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FILED

DEC 09 2004

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONNA AVILA, et al.,

No. C 99-3941 SI

Plaintiff,

**ORDER GRANTING DEFENDANTS'
REQUEST FOR *PRIMA FACIE*
SHOWING**

v.

WILLITS ENVIRONMENTAL REMEDIATION
TRUST, et al.,

Defendant.

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By letter briefs, the parties seek resolution of a dispute regarding defendants' request for an order that plaintiffs who never lived in Willits and plaintiffs who only lived in Willits after December 1988 be required to make a *prima facie* showing of exposure and medical causation.

Defendants Whitman Corporation and Pneumo Abex Corporation argue that their request is well within a federal court's express and inherent powers to exercise extensive supervision and control of litigation. Defendants also point to several state and federal court decisions where courts issued Lone Pine/Cottle case management orders¹ requiring plaintiffs to make a *prima facie* showing of exposure and/or causation to streamline protracted and expensive toxic tort litigation. Plaintiffs do not dispute the general propriety of Lone Pine/Cottle orders, but argue that such an order is premature.

¹These orders are commonly referred to as "Lone Pine orders," after Lore v. Lone Pine, Inc., No. L 33606-85, 1986 N.J. Super. LEXIS 1626 (N.J. Super. Ct. Monmouth County, Nov. 18, 1986), the first case in which such an order was used, or "Cottle orders," after Cottle v. Superior Court, 3 Cal. App. 4th 1367 (2d Dist. 1992), the first California case in which such an order was used.

1 Federal Rule of Civil Procedure 16(c)(12) authorizes a court to adopt “special procedures for
2 managing potentially difficult or protracted actions that may involve complex issues, multiple parties,
3 difficult legal questions, or unusual proof problems.” The Ninth Circuit and other circuits have
4 issued case management orders requiring toxic tort plaintiffs to make a *prima facie* showing of
5 exposure and causation to avoid unnecessary delays and expenses in complex litigation. These Lone
6 Pine orders “are designed to handle the complex issues and potential burdens on defendants and the
7 court in mass tort litigation.” Acuna v. Brown and Root Inc., 200 F.3d 335, 340 (5th Cir. 2000),
8 see Renaud v. Martin Marietta Corp., 749 F. Supp. 1545 (D. Colo. 1990); Abuan v. General Electric
9 Co., 3 F.3d 329 (9th Cir. 1993); Claar v. Burlington Northern Railroad Co., 29 F.3d 499 (9th Cir.
10 1994). Lone Pine orders are issued under the wide discretion afforded district judges over the
11 management of discovery under Fed. R. Civ. P. 16. Acuna, 200 F.3d at 340.

12 This litigation commenced on August 23, 1999. Given the length of time that has elapsed, the
13 Court finds that it is reasonable to require certain plaintiffs to make a *prima facie* showing of
14 causation and exposure at this stage of the litigation.

15 The 51 plaintiffs² who never lived in Willits (the “non-resident plaintiffs”) shall be required
16 to make a *prima facie* showing that such plaintiffs were exposed to hazardous substances released by
17 the predecessor of either defendants Whitman or Pneumo Abex, and that such exposure caused their
18 injury. The 86 plaintiffs³ who only lived in Willits after December 31, 1988 (the “post-1998
19 plaintiffs”) shall also be required to make a similar showing.
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26 ²A list of the 51 non-resident plaintiffs is attached to defendants’ September 19, 2003 letter
27 brief as Exhibit A.

28 ³A list of the 86 post-1988 plaintiffs is attached to defendants’ September 19, 2003 letter brief
as Exhibit B.

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CONCLUSION

For the foregoing reasons, the Court hereby GRANTS defendants' request that plaintiffs who never lived in Willits and plaintiffs who only lived in Willits after December 31, 1988 make a *prima facie* showing of exposure and medical causation. The parties are ORDERED to meet and confer prior to the December 17, 2004 case management conference to determine a date by which such a showing will be made.

IT IS SO ORDERED.

Dated: December 9, 2004



SUSAN ILLSTON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DONNA M. AVILA,

Plaintiff,

v.

WILLITS ENVIORNMENTAL,

Defendant.

Case Number: CV99-03941 SI

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 10, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: December 10, 2004

Richard W. Wierking, Clerk
By: Tracy Sutton, Deputy Clerk

