

P-5
REWY

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 BACARISSE
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
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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;

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- (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

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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).

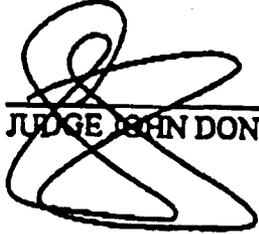
The purpose of this Case Management Order is to allow the Court to exercise its role as gatekeeper to screen the expert evidence for relevancy and reliability, as required by Rule 702 of the TEXAS RULES OF EVIDENCE, as interpreted by *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1994) and *E.I. 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.

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SIGNED this 25th day of November, 1998.


JUDGE JOHN DONOVAN

APPROVED AS TO FORM
AND SUBSTANCE:

By:

Anna M. Jobsis / by permission R.D.

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