

200 # 56

MARRELL, J

ORIGINAL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

X



ARMAND CORLEW, et al.,

Plaintiffs,

-against-

06CV 0266 (VM) ←  
(formerly 07 Civ. 3258)

GENERAL ELECTRIC COMPANY, et al.

Defendants

X

**STIPULATED REPORT OF THE PARTIES PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE 26(f) AND PROPOSED  
SCHEDULING ORDER**

Plaintiffs Armand Corlew, Vincent Riggi, Stephen Cernak, Jr., and Ruth Depaolo and Defendants General Electric Company ("G.E.") and Monsanto Company and Pharmacia Corporation ("the Pharmacia Defendants") (collectively "Defendants"), met and conferred pursuant to F.R.C.P. 26(f) on June 22, 2007, October 1, 2007, and October 4, 2007, and hereby jointly request that the Court enter the following Scheduling Order for the above captioned Corlew putative class action:

1. This Case Management Order ("Order") shall govern the practices and procedures of the Corlew putative class action, which involves the claims of four named Plaintiffs seeking to represent a class of all individuals and entities who owned and/or occupied property within a five mile radius of a 628 acre General Electric Plant site in Schenectady, New York ("G.E. Schenectady").

2. A Separate Order shall govern the practices and procedures in the related

MICROFILMED

NOV 15 2007 -3 00 PM

cases styled Abbatiello, et al. v. Monsanto Company, et al. (personal injury claims against the Pharmacia Defendants by current employees of G.E. Schenectady alleging exposure to Polychlorinated Biphenyls ("PCBs") during their employment); and Abele, et al. v. Monsanto Company, et al. (formerly 06 CV 3461 (VM)), currently 06 CV 0266 (VM) (personal injury claims against the Pharmacia Defendants by former employees of G.E. Schenectady alleging exposure to PCBs during their employment). Together, Abbatiello and Abele involve approximately 1,000 named Plaintiffs. G.E. is a party only to the Corlew putative class action brought by area property owners/occupiers.

3. The Corlew Plaintiffs seek damages on behalf of themselves and the putative class due to alleged PCB contamination emanating from G.E. Schenectady. They have pleaded a number of legal theories, including product liability, negligence, trespass, and nuisance. The Corlew Plaintiffs seek damages, *inter alia*, for allegedly diminished property values, emotional distress and personal injuries.

4. For judicial efficiency, during the first phase of this litigation as set forth in this Order, the Parties will focus their efforts on issues relating to whether the named Plaintiffs can make prima facie cases for their pleaded causes of action, and whether Plaintiffs' property diminution and/or personal injury, "fear of cancer or disease", medical monitoring, emotional distress and related claims should or should not be certified as representative of a class and on other issues relating to class certification under F.R.C.P. 23.

5. At the conclusion of the prima facie case/class certification issue phase set forth in this Case Management Order, the Court, after consultation with the Parties, shall consider and adopt, an appropriate Case Management Order for claims, if any, remaining

in the case to be resolved on the merits, via dispositive motion, trial or otherwise.

6. **Prima Facie Case/Class Certification Discovery Schedule.** With respect to this initial phase of the proceedings, the Parties shall adhere to the following schedule and procedures (subject to the rights of all Parties to seek future modifications thereof).

7. Within 60 days from the entry of this Case Management Order, each of the named Plaintiffs individually, G.E. and the Pharmacia Defendants, shall make their Initial Disclosures pursuant to Rule 26(a)(1) (A) – (D).

8. Within 60 days from the entry of this Case Management Order, each of the named Plaintiffs shall provide to counsel for G.E. and the Pharmacia Defendants:

(a) Signed Authorizations in the form attached hereto as Exhibit A for his or her Medical, Employment, Workers' Compensation, Social Security, Educational, and Military Records;<sup>1</sup>

(b) A listing that states with specificity each presently undiagnosed and/or latent injury, illness, condition and/or disease, if any, that each such Plaintiff claims he or she has a significantly increased risk of contracting due to exposure of PCBs and for which Plaintiff claims he or she has a present need for periodic diagnostic exams (i.e., medical monitoring claims);

(c) A statement whether each Plaintiff is making a claim for emotional

---

<sup>1</sup> The format of the Authorizations required is set out in Exhibit A hereto. Throughout the course of this litigation, all Plaintiffs shall cooperate with the Pharmacia Defendants and G.E. by providing "freshly" signed and dated Authorizations, as may be reasonably required under the circumstances.

distress and/or a fear of cancer or disease claim and, if so, the details of any such claim;

(d) A listing that states with specificity each past or present injury, illness, condition and/or disease, if any, that each Plaintiff claims was caused by exposure to PCBs<sup>2</sup>;

(e) A list of all health care providers for each Plaintiff;

(f) A statement concerning where, when and how each Plaintiff claims to have been exposed to PCBs;

(g) Plaintiff's PCB test results (e.g., ng/g lipid and ng/g serum), if any, from blood, fat or other sampling, including copies of any sampling results or reports;

(h) A list of all residences (in-state and out-of state) since birth for each Plaintiff, including complete physical addresses for all such residences and the specific time period during which the Plaintiff resided at each one of those residences; and

(i) A list of all employers of each Plaintiff, the dates and locations of all such employment, and a brief description of each position held by each Plaintiff.

9. Within 60 days from the entry of this Case Management Order, each of the named Plaintiffs shall provide to counsel for G.E. and the Pharmacia

---

<sup>2</sup> Plaintiffs have advised that they do not intend to make "traditional" claims of personal injury in this matter, i.e., that they do not intend to claim they have a past or present illness, such as heart disease, for example, allegedly caused by exposure to PCBs. Instead, they intend to make "medical monitoring" and/or risk or fear of cancer or disease claims.

Defendants:

- (a) The complete legal address of each individual parcel of property, including the legal description of each parcel of property, that each named Plaintiff alleges to have declined in value or to otherwise have been adversely affected by PCBs;
- (b) Soil, water, air or other test data allegedly demonstrating the presence of PCBs and/or the presence of any other substances on or in relation to each parcel of property of each named Plaintiff;
- (c) Copies of all appraisals ever made on the property, if still in Plaintiffs' possession or under Plaintiffs' control;
- (d) A statement of the date when Plaintiff purchased or otherwise acquired any property alleged to be impacted by PCBs allegedly emanating from G.E. Schenectady, the price paid for the property, if applicable, and a description of how the property was acquired if it was acquired other than through an arms length purchase (e.g., through a gift, a will, intestate succession, merger or acquisition, or otherwise). Non-owner Plaintiffs, if any, shall provide the dates and details of rental or other occupancy;
- (e) Copies of all contracts for the purchase, sale or rental of the property, including all documents comprising or relating to mortgage financing and requests for refinancing, if still in Plaintiffs' possession or under Plaintiffs' control; and
- (f) A statement of the nature of Plaintiffs' ownership interest in the

property (e.g. fee simple, tenant in common) and the name and address of each person or entity who claims an ownership interest in each such parcel.

10. Within 60 days of Defendants' service of the Interrogatories and Requests for Production of Documents attached hereto as Exhibits B and C, each of the named Plaintiffs shall provide verified responses to Interrogatories served, and shall provide documents and electronically stored information responsive to the Requests for Production of Documents served in accordance with this Paragraph, in accordance with F.R.C.P. 33 and 34.

11. If Plaintiffs choose to serve written discovery on G.E. and the Pharmacia Defendants during this phase of the proceedings, within 60 days of such service, the Defendants shall serve written responses in accordance with F.R.C.P. 33 and 34. Plaintiffs also shall have the right to take a reasonable number of depositions of G.E. and the Pharmacia Defendants for the purpose of inquiring about Defendants' knowledge of the nature and characteristics of PCBs, and for the purpose of seeking to prove that any levels of PCBs allegedly on Plaintiffs' properties allegedly emanated from G.E. Schenectady, and were manufactured, sold and distributed by the Pharmacia Defendants.

12. Within 60 days from the entry of this Case Management Order, each of the named Plaintiffs who intends to rely on blood or fat or other bodily sampling in support of any claim, and/or who has previously had such sampling conducted, shall have a blood sample drawn by a qualified medical center acceptable to Defendants pursuant to protocols acceptable to Defendants and will have the results sent for analysis to an analytical laboratory of Defendants' choice, at Defendants' expense. Once the blood

sampling has occurred, the analytical laboratory will be directed promptly to send the analytical results to counsel for the Defendants.

13. Within 90 days from the entry of this Case Management Order, each of the named Plaintiffs who intends to rely on soil, water, air or other sampling in support of any claim of property damage and/or diminution in value and/or who has previously had any such sampling conducted, shall permit consultants of Defendants' choice to perform such sampling as Defendants' deem appropriate. Defendants shall provide reasonable advance notice of their intent to enter Plaintiffs' properties to conduct sampling and shall advise Plaintiffs' counsel of the specific nature, method and extent of such sampling. Plaintiffs' shall cooperate in the process. Plaintiffs have the right to have consultants of their own choice attend and observe Defendants' sampling, provided however, that Plaintiffs' consultants shall not interfere with Defendants' ability to sample.

14. Defendants shall produce such sampling results to plaintiffs' counsel at least 60 days in advance of Defendants' filing or service of any dispositive motion relying on the sampling permitted under Paragraphs 12 and 13.

15. Within 240 days from the entry of this Case Management Order, each of the named Plaintiffs, if any, who is making a personal injury claim shall provide an affidavit of a qualified medical expert setting forth any diagnosis, conclusion or opinion that any past or present injury, illness, condition and/or disease of each individual Plaintiff was caused by exposure to PCBs, and the scientific, medical and other bases for the expert's opinions, including all medical examinations, testing or treatment of each Plaintiff and all other data or information including, but not limited to medical records, relied upon or considered by the expert in forming the opinions. These expert affidavits

must be prepared in compliance with F.R.C.P. 26(a)(2).

16. Within 240 days from the entry of this Case Management Order, each of the named Plaintiffs who is making a medical monitoring or risk or fear of cancer or disease claim shall provide an affidavit of a qualified medical expert setting forth any conclusion or opinion that, due to exposure to PCBs, such Plaintiff has a significantly increased risk of developing in the future any presently undiagnosed or latent injury, illness, condition and/or disease and a resulting present need for periodic diagnostic exams, and the scientific, medical and other bases for the expert's opinions, and all data or other information including, but not limited to, medical records, relied upon or considered by the expert in forming the opinions. These expert affidavits must be prepared in compliance with F.R.C.P. 26(a)(2).

17. Within 240 days from the entry of this Case Management Order, each of the named Plaintiffs who is making a property damage or diminution in property value claim shall provide an affidavit of a qualified expert setting forth any conclusion or opinion that such Plaintiff has sustained property damage or diminution in property values due to PCBs, and the scientific, and other bases for the expert's opinions, and all data or other information relied upon or considered by the expert in forming the opinions. These expert affidavits must be prepared in compliance with F.R.C.P. 26(a)(2).

18. Within 240 days from the entry of this Case Management Order, each of the named Plaintiffs who is making a property damage or diminution in property damage claim shall provide an affidavit of a qualified expert (e.g., environmental chemists, soil scientists, hydrogeologists, air dispersion modeler) setting forth a conclusion that the source of PCBs (if any) present on each Plaintiffs' property came from Defendant(s)'



alleged activities at G.E. Schenectady and demonstrating a scientifically reliable transport pathway from G.E. Schenectady to each Plaintiffs' property. Each such affidavit shall set forth the scientific, medical and other bases for the expert's opinions, and all data or other information relied upon or considered by the expert in forming the opinions. These expert affidavits must be prepared in compliance with F.R.C.P. 26(a)(2).

19. Within 240 days from the entry of this Case Management Order, if Plaintiffs still intend to pursue class certification, they shall file and serve a detailed proposed class definition for personal injury, medical monitoring, and property/stigma damage putative classes, including how and why their action meets the prerequisites to a class action as identified in F.R.C.P. 23, however, Plaintiff is not bound by the parameters of this preliminary proposed class definition.

20. Within 240 days from the entry of this Case Management Order, Plaintiffs shall identify with specificity all fact witnesses upon whose testimony (whether as a live witness or via affidavit) they intend to rely in support of class certification. Within 240 days of the entry of this Case Management Order, if Plaintiffs intend to offer proof through any expert witness in support of class certification, plaintiffs shall submit to Defendants an affidavit and report in compliance with F.R.C.P. 26(a)(2) for each such class certification expert.

21. Following receipt by G.E. and the Pharmacia Defendants of the information required or permitted by this Order, including the expert affidavits/Rule 26 reports required by Paragraphs 15 through 18 of this Order and those permitted by Paragraph 20 of this Order, G.E. and the Pharmacia Defendants shall have 180 days to depose the expert witnesses identified by the named Plaintiffs, including class

certification experts, if any, and the right to take the depositions of any Plaintiff, putative class member, class certification fact witness, medical care provider, laboratory, analyst or other person, institution, or expert whose data or other information has formed the basis of or relates to the Plaintiffs' submissions or whose data or other information has been relied upon or considered by any expert witness providing an affidavit in accordance with Paragraphs 15, 16, 17, 18 and 20 above. Due to the nature of this case, for purposes of the depositions permitted by this Paragraph 21, the Defendants are exempted from compliance with the ten deposition limit of F.R.C.P. 30(a)(2)(A). Plaintiffs shall cooperate in making the Plaintiffs themselves, fact witnesses, experts and other deponents under Plaintiffs' control available for deposition within this timeframe. G.E. and the Pharmacia Defendants also shall have the right to seek a medical examination of any of the named Plaintiffs or any other discovery authorized by the F.R.C.P., if G.E. and/or the Pharmacia Defendants deem such exams or discovery necessary in light of Plaintiffs' expert and/or other submissions and/or testimony.

22. Within 60 days after the conclusion of the last of the depositions as set forth in Paragraph 21 of this Order, the Defendants may serve reports of experts or other witnesses to rebut the opinions and conclusions contained in the Plaintiffs' Paragraph 15, 16, 17 and 18 submissions. Reports of opinion witnesses, if any, disclosed by Defendants pursuant to this Paragraph shall be prepared in compliance with F.R.C.P. 26(a)(2).

23. Within 60 days after the conclusion of the last of the depositions as set forth in Paragraph 21 of this Order, G.E. and the Pharmacia Defendants shall identify with specificity all fact witnesses upon whose testimony (whether as a live witness or via affidavit) they intend to rely in opposition to class certification. Within 60 days after the

conclusion of the last of the depositions as set forth in Paragraph 21 of this Order, if Defendants intend to offer proof through any expert witness in opposition to class certification, Defendants shall submit to Plaintiffs an affidavit and report in compliance with F.R.C.P. 26(a)(2) for each such class certification expert.

24. Plaintiffs may depose any witness disclosed by Defendants pursuant to Paragraphs 22 and 23 of this Order, provided that the depositions of such witnesses shall be concluded within 120 days after Defendants' expert reports are served and their class certification fact witnesses, if any, are identified. Due to the nature of this case, for purposes of the depositions permitted by this Paragraph 24, the Plaintiffs are exempted from compliance with the ten deposition limit of F.R.C.P. 30(a)(2)(A). G.E. and the Pharmacia Defendants shall cooperate in making these experts or other witnesses under Defendants' control available for deposition within this timeframe.

25. The taking of depositions or other discovery as set forth in this Order shall not operate to prejudice any party from taking additional discovery of any witness deposed or otherwise examined following the conclusion of the pretrial proceedings outlined in this Order.

26. Within 90 days of the conclusion of the last of the depositions described in Paragraphs 21 and 24 above, Plaintiffs shall file all submissions in support of class certification including a motion for class certification and a memorandum of law in support and any verified evidence they wish to submit in support of class certification.

27. Within 90 days of the conclusion of the last of the depositions described in Paragraphs 21 and 24 above, G.E. and/or the Pharmacia Defendants may challenge the sufficiency of the Plaintiffs' submissions required by Paragraphs 15, 16, 17 and 18 of this

Order including the opinions and conclusions of any expert witness, by filing *Daubert* motions and/or motions for summary judgment, consistent with Rule 56(b) of the Federal Rules of Civil Procedure, seeking the dismissal of the claims of any Plaintiff that G.E. or the Pharmacia Defendants contend has failed to demonstrate a *prima facie* claim for personal injury, medical monitoring and/or property/stigma damage. Within 60 days of the Defendants' service of any such Motions, Plaintiffs shall respond in compliance with the Federal Rules of Civil Procedure, including Rule 56. Within 60 days of Plaintiffs' service of any response or opposition papers, the Defendants shall serve their Replies in Support of their Motions.

28. The provisions of Paragraph 27 shall not operate as a dispositive motion cut-off deadline or otherwise to preclude G.E. or the Pharmacia Defendants from later filing dispositive motions directed to any individual Plaintiff or Plaintiffs, to the extent such subsequent dispositive motion practice complies with the Federal Rules of Civil Procedure and/or any subsequent scheduling orders of this Court.

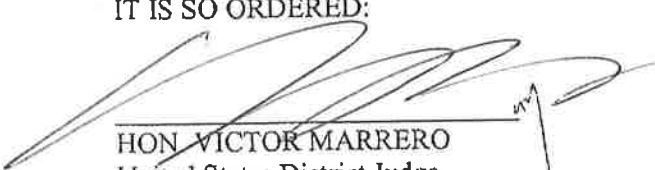
29. If class allegations are still in the case, within 30 days after Defendants serve their reply briefs in support of Defendants' *Daubert* and/or summary judgment motions pursuant to Paragraph 27 above, Defendants shall serve their opposition to Plaintiffs' motion for class certification, and Plaintiffs' shall serve their Reply in Support within 15 days of service of Defendants' opposition papers.

30. During the pendency of the pretrial proceedings as set forth in this Order, all other discovery shall be stayed, except for the discovery specifically contemplated by this Order. The Parties specifically reserve their right to conduct further discovery on all Causes of Action, if any, remaining after the motions contemplated herein are decided.

31. Following the conclusion of the above proceedings, the Court will schedule a status conference to discuss and develop with the parties a plan for appropriate coordination of the resolution of the pending *Daubert*/Summary Judgment Motions and any class certification issues remaining in the case, including whether to schedule oral argument on the *Daubert*/Summary Judgment motions and/or whether and when to schedule a class certification hearing, and will consider and adopt, if appropriate, additional pretrial procedures, and case scheduling orders.

32. The Parties retain all rights and duties imposed by the Federal Rules of Civil Procedure and the Federal Rules of Evidence, except as expressly modified herein.

IT IS SO ORDERED:



HON. VICTOR MARRERO  
United States District Judge

Date: 13 November 2007

LAW OFFICES OF LAWRENCE P. BIONDI

By: 

LAWRENCE P. BIONDI  
81 Main Street, Suite 504  
White Plains, New York 10601  
(914) 946-5093

*Attorneys for Plaintiffs*

LEADER & BERKON LLP

By: \_\_\_\_\_

JAMES K. LEADER  
630 Third Avenue 17<sup>th</sup> Floor  
New York, New York 10017  
(212) 486-2400

and

Thomas M. Carney  
Mark G. Arnold  
Carol A. Rutter  
Adam Miller  
HUSCH & EPPENBERGER, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
(314) 480-1500

*Attorneys for Monsanto Company  
And Pharmacia Corporation*

BOND, SCHOENECK & KING, PLLC

By: \_\_\_\_\_

Arthur J. Siegel  
111 Washington Avenue  
Albany, New York 12210  
(518) 533-3000

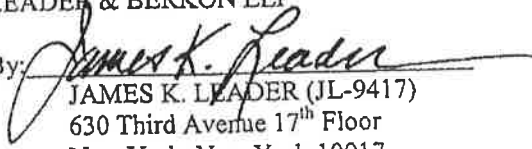
*Attorneys for Defendant  
General Electric Company*

LAW OFFICES OF LAWRENCE P. BIONDI

By: \_\_\_\_\_  
LAWRENCE P. BIONDI  
81 Main Street, Suite 504  
White Plains, New York 10601  
(914) 946-5093

*Attorneys for Plaintiffs*

LEADER & BERKON LLP

By:   
JAMES K. LEADER (JL-9417)  
630 Third Avenue 17<sup>th</sup> Floor  
New York, New York 10017  
(212) 486-2400

and

Thomas M. Carney  
Mark G. Arnold  
Carol A. Rutter  
Adam Miller  
HUSCH & EPPENBERGER, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
(314) 480-1500

*Attorneys for Monsanto Company  
And Pharmacia Corporation*

BOND, SCHOENECK & KING, PLLC

By: \_\_\_\_\_  
Arthur J. Siegel  
111 Washington Avenue  
Albany, New York 12210  
(518) 533-3000

*Attorneys for Defendant  
General Electric Company*

LAW OFFICES OF LAWRENCE P. BIONDI

By: LAWRENCE P. BIONDI  
81 Main Street, Suite 504  
White Plains, New York 10601  
(914) 946-5093

*Attorneys for Plaintiffs*

LEADER & BERKON LLP

By: JAMES K. LEADER  
630 Third Avenue 17<sup>th</sup> Floor  
New York, New York 10017  
(212) 486-2400

and

Thomas M. Carney  
Mark G. Arnold  
Carol A. Rutter  
Adam Miller  
HUSCH & EPPENBERGER, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
(314) 480-1500

*Attorneys for Monsanto Company  
And Pharmacia Corporation*

BOND, SCHOENECK & KING, PLLC

By: Arthur J. Siegel  
111 Washington Avenue  
Albany, New York 12210  
(518) 533-3000

*AS 5181*  
*Attorneys for Defendant*  
*General Electric Company*