

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOAN SCHWAN, et al.)	4:04CV3384
)	
Plaintiffs,)	
vs.)	ORDER
)	
CNH AMERICA LLC, et al.,)	
)	
Defendants.)	

IT IS ORDERED that Defendants’ Motion for a Lone Pine Case Management Order (filing 103) is granted in part and otherwise denied, as follows:

1. On or before October 31, 2006, each Plaintiff must serve on Defendants a signed statement showing:
 - a. Each address at which he or she resided between 1965 and the present.
 - b. For any claim brought by such Plaintiff on behalf of a minor, each address at which the minor resided between 1965 and the present.
 - c. For any wrongful death claim brought by such Plaintiff, the date and cause of the decedent’s death and all known or reasonably ascertainable addresses at which the decedent resided between 1965 and the date of death.

2. On or before October 31, 2006, each Plaintiff who is claiming personal injury, whether to himself or herself, or to a minor or decedent, must serve on Defendants a sworn affidavit from a licensed physician or other qualified expert, or both, as may be necessary to make the requisite showing, that contains the following information:
 - a. Each specific illness or injury that the subject Plaintiff, minor, or decedent suffered as a result of alleged exposure to “Contaminants” (as that term is defined in the Third Amended Complaint) allegedly emanating from

Defendants' operations at the property located at 3445 West Stolley Park Road, Grand Island, Nebraska (the "CNH Property");

b. The date(s) on which the physician examined the subject Plaintiff, minor, or decedent;

c. The date on which each such illness or injury was first suffered by the subject Plaintiff, minor, or decedent;

d. The identity and concentration of the Contaminant(s) that, to a reasonable degree of medical and scientific certainty, caused each such injury or illness;

e. The date(s) and means (e.g., ingestion, inhalation or skin absorption) of the subject Plaintiff's, minor's, or decedent's exposure to each such Contaminant;

f. The basis for concluding, to a reasonable degree of medical and scientific certainty, that the alleged injury-causing Contaminant(s) emanated from the CNH Property, including a precise description of the environmental pathway (e.g., soil, water, air) of each such alleged injury-causing Contaminant from the CNH Property to the subject Plaintiff, minor, or decedent;

g. Any cause for the injury, illness or Contaminant exposure(s) unrelated to Contaminant(s) from the CNH Property that the physician or other qualified expert identified; and

h. The scientific and medical bases, and the basic evidence supporting such bases, for the opinions and conclusions stated.

3. On or before October 31, 2006, each Plaintiff who is claiming property damage, whether on his or her own behalf or on behalf of a decedent's estate, must serve on Defendants a sworn affidavit from a licensed real estate appraiser or other qualified expert, or both, as may be necessary to make the requisite showing, that contains the following information:

a. The street address of the property allegedly affected;

b. The identity and amount of the Contaminant(s) that, in the opinion of the expert and to a reasonable degree of scientific certainty, allegedly

affected the property, including a precise description of the environmental pathway (e.g., soil, water, air) of each such Contaminant from the CNH Property to the allegedly affected property;

c. The time period over which the Contaminant(s) allegedly affected the property;

d. Whether, to a reasonable degree of scientific certainty, the Contaminant(s) emanated from the CNH Property;

e. Any other cause or source of property damage, unrelated to any Contaminates emanating from the CNH Property, that the expert identified;

f. The value of the property before the claimed date of contamination;

g. The value of the property after the claimed date of contamination;
and

h. The methodology or bases underlying the opinions and conclusions.

Any Plaintiff who fails to provide the foregoing information in a timely fashion shall be subject to sanctions, up to and including dismissal of his or her claims with prejudice. Plaintiffs shall not file the foregoing information with the court, but Plaintiffs' counsel shall file with the court a declaration of compliance with this order on behalf of each Plaintiff when the information is served on Defendants.

IT IS FURTHER ORDERED that the parties shall file their Rule 26 planning conference report within sixty (60) days of today's date, and this matter is referred to Magistrate Judge Piester for further progression.

May 4, 2006

BY THE COURT:

s/ Richard G. Kopf
United States District Judge