMPANY, INC.;
PHILLIPS CHEMICAL COMPANY;
QUANTUM CHEMICAL CORPORATION;
ROHM & HAAS COMPANY; SHELL OIL
COMPANY; SOLVAY POLYMERS, INC.;
UNION CARBIDE CHEMICALS
AND PLASTICS COMPANY, INC.;
AMOCO CHEMICAL COMPANY;
ARISTECH CHEMICAL CORPORATION;
MARATHON OIL COMPANY; AND
WARREN PETROLEUM, INC.

The following counsel have been contacted and join in this motion:

Handwritten mark resembling a stylized 'A' or a signature.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MARY A. ALSTON, et al.

Plaintiff:

V.

ATLANTIC RICHFIELD COMPANY,
et al.

Defendants

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CIVIL ACTION NO. 1:90CV626

CASE MANAGEMENT ORDER

Came on to be heard on July 23, 1991, the motions for case management order filed by various of the parties in the above-referenced action, and the Court, having considered the motions, the responsive pleadings, and oral argument of counsel, enters the following case management order in this matter:

1. On or before October 1, 1991, each plaintiff shall provide to the defendants written authorizations for the release of all medical, physical and mental health, and employment records and information, as well as any other records relating to the plaintiff's claims. Each authorization shall include the plaintiffs' typewritten name, address, date of birth and social security number, the plaintiffs' original signature, and the plaintiff's waiver and release of all privileges and privacy rights, including specifically all privileges pertaining to mental health information. Further, each authorization shall be complete and sufficient to enable the

defendants to obtain, without limit, any and all records and information relating to the plaintiff.

2. On or before October 1, 1991, the plaintiffs shall fully answer and/or supplement their prior answers to defendants' written discovery requests in accordance with the Federal Rules of Civil Procedure.
3. On or before November 1, 1991, each plaintiff asserting personal injury claims in this case shall provide to the defendants a report in affidavit form on medical causation. Such report shall include an affidavit by a qualified health care provider stating under oath that, based on reasonable medical probability, such plaintiff's injuries or ailments were caused by exposure to one or more of the chemicals at the French Limited and/or Sikes sites. The physician's affidavit and sworn report must specify:
 - a. The specific injuries and ailments that the subject plaintiff has suffered as a result of exposure to a chemical or chemicals at the French Limited or Sikes sites;
 - b. The chemical or chemicals that in the opinion of the physician caused each injury or ailment of the subject plaintiff and the site at which such chemical or chemicals are or were present;
 - c. The manner and extent to which the subject plaintiff was exposed to each chemical, the organs of the plaintiff that were injured by such exposure and the nature and extent of each injury;
 - d. The duration of time over which the subject plaintiff was exposed to the chemical or chemicals; and

- e. All medical and/or scientific data, studies, theories and/or facts relied upon by the physician in forming his or her opinions regarding the subject plaintiff.
4. Oral depositions shall be scheduled pursuant to written notice, received not less than 15 working days before the date of the deposition, unless the parties agree otherwise. Such written notice shall be sufficient to compel the attendance of any party and, absent agreement by the party noticing the deposition, a deposition so noticed shall not be subject to being quashed or rescheduled on account of conflicting commitments of the parties' lawyers. Oral depositions may be scheduled to occur simultaneously; however, no more than two (2) depositions (one by plaintiffs and one by defendants) shall be taken simultaneously.
5. If a written deposition notice requires a party or an employee of a party to produce documents at an oral deposition, the witness shall comply as if served with a subpoena duces tecum, without the necessity of subpoena. If the volume of requested documents reasonably cannot be produced at the place indicated for the deposition in the notice, the deposition shall be taken where the documents are located or at such other convenient location as is agreed upon by counsel for the parties.
6. This suit arises from two waste disposal sites in Harris County, Texas. Three other multi-plaintiff suits (*Elzina Avalos, et al. v. Atlantic Richfield Company, et al.*, C.A. No. H-89-3487, *Lester Curren, et al. v. Atlantic Richfield Company, et al.*, C.A. No. H-89-3487-A, and *Linda Adolph, et al. v. Atlantic Richfield Company, et al.*, C.A. No. H-90-3657) are

pending in the United States District Court for the Southern District of Texas, Houston Division (Harris County) against many of the same defendants named herein. In order to prevent multiple depositions of common defendants, plaintiffs shall coordinate the taking of defendant company representative depositions with plaintiffs' counsel in the other similar suits. In the event plaintiffs in *Avalos*, *Curette* or *Adolph* issue a notice of deposition to a defendant named in this case, that defendant immediately shall forward a copy of such notice to plaintiffs in this case. Upon receipt of such notice, plaintiffs in this case may issue a notice for the same defendant at the same time and place as that issued in *Avalos*, *Curette*, or *Adolph*. For the purposes of this provision, the 15-working-day notice requirement of paragraph 4 above shall not apply. If plaintiffs in this case choose not to issue a notice at the same time and place, they must show good cause for taking the defendant's deposition at a later date. A deposition taken in *Avalos*, *Curette*, or *Adolph* can be used in this suit so long as the deponent is a representative of a defendant in this case. Thus, plaintiffs' counsel in all three cases can each question a defendant's representative so that the defendant's representative need only be produced for deposition one time.

7. All oral depositions of defendant representatives shall be taken at the place where such representatives regularly work or in the offices of defense counsel, whichever is most convenient to the witness and his or her counsel. The plaintiffs are limited to oral depositions of two corporate

representatives for each defendant, unless good cause is shown or the parties agree otherwise.

8. No plaintiff will be noticed for deposition before November 1, 1991. All plaintiff depositions will be taken in Channelview, Texas, unless the parties agree to a different location. Any plaintiff who is requested to give an oral deposition will only be deposed one time, unless the parties agree otherwise or good cause is shown. The interrogation of plaintiffs at depositions shall be conducted by only two defense attorneys, unless good cause is shown.
9. Defendants shall respond to plaintiffs' outstanding written discovery requests in accordance with the schedules agreed upon by the parties. Each defendant's responses shall be verified by an officer, director or principal of the defendant.

SIGNED this ____ day of _____, 1991.



U. S. DISTRICT JUDGE

MAY-13-97 TUE 16:25

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P.3
ENTX
CR

NO. 93-023995

FRED ADAMS and
JUANITA ADAMS, ET AL.

VS.

EXXON CORPORATION, ET AL.

§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152ND JUDICIAL DISTRICT

ORDER

CAME ON THIS DAY to be considered Defendants The Lubrizol Corporation, Exxon Corporation, Exxon Research & Engineering Corporation, E.R. Carpenter Company Incorporated d/b/a Carpenter Chemical Company, Houston Lighting & Power Company, United States Steel Corporation, Atlantic Richfield Company, Phillips Petroleum Company d/b/a Phillips 66 Company, Phillips Chemical Company, J.M. Huber Corporation, Georgetown Texas Steel Corporation n/k/a North Star Steel Texas, Inc., Hercules, Incorporated, ARCO Chemical Company, Lyondell Petrochemical Company, and Occidental Chemical Corporation's (hereinafter "Defendants") Motion for a "Lone Pine" Order. The Court, having considered the motion and any response and hearing the arguments of counsel, is of the opinion that such motion should be GRANTED; it is therefore

ORDERED, ADJUDGED AND DECREED Defendants' motion is in all things GRANTED; it is further

~~ORDERED, ADJUDGED AND DECREED that the Plaintiffs' counsel shall notify the Defendants and the Court by the _____ day of _____, 1996 of the identity of the Plaintiffs represented by Bob O'Connor, Jr. who will pursue claims for personal injury damages in the trial of this lawsuit. It is further~~

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RECORDER'S MEMORANDUM
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V10627P0015

ORDERED ADJUDGED AND DECREED that each of the Plaintiffs represented by Mr. O'Connor who intend to pursue personal injury claims in the trial of this lawsuit shall file with this Court and serve on Defense counsel by the 14th day of March, 1997 the expert report of a physician qualified to testify at the trial of this matter, stating the diagnosis of each specific personal injury which the physician intends to testify was caused by exposure to any chemical substances which any Defendant deposited at the Liberty Waste Disposal site, based on a reasonable medical probability, and the identity of the chemical which the physician intends to testify caused or contributed to cause said injury(s). The report shall also state the manner (i.e. ingestion, inhalation or skin absorption) and duration of exposure (including the specific dates of exposure, the dates of first and last exposure and the total amount of time exposed) which in the physician's opinion caused or contributed to cause the injury, and shall identify all medical and scientific data, studies, texts, articles, theories and/or facts on upon which the physician relied in coming to his or her conclusion. Plaintiffs' personal injury claims in this lawsuit, and evidence regarding personal injuries, will be limited to those injuries, diagnoses and chemical substances identified by the physician in the report. It is further

ORDERED ADJUDGED AND DECREED that the failure to file with the Court and serve on Defendants such report by the close of business on the above-stated date will result in the dismissal of that Plaintiffs' personal injury claims and the inadmissibility of any evidence of personal injury to that Plaintiff from the trial of this matter.

VI0627P0016

SIGNED this 19th day of December, 1996.

Wayne R. ...
JUDGE PRESIDING

VI0627P0017

72
ORIGINAL
BOOK 2

NO. 93-060248

JULIEN J. BAPTISTE, ET AL.

v.

EXXON CORPORATION, ET AL.

§
§
§
§
§
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

**ORDER GRANTING TEXACO INC.'S
MOTION TO MODIFY SCHEDULING ORDER**

The Court has considered Texaco Inc.'s Motion to Modify Scheduling Order. After considering this motion, the Court has decided to grant the motion.

IT IS ORDERED, ADJUDGED and DECREED that this Court's Scheduling Order is modified as follows:

By March 10, 1995, each plaintiff is required to provide an affidavit from a physician supporting his exposure and personal injury claims. Specifically, a qualified physician must state under oath that, based on reasonable medical probability, the named plaintiff's injuries or symptoms were caused by exposure to one or more chemicals deposited at the Liberty Waste Disposal site. With regard to the physicians opinion, each report must specify:

- a. Each specific injury that the subject plaintiff has suffered as a result of exposure to the chemical or chemicals and the date on which such injury was first suffered;
- b. The chemical or chemicals that in the opinion of the physician caused each such injury, illness, condition, or symptom;
- c. The manner in which the subject plaintiff was exposed to each chemical (i.e. ingestion, inhalation, or skin absorption);

7071983

V8635 P0798

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d. The duration of time over which the subject plaintiff was exposed to each chemical, including the date(s) of exposure and the total amount of time exposed; and

e. All medical and/or scientific data, studies, theories and/or facts relied upon by the physician informing his or her opinions regarding the subject plaintiff.

Signed this 30 day of January 1995.

Greg Abbott
JUDGE PRESIDING

V0635 P0799

NO. 93-060248

JULIEN J. BAPTISTE, ET AL,

Plaintiffs

VS.

EXXON CORPORATION, ET AL,

Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129th JUDICIAL DISTRICT

7/3/95

SECOND AMENDED ORDER GRANTING DEFENDANTS' MOTION TO STRIKE

The Court has considered Defendants' Exxon Corporation, Exxon Research & Engineering Company, E.R. Carpenter Company, Incorporated (d/b/a Carpenter Chemical Company, Houston, Lighting & Power Company, United States Steel Corporation, Atlantic Richfield Company, Phillips Petroleum Company, Phillips 66 Company (d/b/a Phillips Petroleum Company), Phillips Chemical Company, J.M. Huber Corporation, Rohm and Haas Company, Georgetown Texas Steel Corporation (n/k/a North Star Steel Texas, Inc., Hercules Incorporated, ARCO Chemical Company, Lyondell Petrochemical Company, Occidental Chemical Corporation and The Lubrizol Corporation, some of the defendants in the above-entitled cause, Motion to Strike and for Sanctions and finds that such Motion is applicable to all defendants in this action (hereinafter collectively "Defendants").

The Court has considered this matter before and has considered lesser and alternative sanctions. Further, this Court has previously entered orders dated January 30, 1995, May 4, 1995 and June 19, 1995 regarding this matter and is now entering this new order again extending the time periods in which Plaintiffs must comply. This Court finds that it is still left with no alternative than to dismiss claims of each Plaintiff as to all Defendants unless the specified information as defined below is provided to Defendants by September 15, 1995.

E:\LUBRIZOL\BAPTISTE\0002.001

V9028 p11883

(20)

IT IS ORDERED, ADJUDGED AND DECREED that by September 15, 1995 each Plaintiff is required to provide an affidavit from a physician supporting his exposure and personal injury claims. Specifically, a qualified physician must state under oath that, based on reasonable medical probability, the named Plaintiffs' injuries or symptoms were caused by exposure to one or more chemicals deposited at the Liberty Waste disposal site. With regard to the physicians' opinion, each report must specify:

- a. Each specific injury that the subject Plaintiff has suffered as a result of exposure to the chemical or chemicals and the date on which such injury was first suffered;
- b. The chemical or chemicals that in the opinion of the physician caused each such injury, illness, condition or symptom;
- c. The manner in which the subject Plaintiff was exposed to each chemical (i.e., ingestion, inhalation or skin absorption);
- d. The duration of time over which the subject Plaintiff was exposed to each chemical, including the date(s) of exposure and the total amount of time exposed; and
- e. All medical and/or scientific data, studies, theories and/or facts relied upon by the physician informing his or her opinions regarding the subject Plaintiff.

Signed this 3 day of July, 1995.

Greg Abbott
JUDGE PRESIDING

49026 20884

JEAN VENTURA, BILLIE GREEN, § IN THE DISTRICT COURT OF
 MARGRET DAVIS, JACK MARTIN, §
 JANICE MARTIN, JEAN LAVOTA, §
 AND JOHN LAVOTA, SR. § NUECES COUNTY, TEXAS
 §
 VS. §
 §
 VALERO REFINING COMPANY, et al. § 105TH JUDICIAL DISTRICT

SCHEDULING ORDER

Pursuant to Rule 166 of the Texas Rules of Civil Procedure, the court finds that the entry of this case management order is in the best interests of the efficient prosecution of this lawsuit. Consequently, it is hereby

ORDERED that on or before July 1, 1995, plaintiffs shall file affidavits from qualified experts with respect to each Plaintiff's claims of exposure to substances from the Valero Refining Company facility located on Up River Road and claims of damages caused by such exposure. These affidavits must contain the following information with respect to all claims:

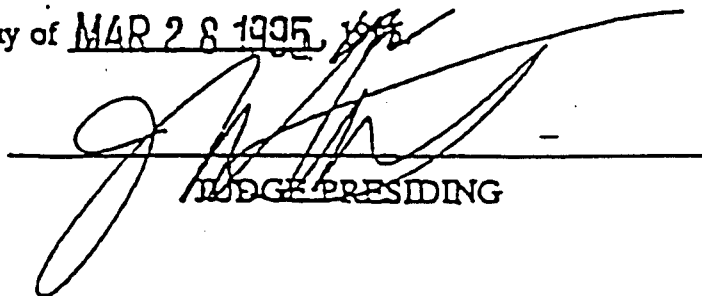
- a. The facts and evidence of each alleged exposure of a plaintiff or a plaintiff's property to allegedly toxic substances from the Valero Refining Company facility located on Up River Road, including the particular toxic substance involved, a description of the manner, duration, and concentration of such alleged exposure, and all facts supporting such claims of exposure.
- b. With respect to each plaintiff and/or plaintiff's property, each particular damage claimed to have been caused by the alleged exposure described in (a) above;
- c. Details of any testing, sampling, or other evidence relied upon by the plaintiff or the plaintiff's expert to support their claims as to (a) and (b) above:

b. As to the need for future medical monitoring claimed by each plaintiff, a report by a medical expert or other qualified expert that to a reasonable degree of medical probability, the exposure described in (a) requires future medical monitoring, and a description of all facts supporting such statement and all medical or scientific literature and authorities relied upon by such expert to support such statement;

c. As to property damage claims, a report by a licensed real estate appraiser that to a reasonable degree of certainty, the exposure described in (a) above was a cause of decline in property value and a description of all facts supporting such statement and all authorities relied upon by such expert to support such statement.

It is further ORDERED that by August 15, 1995, the defendants file any motions for summary judgment on the evidence produced by plaintiffs pursuant to this Order.

Signed this ____ day of MAR 28 1995, 1995



JUDGE PRESIDING

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FILED
at Santa Fe, NM

AUG 29 1995

JOYCE SAIZ,
ET AL.,

Plaintiffs,

vs.

No. CIVIL 95-648 MV/LCS

ATCHISON TOPEKA,
ET AL.,

Defendants.

ORDER RELATING TO
PRE-SETTLEMENT DISCOVERY

THIS MATTER having come before the Court after discussion with the parties at the August 24, 1995 Scheduling Conference and there being no objections expressed at said conference, and the Court otherwise being fully advised in the premises,

IT IS ORDERED that a questionnaire prepared and approved by the parties, which incorporates a form of medical records release, be presented to all Plaintiffs by September 25, 1995;

IT IS FURTHER ORDERED that all Plaintiffs complete and return the questionnaires by October 25, 1995;

IT IS FURTHER ORDERED that the Plaintiffs (in concert) be allowed to notice a total of five depositions, with all other parties being allowed to notice two depositions each, unless augmented by agreement of the parties or by order of the Court, and that all depositions be completed no later than November 15, 1995;

IT IS FURTHER ORDERED that the Plaintiffs' causation expert's Rule 26(a)(2) report be disclosed no later than November 15, 1995;

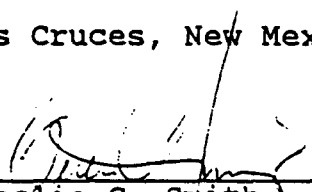
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(24)

IT IS FURTHER ORDERED that a "Pre-settlement Conference" will be held TELEPHONICALLY on the 4th day of December, 1995, before the Honorable Leslie Smith, with Plaintiffs' counsel initiating and coordinating the call;

IT IS FURTHER ORDERED that a briefing schedule will be established after the Settlement Conference and that dispositive motions will not be considered prior to the establishment of said briefing schedule,

IT IS FURTHER ORDERED that a Settlement Conference in this case will be held on Thursday, December 14, 1995, before the Honorable Leslie C. Smith in the United States Federal Building, Second Floor, 200 East Griggs St., Las Cruces, New Mexico.



Leslie C. Smith
United States Magistrate Judge
(505) 527-6815

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOYCE SAIZ, NONA ANDERSON,
FRANCES BENAVIDEZ, et al.,

Plaintiffs,

v.

No. CIV 95-0648 MV/LCS

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY CORPORATION
and MERV LYNE,

Defendants.

PLAINTIFF QUESTIONNAIRE

Section I. - Personal														
1. CURRENT NAME <div style="display: flex; justify-content: space-between; margin-top: 5px;">First NameMiddle nameLast name</div>														
2. OTHER NAMES BY WHICH YOU HAVE BEEN KNOWN (such as maiden name or married names) Name _____ Years when name used _____ _____ _____ <input type="checkbox"/> check if never known by any other name <input type="checkbox"/> check if additional names; provide on separate sheet		3. DATE OF BIRTH ____/____/____ 4. PLACE OF BIRTH (city/state country) _____ 5. SOCIAL SECURITY NO. _____												
6.a. CURRENT ADDRESS (street, apartment address; not P.O. Box) street/apartment _____ city/state/zip _____ _____		6.b. DATE WHEN BEGAN LIVING AT CURRENT ADDRESS ____/____/____												
6.c. PERSONS WHO HAVE LIVED WITH YOU AT CURRENT ADDRESS <table style="width: 100%; border-collapse: collapse;"><thead><tr><th style="width: 30%;">Name</th><th style="width: 40%;">Relationship to you</th><th style="width: 30%;">Dates when lived with you</th></tr></thead><tbody><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr></tbody></table> <input type="checkbox"/> check if additional persons; provide on separate sheet			Name	Relationship to you	Dates when lived with you	_____	_____	_____	_____	_____	_____	_____	_____	_____
Name	Relationship to you	Dates when lived with you												
_____	_____	_____												
_____	_____	_____												
_____	_____	_____												

*

Plaintiff

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- 1 -

7. ALL PRIOR ADDRESSES STARTING 10 YEARS BEFORE FILING SUIT

street/apartment

city/state/zip

Years living at address

☐

check if additional addresses; provide on separate sheet

8. MARRIAGES (list each marriage)

Name of spouse

Date of marriage

Date marriage ended

How marriage ended
(such as divorce, death)

☐

check if never married

☐

check if additional marriages; provide on separate sheet

9. CHILDREN

Name

Date of birth

Dates lived with you

☐

check if additional children; provide on separate sheet

*

Plaintiff

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Section II. - Education

Provide the following information regarding your educational background:

<u>High School</u>	<u>Address (street, state, zip)</u>	<u>Grades Completed</u>	<u>Year Graduated</u>

If you did not finish high school, do you have a GED? ☐ yes ☐ no

Did you attend school beyond high school? ☐ yes ☐ no

If yes, then for each school, provide the following information. (Your answer should include any college, vocational, technical or professional school.)

School #1:

name _____

address _____

Dates of attendance: from _____ until _____

Degree awarded _____

Field of Study _____

School #2:

name _____

address _____

Dates of attendance: from _____ until _____

Degree awarded _____

Field of Study _____

☐ check if you have not listed all schools responsive to the question; provide on separate sheet

*

Plaintiff

Section III. - Employment History

1. Current Employment: If you are currently employed, provide the following information. (Your answer should include self-employment.)

<u>Employer Name</u>	<u>Job Title</u>
<u>Street, city, state, zip</u>	<u>Date Employed</u> ____/____/____
<u>Description of Duties</u> _____ _____ _____	<u>Hours per week</u>
	<u>Supervisor's name</u>
	<input type="checkbox"/> check if more than one current employer; - provide on separate sheet

2. Prior Employment: For the 10 year period before you filed suit to the present, list all the places you worked other than your current employer(s) or prior to quitting work and answer the following as to each. (Your answer should include self-employment.)

Job 1	<u>Employer Name</u>	<u>Job Title</u>
	<u>Street, city, state, zip</u>	<u>Dates Employed</u>
	<u>Description of Duties</u> _____ _____ _____	<u>Hours per week</u>
	<u>Reasons for leaving</u> _____ _____	<u>Supervisor's name</u>

(continue answer on next page)

*

Plaintiff _____

(29)

Job 2	<u>Employer Name</u>	<u>Job Title</u>
	<u>Street, city, state, zip</u>	<u>Dates Employed</u>
	<u>Description of Duties</u> _____ _____	<u>Hours per week</u>
	<u>Reasons for leaving</u> _____	<u>Supervisor's name</u>

Job 3	<u>Employer Name</u>	<u>Job Title</u>
	<u>Street, city, state, zip</u>	<u>Dates Employed</u>
	<u>Description of Duties</u> _____ _____	<u>Hours per week</u>
	<u>Reasons for leaving</u> _____	<u>Supervisor's name</u>

☐ check if you have not listed all employers responsive to question 2; provide on separate sheet

*

Plaintiff _____

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Section IV. - Health-Related Work Absences

1. Have you ever lost any time from work in excess of three consecutive work days due to a sickness, injury or mental condition that you believe was not related to your alleged exposure to Ammonium Sulfide Solution (the substance in the tank car)? (DO NOT INCLUDE MATERNITY ABSENCES.)

☐ yes ☐ no

If yes, for each period you lost time, please provide the following information.

<u>Employer Name</u>	<u>Time Lost</u> ____/____/____ to ____/____/____
<u>Street, city, state, zip</u>	<input type="checkbox"/> check if you returned to work under any restrictions
<u>Injury or Illness Causing Absence</u>	<u>Describe Restriction</u>

☐ check if you have not listed all absences responsive to question 1; provide on separate sheet

2. Have you ever applied for worker's compensation, social security or state or federal disability benefits? ☐ yes ☐ no

If yes, as to each application provide the following information.

<u>Date of Application</u> ____/____/____	<u>Type of Benefits</u>
<u>Amount awarded</u> \$ _____	<u>Basis of Your Claim</u>
<u>If Denied, Reason for Denial</u> _____ _____	

☐ check if you have not listed all applications responsive to question 2; provide on separate sheet

*

Plaintiff _____

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Section V. - Alleged Exposure to Ammonium Sulfide Solution

1. What were you doing at the time you believe you were first exposed to Ammonium Sulfide Solution?

[illegible]

2. Describe in detail your activities for each day after you believe you were first exposed to Ammonium Sulfide Solution through Sunday, June 26, 1994.

[illegible]

*

Plaintiff

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3. Did you see, smell, or hear any product leaking from a tank car at AT&SF's Belen railyard between June 19, 1994 and June 26, 1994?

☐ yes ☐ no

If yes, then describe the details of what you saw, smelled, or heard.

<u>Date</u>	<u>Time</u>	<u>Description of Event</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Were you notified of any evacuation of residences in the vicinity of the Belen railyard?

☐ yes ☐ no

If yes, when and how were you notified of any evacuation? _____

5. Did you report to the official evacuation center at Belen High School on June 26, 1994?

☐ yes ☐ no

If no, why not? _____

*

Plaintiff

(33)

Section VI. - Medical History - Ammonium Sulfide Solution

1. What health problems do you have now or have you ever had that you believe are related to your exposure to Ammonium Sulfide Solution? Your answer should include all physical and psychological complaints that you attribute to your exposure?

[illegible]

- ☐
- check if you have not listed all problems responsive to question 1; provide on separate sheet

2. Have you ever seen a doctor or sought treatment from any health practitioner for any of the problems you describe in question 1?

☐ yes ☐ no

If yes, what was the date you first saw the doctor or health practitioner?

3. For any disease or condition that you believe is or may be caused by or related to your exposure to Ammonium Sulfide Solution, has any medical practitioner or health care professional told you that he or she did not believe such disease or condition was caused by or related to your exposure to Ammonium Sulfide Solution?

☐ yes ☐ no

If yes, provide the following information:

<u>Provider Name</u>	<u>Street, City, State, Zip</u>	<u>Describe Condition</u>

- ☐
- check if you have not listed all providers responsive to question 3; provide on separate sheet

✱

Plaintiff

4. For any disease or condition that you believe is or may be caused by or related to your exposure to Ammonium Sulfide Solution, has any medical practitioner or health care professional told you that he or she did believe such disease or condition was caused by or related to your exposure to Ammonium Sulfide Solution?

☐ yes ☐ no

If yes, provide the following information:

<u>Provider Name</u>	<u>Street, City, State, Zip</u>	<u>Describe Condition</u>

☐ check if you have not listed all providers responsive to question 4; provide on separate sheet

5. Do you have a family history of any bronchitis, asthma or other lung related disease or illness? (Family includes you, your parents, grandparents, aunts, uncles, siblings and children.)

☐ yes ☐ no

If yes, then for each condition describe the condition and the relationship to you of each person in the family with the condition.

<u>Condition #</u>	<u>Describe Condition</u>	<u>Relation (i.e., aunt, sister, etc.)</u>

☐ check if information you provided above is incomplete; provide on separate sheet

6. Have you ever smoked cigarettes or cigars on a regular basis at any time in your life?

☐ yes ☐ no

If yes, then provide the following information:

<u>Dates</u>	<u>Number of cigarettes or cigars smoked per day</u>	<u>Describe any health related problems</u>

*

Plaintiff

35

Section VII. - Other Hospitalizations or Illnesses

1. To the best of your recollection have you ever been hospitalized for reasons other than your exposure to Ammonium Sulfide Solution described in your previous answers?

☐ yes ☐ no

If yes, provide the following information with respect to each hospitalization starting with your earliest hospitalization to the present.

<u>Hospitalization No. 1:</u>		<u>Reason Hospitalized</u>
from ____/____/____ to ____/____/____		
<u>Hospital Name</u>		<u>Street, city, state, zip</u>
<u>Treating Physician</u>		<u>Street, city, state, zip</u>
Surgery performed? <input type="checkbox"/> yes <input type="checkbox"/> no		If yes, describe surgery:
<input type="checkbox"/> check if more than one treating physician; provide on separate sheet		

<u>Hospitalization No. 2:</u>		<u>Reason Hospitalized</u>
from ____/____/____ to ____/____/____		
<u>Hospital Name</u>		<u>Street, city, state, zip</u>
<u>Treating Physician</u>		<u>Street, city, state, zip</u>
Surgery performed? <input type="checkbox"/> yes <input type="checkbox"/> no		If yes, describe surgery:
<input type="checkbox"/> check if more than one treating physician; provide on separate sheet		

☐ check if you have not listed all hospitalizations responsive to question 1; provide on separate sheet

*

Plaintiff _____

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2. Have you ever suffered from any other health problems other than the problems you are claiming are related to your exposure to Ammonium Sulfide Solution?

☐ yes ☐ no

If yes, provide the following information as to each problem:

<u>Problem #1 Description</u>	<u>Problem #2 Description</u>
<u>Date of Onset</u> ____/____/____	<u>Date of Onset</u> ____/____/____
Were you treated by a doctor or health care professional? <input type="checkbox"/> yes <input type="checkbox"/> no	Were you treated by a doctor or health care professional? <input type="checkbox"/> yes <input type="checkbox"/> no
<u>Doctor Name</u>	<u>Doctor Name</u>
<u>Street, city, state, zip</u>	<u>Street, city, state, zip</u>
<input type="checkbox"/> if more than one treating doctor; provide on separate sheet	<input type="checkbox"/> if more than one treating doctor; provide on separate sheet

☐ check if you have not listed all health problems responsive to question 2; provide on separate sheet

*

Plaintiff

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Section VIII. - Treating Doctors

1. To the best of your recollection provide the following information for each doctor or health care professional who has ever treated you (which you have not identified in response to your previous answers). Your answer should include all your doctors from childhood to the present including, but not limited to, family practice doctors, obstetricians, gynecologists, osteopaths, chiropractors, physiotherapists, psychiatrists and psychologists.

Doctor #1	<u>Name</u>	<u>Street, city, state, zip</u>
<u>Dates of Care</u> from ____/____/____ until ____/____/____		<u>Reasons for Care</u>
<u>Type of Doctor (i.e., GP, internist, etc.)</u>		

Doctor #2	<u>Name</u>	<u>Street, city, state, zip</u>
<u>Dates of Care</u> from ____/____/____ until ____/____/____		<u>Reasons for Care</u>
<u>Type of Doctor (i.e., GP, internist, etc.)</u>		

Doctor #3	<u>Name</u>	<u>Street, city, state, zip</u>
<u>Dates of Care</u> from ____/____/____ until ____/____/____		<u>Reasons for Care</u>
<u>Type of Doctor (i.e., GP, internist, etc.)</u>		

☐ check if you have not listed all doctors responsive to question 1; provide on separate sheet

*

Plaintiff _____

(38)

2. Have you used any prescription drugs or medications (including birth control medications) on a regular basis from the period starting five years prior to your exposure to Ammonium Sulfide Solution until the present? ("Regular basis" means something taken consistently for a period in excess of one month.)

☐ yes ☐ no

If yes, then provide the following information:

<u>Drug Name</u>	<u>Dates Taken</u>	<u>Reason Taken</u>

☐ check if you have not listed all prescriptions responsive to question 4; provide on separate sheet

*

Plaintiff

39

Section IX. - Damages

1. Claims for Lost Income. Are you claiming loss of income as part of your damages in this lawsuit?

☐ yes ☐ no

If no, then skip to question 2 below.

If yes, please provide the following information for each employer who would have paid the income you are claiming you lost:

<u>Employer #1 Name</u>	<u>Employer #2 Name</u>
<u>Street, city, state, zip</u>	<u>Street, city, state, zip</u>
<u>Dates Missed</u>	<u>Dates Missed</u>
<u>Lost Income</u> \$ _____	<u>Lost Income</u> \$ _____
<u>Describe how loss calculated</u> _____ _____	<u>Describe how loss calculated</u> _____ _____

☐ check if you have not listed all employers responsive to question 1; provide on separate sheet

2. Claims for medical bills. Are you claiming medical bills as damages in this lawsuit?

☐ yes ☐ no

If yes, what is the total amount that you are claiming?

\$ _____

(PROVIDE COPIES OF ALL BILLS YOU ARE CLAIMING AS DAMAGES)

*

Plaintiff _____

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Section X. - Lawsuits

1. Have you or your spouse (if married) ever been a party to a lawsuit (other than your current lawsuit) which involved a claim of personal injury or emotional distress?

☐ yes ☐ no

If yes, for each lawsuit provide the following information.

<u>Lawsuit No. 1</u>	<u>Lawsuit No. 2</u>
Caption:	Caption:
Court:	Court:
Date Filed: ____/____/____	Date Filed: ____/____/____
Description of lawsuit:	Description of lawsuit:
_____	_____
_____	_____
_____	_____

☐ check if you have not listed all lawsuits responsive to question 1; provide on separate sheet

*

Plaintiff

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Section XI. - Miscellaneous

1. In addition to the doctors I have already identified in my responses, my attorney, the defendants and any experts retained by my attorney, the following persons have knowledge of the facts pertaining to my claims in this lawsuit.

Person #1:

name _____

address _____

Description of knowledge: _____

Person #2:

name _____

address _____

Description of knowledge: _____

Person #3:

name _____

address _____

Description of knowledge: _____

☐ check if you have not listed all people (with the exception of your attorney, the defendants, treating doctors identified in these responses and any experts retained by your attorney) with knowledge pertaining to your claims in this lawsuit; provide on separate sheet

VERIFICATION

STATE OF NEW MEXICO
COUNTY OF VALENCLIA

_____, being first duly sworn, says _____ is the _____ herein, has read the foregoing Plaintiff Questionnaire and knows the content thereof, and the statements contained therein are true to the best of _____ knowledge and belief.

Signed and sworn to before me on _____ by _____.

(Seal)

Notary Public

My commission expires: _____

*

Plaintiff

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Section XII. - Requests for Documents

Check the appropriate box.

1. Sign the attached authorization (Release "A") permitting the disclosure of your medical records and medical expenses.
☐ The executed release is attached.
☐ The executed release has been given to my attorney.
2. If you are claiming lost wages, lost job or lost job opportunity as part of your damages in this lawsuit, sign an authorization (Release "B") permitting the disclosure of your employment records for each employer from whom you are claiming lost wages.
☐ Not applicable.
☐ The executed release is attached.
3. All medical records currently in your possession relating to any of your claimed injuries.
☐ I have no documents responsive to this request.
☐ The responsive documents are attached.
☐ The responsive documents will be produced by _____ (date)
4. All medical bills you are claiming as damages in your lawsuit.
☐ I have no documents responsive to this request.
☐ The responsive documents are attached.
☐ The responsive documents will be produced by _____ (date)
5. Any documents which show any reimbursement you may have received for any of the medical bills you are claiming as damages in your lawsuit.
☐ I have no documents responsive to this request.
☐ The responsive documents are attached.
☐ The responsive documents will be produced by _____ (date)

*

Plaintiff

43

6. If you are claiming lost wages, produce your W-2 forms for those years in which you are claiming a loss and for the five-year period preceding the year of your first loss.

- ☐ I am not claiming lost wages.
- ☐ The responsive documents are attached.
- ☐ The responsive documents will be produced by _____.
(date)

7. If you are claiming loss of self-employment income, then produce those portions of your tax returns which relate to the loss for each year in which you are claiming a loss and for the five-year period preceding the year of your first loss.

- ☐ I am not claiming loss of self-employment income.
- ☐ The responsive documents are attached.
- ☐ The responsive documents will be produced by _____.
(date)

8. If you have received disability benefits in connection with any of the medical conditions alleged in your lawsuit, produce documents which reflect payment of these benefits.

- ☐ I have not received any such benefits.
- ☐ The responsive documents are attached.
- ☐ The responsive documents will be produced by _____.
(date)

9. Any photographs you took or have in your possession regarding the circumstances surrounding this lawsuit.

- ☐ I have no photographs responsive to this request.
- ☐ The responsive photographs are attached.
- ☐ The responsive photographs will be produced by _____.
(date)

324568

*

Plaintiff

44

TO: _____

REQUESTER:

RE: Name: _____
DOB: _____
SSN: _____

You are hereby authorized to furnish copies of your medical records on the above-referenced Patient to the above-referenced Requester. This authorization is furnished upon the following conditions:

1. *Only records may be furnished. You are not authorized to engage in any verbal communications except with your Patient and your Patient's attorney.*
2. *The cost of all copies of your medical records must be billed only to the Requester.*
3. *This authorization is valid only until your Patient notifies you in writing of this cancellation.*
4. *This authorization has no effect upon any other authorization allowing communications with your Patient's attorney.*
5. *The party requesting these records shall provide a copy of the records obtained with this authorization to the Patient's attorney free of charge.*

PLEASE OBSERVE THESE CONDITIONS

Signed this _____ day of _____, 199_____.

Patient's Attorney

45

TO: _____

REQUESTER:

RE: Name: _____
DOB: _____
SSN: _____

You are hereby authorized to furnish copies of your employment records on the above-referenced individual to the above-referenced Requester. This authorization is furnished upon the following conditions:

- 1. Only records may be furnished. You are not authorized to engage in any verbal communications except with the individual and the individual's attorney.*
- 2. The cost of all copies of your records must be billed only to the Requester.*
- 3. This authorization is valid only until the individual notifies you in writing of this cancellation.*
- 4. This authorization has no effect upon any other authorization allowing communications with this individual's attorney.*
- 5. The party requesting these records shall provide a copy of the records obtained with this authorization to the individual's attorney free of charge.*

PLEASE OBSERVE THESE CONDITIONS

Signed this _____ day of _____, 199 _____.

Individual's Attorney

46

14

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

JUN 01 1995

ROBIN RAY DODDY and his wife
JEANETTA W. DODDY,

Plaintiff,

V.

OXY U.S.A., INC., ET AL.,

Defendants.

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Michael N. Milby, Clerk

CIVIL ACTION NO. H-93-3372

ORDER

Before the Magistrate is Defendants' Motion to Compel Rule 26 Disclosures and Request for Rule 16 Conference (Document No. 175), wherein Defendants complain that Plaintiffs have not provided the information requested by Defendants in the form of Rule 26 Mandatory Disclosures. On January 13, 1995, the Magistrate ordered Plaintiffs to provide Defendants with documents responsive to Defendants' sixteen categories of disclosures by March 13, 1995. Plaintiffs were allowed to make objections to those sixteen categories of documents and have done so, with the most common objection being that the categories were overbroad.

As Plaintiffs' claims are based on allegations of long term exposure to toxic chemicals, the seemingly overbroad categories are entirely proper. Plaintiffs cannot contend that their medical problems are solely due to Defendants' use of toxic chemicals and then refuse to provide Defendants with information as to their medical histories, their places of residence and employment, information which is clearly relevant to whether Defendants' actions caused the injuries Plaintiffs complain of. Moreover, as

EXHIBIT

"C"

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the Rule 26 disclosures requested by Defendants were in lieu of extensive interrogatories, requests for admissions and requests for production, all of which would have been proper, Plaintiffs' objections to the requested disclosures are OVERRULED. Although Plaintiffs' Response to the Motion to Compel shows that Plaintiffs have provided some of the information Defendants have requested, Plaintiffs, based on the overruling of their objections to the requested disclosures, are obligated to produce to Defendants the remainder of the information in their possession which is responsive to those requests. Thus, Defendants' Motion to Compel Rule 26 Disclosures (Document No. 175-1) is GRANTED and Defendants' Request for Rule 16 Conference (Document No. 175-2) is DENIED as MOOT. Within thirty days of their receipt of this Order Plaintiffs shall produce all information in their possession that is responsive to the requested disclosures.

Signed at Houston, Texas, this 30th day of May, 1995.

Frances H. Stacy
FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBIN RAY DODDY and His
Wife JEANETTE W. DODDY,

Plaintiffs,

vs.

OXY USA INC., et al.,

Defendants.

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C.A. NO. H-93-3372

PLAINTIFFS' MANDATORY DISCLOSURES

1. Mandatory Disclosures

The Plaintiffs shall make Mandatory Disclosures containing the following described information as soon as possible but not later than 3/13/95

The foregoing Mandatory Disclosures shall include at least the following:

- (a) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information. This information includes, but is not limited to:
 - i) All fact witnesses.
 - ii) All expert or opinion witnesses.
 - iii) All entities or individuals that have provided health care or health care related services to the Plaintiffs within the past 15 years for any reason, and without limitation for those providers relating to any condition due to exposure to any substance, immune disorder, or other condition that could relate in any way to Plaintiffs' currently alleged illnesses;
- (b) A detailed chronological history of each Plaintiff's residences for the entire life of each Plaintiff to the present.
- (c) The name, address and telephone number of any business organizations or individuals by whom each Plaintiff was or is employed, including self-employment, the beginning and ending dates of each employment, including the reason such employment terminated, the job title, description of duties, amount or rate of compensation and the name of each Plaintiff's supervisor for each job

EXHIBIT

"B"

49

held in the past 20 years, and without limitation for any job in the petroleum, oil and gas, petrochemical, refining or other industry that produces or utilizes petroleum.

- (d) Every toxic substance to which each Plaintiff claims to have been exposed and the alleged time, place, method and level or dosage of the exposure and how each Defendant caused or contributed to the alleged exposure.
- (e) The location and name of every oil or gas well, petrochemical refinery, or other plant or facility in which petroleum products or petrochemicals are used or refined that each Plaintiff has ever visited, worked at or lived within 500 yards of.
- (f) All information (including documents, data compilations or statements) relating to any product, service or equipment, sold, provided or leased by any Defendant which Plaintiffs contend caused injury to Plaintiffs.
- (g) A copy of all documents, data compilations, and tangible things in the possession, custody, or control of Plaintiffs that are relevant to disputed facts alleged with particularity in the pleadings. This information includes but is not limited to the following:
 - i) All medical records relating to any Plaintiff for the past 15 years for any reason, and without limitation for those medical records relating to any condition due to exposure to any substance, immune disorder, or other condition that could relate in any way to Plaintiffs' currently alleged illnesses.
 - ii) All medical records of any hospital or other healthcare facility for the past 15 years for any reason, and without limitation for those medical records relating to any condition due to exposure to any substance, immune disorder, or other condition that could relate in any way to Plaintiffs' currently alleged illnesses.
 - iii) Correspondence between any Plaintiff and any doctor, employer or other person (other than Plaintiff's attorney) regarding any illness or diagnosis for the past 15 years for any reason, and without limitation for those illnesses relating to any condition due to exposure to any substance, immune disorder, or other condition that could relate in any way to Plaintiffs' currently alleged illnesses.
 - iv) All employment records for the past 20 years and without limitation for any job in the petroleum, oil and gas, petrochemical,

refining or other industry that produces or utilizes chemicals, petroleum or petroleum based products.

- v) All documents pertaining to health insurance, temporary disability payments or any other payments made to any Plaintiff as a result of any medical condition.
 - vi) All documents pertaining to any unemployment or Workmen's Compensation benefit received by any Plaintiff.
 - vii) All documents which establish or tend to establish any lost income which Plaintiff alleges to have suffered or will suffer as a result of the alleged activities.
 - viii) All records related to any medicine, drugs, or other medical supplies relating to any illness, operation, disease, procedure or injury for any Plaintiff.
 - ix) A signed authorization (in the form of the attached Exhibit "A") permitting the full disclosure of medical records and medical expenses which are related to each Plaintiff's alleged injuries or damages asserted in this lawsuit.
 - x) A signed authorization (in the form of the attached Exhibit "B") permitting the full disclosure of each Plaintiff's employment records.
- (h) A computation of any category of damages claimed by the disclosing party and those documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.
- (i) If any medical practitioner has ever diagnosed any Plaintiff as having any disease or condition that such medical practitioner has said was caused by product, service or equipment related to the oilfield or oilfield service industry Plaintiff shall disclose the following:
- i) The name or description of such disease or condition.
 - ii) The dates of exposure.
 - iii) The name and address of each medical practitioner who made such diagnosis.
 - iv) A recitation of any such diagnosis.

- v) all medical records relating to such diagnosis.
- (j) If Plaintiff is claiming loss of income, state the name, address and telephone number of the person or entity that would have paid the income, the dates that income would have been paid and the amounts of the payments.
- (k) Plaintiff shall provide a detailed description of the facts and circumstances of any tests, inspections, examinations or investigations performed by any person relating to any product or equipment sold or leased by any Defendant.
- (l) For every medical practitioner by whom each Plaintiff has been treated or examined for any reason whatsoever for the past 15 years, and without limitation for those practitioners by whom Plaintiff was treated for conditions relating to any exposure to any substance, immune disorder, or other condition that could relate in any way to Plaintiffs' currently alleged illnesses, each Plaintiff shall state the following:
- i) The names, addresses and fields of medicine of each such medical practitioner;
 - ii) The date(s) that the Plaintiff saw each such medical practitioner;
 - iii) The reason(s) that each Plaintiff went to each such medical practitioner and the diagnosis as related to each Plaintiff by each medical practitioner of each Plaintiff's alleged injury, damage or complaint.
- (m) Each Plaintiff shall provide a detailed chronological history of all treatments examinations or procedures performed by any medical facility including, with respect to each such treatment and examination, the name and address of the medical facility, the dates of admission and discharge, the name and address of the treating physician(s), the reason for each Plaintiff's admittance and the prognosis given.
- (n) Each Plaintiff shall provide a detailed listing of all medical expenses sought in this lawsuit, including those from medical practitioners and medical facilities. Include in the description, the name and addresses of the medical practitioner or facility charging the expense, the date and amount of the expense, and the reason for the expense.
- (o) Each Plaintiff shall identify each carrier of insurance which provided or been obligated to provide Plaintiff with medical, health, disability and/or compensation coverage. The description shall include the company name, address, telephone number and policy or identification number.

- (p) Each Plaintiff shall list all medications (legal or illegal, prescription and non-prescription, including medications used for birth control) that each Plaintiff has used in the past 15 years. For each medication or drug, identify its trademark or generic name; the dates and dosages taken; the reason(s) why the drug was taken; if it was prescribed; the name, address and occupation of the person prescribing it; and the nature of any reactions or side effects.
- (q) Documents reflecting any type of testing for toxic substances, hazardous materials or environmental concerns on the Plaintiffs property, near the Plaintiffs' home or near the subject oil and gas well.
- (r) Documents reflecting any type of sampling of air, dirt or other material on or near the Plaintiffs' property.
- (s) A copy of, or a description by category and location, of all documents, data compilations, and tangible things in the possession, custody or control of the Plaintiffs that are relevant to the disputed facts alleged with particularity in the pleadings.

2. Net Worth Information

Any information related to net worth, and any information not directly related to the subject matter of this case but requested for purposes of seeking exemplary damages, may not be requested before the later of the date Plaintiffs have established a prima facie case authorizing an award of exemplary.

3. Disclosure of Experts

The Plaintiffs shall disclose experts by 5/1/95

The Defendants shall disclose experts by 6/1/95

Pursuant to Fed. R. Civ. 26(a)(2) the identity of expert witnesses shall be accompanied by a written report prepared and signed by each expert witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinion; the qualification of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a list of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

4. Pre-Trial Disclosures

Plaintiffs shall make Pre-Trial Disclosures by (45 days before trial) 7/13/95

Defendants shall make Pre-Trial Disclosures by (30 days before trial) 8/11/95

Pursuant to Fed. R. Civ. 26(a)(3), Pre-Trial Disclosures shall include the following:

- (a) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those who the party may call if the need arises;
 - (b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and
 - (c) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the parties may offer if the need arises.
5. Depositions Limits. The deposition limits imposed by Fed. R. Civ. P. 30 & 31 are suspended.
6. Interrogatory Limits. Each party is allowed two sets of 25 interrogatories to each other party.

SIGNED at Houston, Texas this _____ day of _____, 1995.

HONORABLE JUDGE PRESIDING

NO. 153-153368-94

RONALD BROWNE, <i>et al.</i> ;	§	IN THE DISTRICT COURT OF
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
SICPA SECURINK CORP., <i>et al.</i>	§	153RD JUDICIAL DISTRICT

NO. 153-151265-93

ROBERT J. ANSLOAN, <i>et al.</i> ;	§	IN THE DISTRICT COURT OF
	§	
v.	§	TARRANT COUNTY, TEXAS
	§	
SICPA SECURINK CORP., <i>et al.</i>	§	153RD JUDICIAL DISTRICT

MODIFIED DOCKET CONTROL ORDER

Having considered Defendant's Motion to Modify the Docket Control Order, Plaintiffs' motion to continue deadlines, the parties' agreement, and Rule 166(i) of the Texas Rules of Civil Procedure, the Court is of the opinion that the November 28, 1995 docket control order should be modified as follows. The dates for discovery deadlines, pleadings amendments, mediation, pretrial matters and trial set forth in the prior order shall be suspended in the interim. Unless otherwise ordered by the Court, the following deadlines shall apply:

1. 2/19/96 Local counsel for Plaintiffs shall have entered an appearance with the Court.
2. 2/19/96 Plaintiffs shall notify Defendants of any defects in discovery responses and Defendants shall make a good faith effort to resolve any disputes.
3. 4/ 3/96 Plaintiffs shall amend their pleadings to allege claims against defendants with particularity according to the special exceptions filed by Natkin and Hensel Phelps.
4. 4/ 3/96 Plaintiffs shall fully answer all discovery previously served on them. Identical interrogatories need not be answered more than once. These

answers shall include responses to all factual and contention interrogatories and shall contain all information possessed by each plaintiff or shall indicate that the plaintiff has no information to support a contention at the present time. The interrogatories shall be signed and verified by each plaintiff.

5. 5/ 3/96 Plaintiffs shall identify all experts that will present testimony in person or by deposition ("Testifying Experts") for all plaintiffs ~~and intervenors~~ ^{KL}. Identification includes names, addresses, telephone numbers, degrees, and areas of expertise.

6. 6/ 3/96 Plaintiffs shall present to all defendants affidavits from technical expert(s) who will testify about the standard of care for each defendant. Each expert's affidavit shall set forth: (i) their complete qualifications, (ii) the standards of care applicable to each defendant, ~~(iii) each defendant role at the Western Currency Facility,~~ ^{KL} (iv) what conduct of each defendant fell below the appropriate standard of care ~~(as distinguished from all other defendants),~~ ^{KL} and (v) how that proximately caused exposure to hazardous chemicals.

Plaintiffs shall present to all defendants affidavits from toxicological experts setting forth their complete qualifications and opinions to a reasonable scientific probability about: (i) what chemicals were present at the currency facility, (ii) how these chemicals could cause injuries and did, in fact, proximately cause injuries to each plaintiff, (iii) the minimum and maximum allowable exposures, and (iv) the relative exposures of each plaintiff.

Plaintiffs shall present to all defendants affidavits from physicians or medical experts ~~who must have examined the individual plaintiffs~~ ^{KL} setting forth their complete qualifications and stating opinions to a reasonable medical probability about: (i) the specific injury, disease, or medical condition that each plaintiff has suffered, (ii) the specific chemical probably causing the injury, (iii) the dates and manner of exposure, ~~(iv) details of examinations, testing and treatment of each plaintiff by each expert,~~ ^{KL} and (v) the nature and duration of the injury.

~~FURTHER, the testimony on toxicological and medical effects shall include sufficient information on the medical and scientific data, literature, or authorities relied on, any laboratory testing of the expert's opinions, all subjective and objective criterion used in arriving at opinions, any peer review of the expert's opinions, the potential rate of error, whether the theories are accepted in the scientific community, and any non-judicial uses of the expert's theories or work.~~ ^{KL}

7. 6/ 3/96 All Plaintiffs and defendants shall be joined by this date. Any plaintiffs joined at or before this time shall produce by this date all information requested in interrogatories to existing plaintiffs.
8. 7/ 2/96 Defendants shall join in any third party defendant.
9. 8/30/96 Defendants shall identify their testifying experts. Defendants shall also provide affidavits from their experts by this date containing factual observations, tests, supporting data, calculations, photos and opinions.
10. 9/16/96 The parties will attend a pre-trial conference at a date convenient with the Court, but in no event later than this date. This conference will consider issues of scheduling depositions and other discovery, trial considerations, and related issues.

DATED this 23rd day of February, 1996.


JUDGE PRESIDING

CAUSE NO. 95-4858-F

ALONZO S. ABARCA, ET AL § IN THE DISTRICT COURT OF
VS. § NUECES COUNTY, TEXAS
ADCO PRODUCTS, INC., ET AL § 214TH JUDICIAL DISTRICT

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER PREVIOUS RULING
AND ORDER REQUIRING IDENTIFICATION OF EXPERTS
AND DELINEATION OF THEIR OPINIONS

On the ____ day of _____, 1996 came on to be considered Plaintiff's Motion to Reconsider its Letter Ruling of April 10, 1996 and the Court after hearing the argument of the parties and reviewing the contents of the file, determines that the following Order should be entered:

It is therefore ORDERED that Plaintiff's Motion to Reconsider the Court's Letter Ruling of April 10, 1996 is denied except to the extent the Letter Ruling is modified as reflected below.

✓ It is further ORDERED that by October 31, 1996 Plaintiff's obtain from their treating medical doctors or other treating health care professionals who regularly render diagnosis of illness or injury or their experts whose opinions they intend to present to the trier of fact at the time of trial, affidavits attesting to the following:

1. The nature, duration and amount of exposures each Plaintiff to any chemical contamination, when and where such exposures occurred, and the nature and extent of each Plaintiff's personal injury as related to the treating medical doctor, treating health care professional, or testifying expert by the Plaintiff;

2. The treating physician's, treating health care professional, or testifying expert's opinion, based upon a reasonable degree of medical probability that the particular Plaintiff has suffered injuries as a result of exposure to chemicals at or from the Corpus Christi Army Depot;

3. Any and every injury, illness or condition suffered by the Plaintiff that in the opinion of the treating physician, treating health care professional, or other testifying expert was caused by the alleged exposure;

4. The chemical or chemicals that in the opinion of the treating physician, treating health care professional, or testifying expert caused each and every specific injury, illness, or condition listed.

✓ 5. ^{State} It is further ordered that Defendants shall provide to Plaintiff's counsel by August 16th at 5:00 p.m. an affidavit identifying the names of all products containing toxic chemicals, fibrous dust, radioactive isotope or heavy metals which that Defendants records indicate were sold directly to CCAD during the time period relevant to this suit.

SIGNED AND ENTERED this 12 day of July, 1996.


District Judge Presiding

APPROVED AS TO FORM AND SUBSTANCE:

FULBRIGHT & JAWORSKI L.L.P.

By: _____
Robert G. Newman
State Bar No. 14965600
300 Convent Street, Suite 2200
San Antonio, Texas 78205-3792
Telephone: 210/224-5575
Telecopier: 210/224-8336
Counsel for Defendant Exxon et al.

APPROVED AS TO FORM ONLY:

By: _____
Donald F. Maierson
State Bar No. 12849000
1914 North Memorial Way
Houston, Texas 77007
Telephone: 713/861-9271
Telecopier: 713/861-1022
Counsel for Plaintiffs

CAUSE NUMBER 93-09149-L

LORETTA CALLENS, et al.,

Plaintiffs,

VS.

ATRIUM DOORS AND
WINDOWS, INC., et al.,

Defendants.

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IN THE DISTRICT COURT

193RD JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

CASE MANAGEMENT ORDER

This Court, having considered the Motion for Entry of a Case Management Order submitted by certain "Generator Defendants," and upon consideration of arguments presented by counsel for all parties, hereby enters the following order:

IT IS ORDERED THAT each Plaintiff in the above styled and numbered lawsuit shall, on or before October 15, 1996, submit to counsel for the Generator Defendants an affidavit and/or affidavits from a qualified expert and/or experts which specifies, describes, and lists the following items:

- a. The name of each Plaintiff;
- b. The illness(es) claimed by each Plaintiff;
- c. The materials to which each Plaintiff was exposed;
- d. The materials which caused injury to each Plaintiff;
- e. The period of time during which each Plaintiff was exposed to the above listed materials; *and including any specific dates of exposure; and*
- f. The method of each Plaintiff's exposure.

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IT IS SO ORDERED.

SIGNED this 20th day of September, 1996.


JUDGE PRESIDING

NO. 91-CI-02533

IN RE: ROC PRE-TRIAL

§ IN THE DISTRICT COURT OF
§
§ 224TH JUDICIAL DISTRICT
§
§ BEXAR COUNTY, TEXAS

**ORDER ON DEFENDANTS' MOTION TO ENFORCE COURT ORDER
AND COMPEL EVIDENCE OF SPECIFIC INJURY AND CAUSATION**

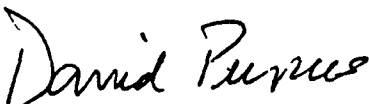
On September 23, 1996, the Court considered the Defendants' Motion to Enforce Court Order and Compel Evidence of a Specific Injury and Causation. The Court, after reviewing the Motion and hearing argument of counsel, determined that the Plaintiffs have failed to comply with the Court's Order of March 24, 1995.

The Court, therefore, ORDERS as follows:

1. Pursuant to the Court's Order of March 24, 1995, and this Order, the Summary Jury Trial Plaintiffs are ORDERED to produce expert reports setting forth the specific injuries or disease process alleged and the possible chemical causes within 60 days from the date of this Order. Said reports shall identify the part of the body or organ system allegedly affected and shall identify what chemical or chemicals allegedly caused these effects. Said reports shall also set forth an impairment evaluation, describe the patient's ability to work, the patient's alleged pain and discomfort, and an evaluation of intellectual capacity should these matters be part of an alleged chemical injury at issue to the Plaintiff.

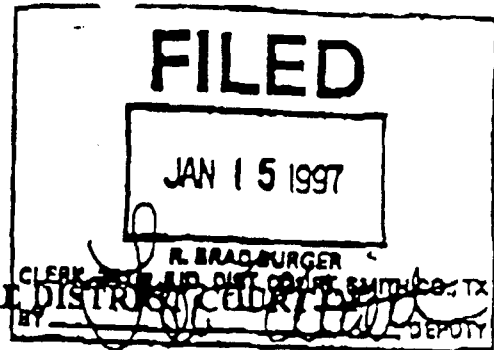
2. It is further ORDERED that until the Court has determined that the Summary Jury Trial Plaintiffs have complied with paragraph number one of this Order, Defendants shall not be required to respond to any requested or propounded discovery by any Plaintiff.

SIGNED this 23RD day of SEPT., 1996.



HON. DAVID PEEPLES
JUDGE, 224TH DISTRICT COURT

received
1-21-97 mm



CAUSE NO.: 94-2771-C

MARTI WILLIAMS, *et al.*,

Plaintiffs,

vs.

AKZO NOBEL CHEMICALS, INC., *et al.*,

Defendants.

IN THE DISTRICT COURT OF SMITH COUNTY, TEXAS

SMITH COUNTY, TEXAS

241st JUDICIAL DISTRICT

CASE MANAGEMENT ORDER

The Court, having considered the Motion for Entry of a Case Management Order, and upon consideration of arguments presented by counsel for all parties, hereby enters the following order:

IT IS ORDERED THAT each Plaintiff in the above styled and numbered lawsuit shall, on or before sixty (60) days after the date of this Order, submit to counsel for the Generator Defendants an affidavit and/or affidavits from a qualified expert and/or experts which specifies, describes, and lists the following items:

- A. List each specific injury, illness or condition suffered by each plaintiff that, in the opinion of the expert, was caused by the alleged exposure to materials from the Facility;
- B. Identify each particular substance or substances that each plaintiff was exposed to that caused each specific injury, illness or condition listed above;
- C. Identify the specific date(s), time(s), duration(s), and dosage(s) of each such incident of exposure for each plaintiff;
- D. How each such incidence of exposure occurred (*i.e.* through air, water, *etc.*);
- E. Identify the source of each substance including the entity that generated each such substance, that each expert claims each plaintiff was exposed to; and
- F. State the scientific and medical bases for the expert's opinions.

(64)

IT IS FURTHER ORDERED, that any plaintiff that fails to comply with this order shall have his or her claims dismissed.

IT IS FURTHER ORDERED that any defendant may make a challenge to the sufficiency or scientific basis of any specific affidavit.

IT IS FURTHER ORDERED that all discovery as to all parties is stayed until thirty (30) days after the submission of the above referenced affidavits.

IT IS SO ORDERED.

Signed this 15th day of January 1997 at Tyler, Texas.


SMITH COUNTY DISTRICT JUDGE

P-5
REWORK

CAUSE NO. 97-29160

VON SIMPSON, HIEU-VIET NGUYEN, §
TRAN-TU LAM, VU VAN THANH, §
LE THANH THIEN, XOAN VAN NGUYEN, §
LINH HUU PHAM, LINH HUY PHAM, §
CLARENCE STUBBLEFIELD, JOSH §
STUBBLEFIELD, ARCHIE VANCE, §
LARRY HAYNES, STANLEY SAUCEDO, §
KRISTI WEBB MULLINAX, MARY §
WELLS, DELILAH BIRMINGHAM, as §
Administratrix of the Estate of FRANK §
BIRMINGHAM, KATHY WEBB, as §
Administratrix of the Estate of MAX WEBB §
and ANDREW GARREN §

v. §

ALAMO FOREST PRODUCTS, INC., §
VAUGHAN & SONS, INC., ALAMO §
LUMBER COMPANY, VAUGHAN §
REALTY COMPANY, CURTIS §
VAUGHAN III, and ALAMO §
INTERCOASTAL TRANSPORT, INC. §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

F I L E D

CHARLES PACARISSE
District Clerk

11-20-98

10:48 a.m.

Harris County, Texas

By _____ Deputy

61ST JUDICIAL DISTRICT

CASE MANAGEMENT ORDER

Came on this day to be considered Defendants' Motion for Entry of a Case Management Order. After considering the Motion and all things properly before it, the Court hereby GRANTS the Motion.

Accordingly, this Case Management Order is hereby entered, and Plaintiffs are ordered to file with the Court, with simultaneous certified copies sent to Defendants' counsel, expert reports regarding Plaintiffs' alleged exposure(s) or dose response and general and specific causation, as follows:

RECORDER'S MEMORANDUM
This instrument is of poor quality
and not satisfactory for photographic
recording; and/or alterations were
present at the time of imaging

H1995A-295411-1
016608:0001

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1. Plaintiffs' Experts' Reports as to Causation:

Each Plaintiff is ordered to provide an expert report from their testifying expert to be filed with the Court, with simultaneous certified copies sent to Defendants' counsel, by no later than January 15, 1999. Each Plaintiff's expert's report(s) at a minimum should include:

- (1) the identity (by common chemical name) of the chemical(s) which the physician intends to testify caused or contributed to any alleged injury or disease suffered by Plaintiff (or decedent, as appropriate), including any diagnosis made, the criteria for such diagnosis, and the methods by which such diagnosis was reached;
- (2) the duration (time) and dose (amount) which the Plaintiff (or decedent, as appropriate) was allegedly exposed to each chemical, including the date, time, place/ location, concentration, rate, and duration of each alleged exposure to the chemical (including the specific dates of exposure, the dates of first and last exposure, and the total amount of time exposed);
- (3) whether the Plaintiff (or decedent, as appropriate) was exposed to any chemical (or compound thereof, as appropriate) through ingestion, inhalation, skin absorption, or a combination thereof or through some other means (i.e., the mode or pathway of the alleged exposure) and a description of how the Plaintiff (or decedent, as appropriate) was exposed in such a manner;
- (4) a description of the Plaintiff's (or decedent's, as appropriate) purported acute and chronic symptoms, clinical course, and a description of the physical, tangible, or objective evidence supporting or refuting the symptoms' existence and the alleged date(s) of onset;
- (5) a description of the Plaintiff's (or decedent's, as appropriate) pre- and post-exposure medical history;
- (6) a description of any diagnostic testing, including any laboratory (blood, urine, or tissue) testing of the Plaintiff (or decedent, as appropriate) with attached copies of all laboratory report(s) or result(s), which tend to establish or fail to establish that the Plaintiff (or decedent, as appropriate) has in fact been exposed to any chemical (or compound thereof, as appropriate) at any given point in time, together with attendant chain-of-custody, and quality assurance/quality control documentation;

- (7) a description of all confounding factors, or differential diagnoses, considered, and the methodology used to rule them out;
- (8) the dose, duration, and dose response that, in the expert's opinion, is hazardous, toxic, or harmful to human health, and the identity and description of all supporting data and literature for such opinion;
- (9) the mode or pathway of exposure to the agent which, in the expert's opinion, will produce the injury, disease, or other health consequence opined about (e.g., ingestion, inhalation, skin absorption, or any combination thereof);
- (10) a description of any pre- or post-exposure medical history, including a history of prior or other exposure, that the expert considered or acknowledges is significant;
- (11) the identity and description of any disease, injury, or other health consequence that the expert will opine is causally connected to pentachlorophenol (or its products); exposure(s), including its diagnostic criteria; laboratory, diagnostic, or clinical testing needed to confirm or refute the diagnosis; characteristic symptomology (both acute and chronic) with pattern of onset, duration, and expected recovery; types of treatment modalities available and likely prognosis or patient outcome; and a description of all other medical, toxicological, or scientific standards, methods, or tests needed to reach the diagnosis;
- (12) any other opinions, conclusions, or inferences the expert has reached or intends to testify about;
- (13) the identity and description of all appropriate testing of both the suspected PCP-exposed person and site needed to confirm or refute a hazardous dose exposure to PCP (or its products) and the dates by which such testing should be conducted in order to be related to the suspected exposure;
- (14) a detailed description of the basis and process or methodology used by the expert in reaching his/her opinions, conclusions, and/or inferences, including all underlying facts, any laboratory or other testing of any Plaintiff (or decedent, as appropriate), any laboratory or other testing of the site's soil, water, or air (with attached copies of all laboratory/test results and attendant chain-of-quality and quality assurance/quality control documentation), all medical and/or scientific data, studies, tests, and/or theories, all regulatory or governmental agency literature, regulations, or standards, all medical/scientific literature, including a description of all epidemiological and toxicological studies, animal studies, in vitro testing, all

medical/scientific research, articles, journals, case reports, abstracts, or texts (whether published or unpublished), and any other authority upon which the expert intends to rely;

- (15) a true and correct copy of the expert's curriculum vitae; and
- (16) a description (and, if available, copies) of all articles or manuscripts authored or co-authored, research conducted, or any other work the expert has done in relation to pentachlorophenol or any of its products (whether published or unpublished).

The purpose of this Case Management Order is to allow the Court to exercise its role as gatekeeper to screen the expert evidence for relevancy and reliability, as required by Rule 702 of the TEXAS RULES OF EVIDENCE, as interpreted by *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1994) and *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549 (Tex. 1995) and their progeny. Its purpose is also to help the parties assess and evaluate the case for the mediation.

The identity of and discovery related to Defendants' experts (including defense expert reports) is hereby held in abeyance, and thus delayed, until Plaintiffs have fully complied with this Case Management Order.

It is ordered that Plaintiffs may seek leave with the Court to enlarge these deadlines as circumstances dictate and upon good cause shown. In that event, the corresponding deadlines for the pre-trial Rule 702 *Robinson*-type hearing and the scheduled mediation will likewise be continued in order to give the Court and the parties a fair opportunity to assess the expert evidence and the case.

It is further ordered that the failure by Plaintiffs to comply with this Case Management Order, without seeking prior leave of Court with a showing of good cause as described herein, shall result in the automatic dismissal of any non-complying Plaintiff's case with prejudice to the refile of same.

25th 8
SIGNED this 25th day of November, 1998.


JUDGE JOHN DONOVAN

APPROVED AS TO FORM
AND SUBSTANCE:

By:


Anna M. Jobsis

State Bar No. 10668800

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ATTORNEYS FOR DEFENDANTS

COPY

NO. 97-09021

FILE

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CSORX

JUDY GARCIA, INDIVIDUALLY AND
AS NEXT FRIEND OF CHANDRA
ZERMENO, ET AL.

VS.

RE-CLAIM ENVIRONMENTAL, INC.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

151ST JUDICIAL DISTRICT

**ORDER GRANTING DEFENDANT'S MOTION
FOR ENTRY OF A CASE MANAGEMENT ORDER**

Defendant's Motion for Entry of a Case Management Order is granted.

IT IS ORDERED that on or before May 22, 1998, ^{CEB} the Plaintiffs shall

file with the Court and serve on opposing counsel the following:

An affidavit signed by each Plaintiff detailing his alleged exposure to the specific chemicals alleged by him (hereafter "Chemicals" or "Chemical") and the dosage of each to which he alleges he was exposed. The affidavit shall contain, at a minimum, the following information:

- (1) name of each Chemical to which each Plaintiff was allegedly exposed;
- (2) dosage of that chemical to which each Plaintiff was allegedly exposed;
- (3) date, time and duration of each exposure to that Chemical; and
- (4) method of exposure, i.e. ingestion, inhalation, skin absorption, etc.

IT IS FURTHER ORDERED that on or before June 22, 1998, ^{CEB} each

Plaintiff shall file with the Court and serve on opposing counsel an affidavit from a qualified and duly licensed physician supporting his personal injury claims. Specifically, the physician must state under

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oath that, based on reasonable medical probability, the Plaintiff's injuries or symptoms were caused by exposure to one or more Chemicals. Each affidavit must specify:

- (1) each specific injury and ailment that each Plaintiff has allegedly suffered as a result of exposure to the Chemicals and the date on which such injury was allegedly first suffered;
- (2) the Chemicals that, in the opinion of the physician, caused each such alleged injury, illness, condition or symptom;
- (3) the manner in which each Plaintiff was allegedly exposed to each Chemical (i.e., ingestion, inhalation or skin absorption);
- (4) the duration of time over which the Plaintiff was exposed to each Chemical, including the date(s) of exposure and the total amount of time exposed;
- (5) all medical and/or scientific data, studies, theories and/or facts relied upon by the physician in forming his or her opinions regarding the Plaintiff; and
- (6) the basis for the physician's medical opinion (i.e., epidemiological studies, toxicological studies, in vitro testing, animal studies, etc.)

IT IS FURTHER ORDERED that on or before May 22 ^{CEB}, 1998, each Plaintiff shall provide to opposing counsel written authorization for the release of all medical, physical and mental health, and employment records and information, as well as any other records relating to each Plaintiff's claims. Each authorization shall include each Plaintiff's typewritten name, address, date of birth and social security number, the Plaintiff's original signature, and the Plaintiff's waiver and release of all privileges and privacy rights, including specifically all privileges pertaining to mental health information. The authorization shall also include the name, address, and telephone number of the physician or mental health professional, and all employers.

IT IS FURTHER ORDERED that on or before June 22 ^{CEB}, 1998, each Plaintiff shall file the following information with respect to the Plaintiff's claim for diminution of property value:

- (1) Plaintiff's address including tax block and lot number for the property alleged to have suffered contamination and/or a diminution in value;
- (2) an appraisal by a licensed real estate appraiser supporting the Plaintiff's claim of diminution of property value from the time she purchased the property in June of 1995 until the time of the appraisal (including the timing and degree of such diminution and the cause of the diminution in value); and
- (3) a report of an environmental engineer or other qualified expert supporting the Plaintiff's claim of contamination on the property, including the timing, degree, source, and type of such contamination and the cause of the contamination.

IT IS FURTHER ORDERED that nothing contained herein shall preclude the parties from moving for a modification of this Case Management Order or moving for further case management orders dealing with the conduct of discovery or the trial or any other matter not addressed in this case management order. Moreover, nothing herein shall preclude any parties from moving for summary judgment on any issue in this case.

IT IS FURTHER ORDERED that all discovery (including discovery requests already filed and served) is stayed until each Plaintiff files and serves the above-described affidavits, appraisal, and environmental report.

IT IS FURTHER ORDERED that the failure by each Plaintiff to file with the Court and serve the above-described affidavits, appraisal, information, and environmental reports on or before the above-stated dates will result in the dismissal with prejudice of each Plaintiff's claims.

SIGNED this 20th day of April, 1997⁸.

Caroline Baker
JUDGE PRESIDING

APPROVED AND ENTRY REQUESTED:

DOW, COGBURN & FRIEDMAN, P.C.

By: 

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