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16 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19

20 DONNA M. AVILA, et al.,)
21 Plaintiffs,)
22 v.)
23 WILLITS ENVIRONMENTAL)
REMEDATION TRUST, et al.,)
24 Defendants.)
25)
26)
27)
28)

FILED
FEB 25 PM 1:35
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED
MAR 1 2005
RICHARD W. WISKINS
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Submitting Counsel are directed
to serve this order upon all other
parties in this action.

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1 Federal Rule of Civil Procedure 16(c)(12) specifically authorizes the Court to adopt “special
2 procedures for managing potentially difficult or protracted actions that may involve complex issues,
3 multiple parties, difficult legal questions or unusual proof problems.” Pursuant to Rule 16(c)(12),
4 the Court finds that entry of Case Management Order Number Four is necessary for the just and
5 efficient resolution of this lawsuit.

6 Case Management Order Number Four addresses (a) the Court’s December 9, 2004 Order
7 regarding exposure and medical causation and (d) additional motions. Any discovery which is not
8 provided for in a case management order approved by the Court, as modified or amended by
9 subsequent case management orders, is stayed while the parties conduct the discovery specified
10 therein, and will require either a stipulation between the parties (which shall not be unreasonably
11 denied if the discovery sought is in furtherance of an approved case management order, and is not
12 unduly burdensome), or a Court Order to permit the discovery to go forward. The parties anticipate
13 that additional case management orders will be issued by the Court to address the timing and scope
14 of additional discovery, depositions, expert discovery, trial preparations, and trial, as appropriate.

15
16 **I. ORDER REGARDING EXPOSURE AND MEDICAL CAUSATION**

17
18 **A. *Prima Facie* Showing of Exposure And Medical Causation.**

19 One purpose of Case Management Order Number Four is to avoid unnecessary delay and
20 expense and the needless expenditure of judicial resources by establishing an orderly process for pre-
21 trial proceedings. This Court’s December 9, 2004 Order Granting Defendants’ Request for *Prima*
22 *Facie* Showing, requires those 51 plaintiffs who never lived in Willits and those 86 Plaintiffs who
23 only lived in Willits after December 31, 1988 “to make a *prima facie* showing that such plaintiffs
24 were exposed to hazardous substances released by the predecessor of either defendants Whitman or
25 Pneumo Abex, and that such exposure caused their injury.”

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1 The showing required shall be as follows:

2 1. Personal Injury Claims

3 Showing Re *Plaintiff Exposure*: Each of the non-resident Plaintiffs and post-1988
4 Plaintiffs (as listed on Exhibits A and B, respectively), shall serve upon Defendants and file with the
5 Court on or before April 18, 2005, a written statement, executed under penalty of perjury setting
6 forth all facts supporting such Plaintiff's claimed exposure to hazardous substances discharged or
7 released by the predecessors of either Whitman or Pneumo Abex. Each such affidavit shall include:

- 8 a. The identity of each chemical substance to which the Plaintiff was
9 exposed from the predecessors of either Whitman or Pneumo Abex;
- 10 b. The dates or date-limited time periods, including days of the week and
11 times during the day, during which such Plaintiff was exposed to
12 hazardous substances discharged or released by the predecessors of
13 either Whitman or Pneumo Abex;
- 14 c. The duration of exposure during the time periods during which such
15 Plaintiff claims exposure to hazardous substances discharged or
16 released by the predecessors of either Whitman or Pneumo Abex;
- 17 d. The location(s) of such exposures during each of the identified time
18 periods;
- 19 e. The route of exposure whether by inhalation, ingestion, dermal or
20 otherwise;
- 21 f. The injuries caused by said exposure; and
- 22 g. The documents and witnesses to support each of the foregoing facts.

23 For any Plaintiff claiming injury prior to birth through the exposure of such Plaintiff's
24 mother ("*in utero* exposure"), the foregoing information shall be provided regarding the person
25 through which such Plaintiff claims exposure.

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1 *Expert's Affidavit:* Each non-resident Plaintiff and post-1988 Plaintiff shall serve upon
2 Defendants and file with the Court a written statement on or before April 18, 2005, from a
3 physician, medical and/or other expert(s) stating the following:

- 4 a. A statement of his or her qualification;
- 5 b. A description of each injury, illness, or condition for which such
6 Plaintiff seeks recovery in this action;
- 7 c. The identity of the chemical to which such Plaintiff was exposed;
- 8 d. A statement as to the route of exposure whether by inhalation,
9 ingestion, dermal or otherwise;
- 10 e. A statement that there is a reasonable medical probability that the
11 exposure caused each injury, illness or condition referred to above.¹
- 12 f. A statement of the scientific and medical basis upon which the experts
13 opinion is based.

14 2. Wrongful Death Claims

15 *Expert's Affidavit:* Each Plaintiff claiming the wrongful death of a decedent who never lived
16 in Willits or only lived in Willits after December 1988 shall serve upon Defendants and file with the
17 Court on or before April 18, 2005, a written statement from a physician, medical and/or other
18 expert(s), regarding the decedent, as directed above.

19 **B. Responsive Defense Affidavits**

20 The parties shall meet and confer on or before May 2, 2005 as to whether Defendants will
21 present expert affidavits to respond to Plaintiffs' affidavits and/or in a dispositive motion seeking
22 dismissal of these enumerated Plaintiffs' injury claims.

23 If Defendants intend to present expert affidavits in response to Plaintiffs' affidavits and/or in
24 a dispositive motion seeking dismissal of these enumerated Plaintiffs' injury claims, Defendants
25

26 ¹ The issue of the standard regarding causation is to be briefed by the parties and addressed by
27 the Court. Plaintiffs shall file an opening brief on February 25, 2005; Defendants' opposition is due on
28 March 11, 2005; and Plaintiffs' reply is due on March 18, 2005. The hearing on this issue is set for
April 1, 2005.

1 shall serve Plaintiffs and file with the Court such responsive affidavits from qualified experts which
2 responds on a point by point basis to each of the Plaintiffs submitted affidavits on or before May 31,
3 2005.

4 **C. Schedule**

5 Plaintiffs' counsel shall serve Defendants and file with the Court the completed affidavits
6 required above by April 18, 2005.

7 The parties shall meet and confer as to whether Defendants will present expert affidavits to
8 respond to Plaintiffs' affidavits and/or in a dispositive motion seeking dismissal of these enumerated
9 Plaintiffs' injury claims by May 2, 2005.

10 Defendants shall serve Plaintiffs and file with the Court the expert affidavits, if any, by May
11 31, 2005.

12 **D. Further Proceedings**

13 Following the submission of the completed affidavits required above, the parties may engage
14 in expert discovery and/or further proceedings as appropriate, including depositions of Defendants
15 and/or Plaintiffs' experts, additional causation discovery, briefing, foundational or other challenges
16 to expert opinions, and submission of rebuttal expert opinions. Thereafter, the Court (or its duly
17 appointed referee) shall hold a hearing to determine whether each non-resident Plaintiff and post-
18 1988 Plaintiff has demonstrated a *prima facie* showing sufficient to show Plaintiffs exposure to
19 Defendants chemicals was a substantial factor in causing or contributing to plaintiffs injuries or the
20 risk of cancer and other diseases.

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22 **II. MOTIONS**

23 Pursuant to this Case Management Order, the parties are permitted to file motions, including
24 but not limited to summary judgment and/or summary adjudication motions, in accordance with the
25 Federal Rules of Civil Procedure.

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1 **III. AMENDMENT/MODIFICATION OF CASE MANAGEMENT ORDER**

2 This Order, including any of the dates or deadlines specified herein, may itself be amended,
3 supplemented or superseded by subsequent case management orders. Such amendments,
4 supplemental or superseding orders may be obtained either by stipulation of the parties with Court
5 approval, or upon the motion of any party for good cause shown. Any such motion shall be made by
6 letter brief to the Court pursuant to the standard procedures in this case.

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8 **IV. FURTHER CASE MANAGEMENT CONFERENCE**

9 The next Case Management Conference is set for June 10, 2005.

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11 Dated: February 24, 2005 Respectfully submitted,

12 ENGSTROM LIPSCOMB & LACK

13
14 By 

15 Mark E. Millard
16 Lead Trial Counsel for Plaintiffs
17 Attorneys for Plaintiffs

18 APPROVED AS TO FORM,

19 LATHAM & WATKINS

20 By 

21 Dana N. Linker
22 Lead Trial Counsel for Defendants
23 Attorneys for Defendants

24 **IT IS SO ORDERED.**

25 DATED: 3/1, 2005

26 
27 Honorable Susan Illston
28 UNITED STATES DISTRICT COURT JUDGE

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 505 Montgomery Street, Suite 1900, San Francisco, CA 94111-2562.

On **February 25, 2005**, I served the following document described as:

[PROPOSED] CASE MANAGEMENT ORDER NO. FOUR

by serving a true copy of the above-described document in the following manner:

BY U.S. MAIL

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid. I deposited in Latham & Watkins LLPs' interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for mailing with the United States Postal Service:

SEE ATTACHED SERVICE LIST

I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **February 25, 2005**, at San Francisco, California.



Helen B. Colombo

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