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In re: Hanford Nuclear Reservation Litigation, 98-36142, 98-36143, 98-36144, 98-36147, 98-36149, 98-36173
In re: Berg Litigation, 99-35979, 00-35062

Opinion Filed: 6/18/02
Panel: Chief Judge Mary Schroeder (author) Judge Alfred T. Goodwin Judge Michael Daly Hawkins

These companion appeals involve claims for damages brought under the Price-Anderson Act, 42 U.S.C. §§ 2014(hh) and 2210 et seq., by several thousand individuals alleging that they suffer or are at risk of suffering cancer and other diseases as a result of exposure to radioactive airborne and river emissions from operations undertaken over several decades by various companies under contract with the U.S. government at a plutonium production plant on the Hanford Nuclear Weapons Reservation in southeastern Washington state.

In the first opinion, *In re Hanford Nuclear Reservation Litigation*, the panel reversed District Judge Alan A. McDonald's partial summary judgment dismissing in part the plaintiffs' claims. The panel held that when considering causation in a mass toxic tort case, the district court should apply a two-step process. First, it must consider the issue of whether there is proof of generic causation, i.e., whether exposure to a substance for which a defendant is responsible, such as radiation at the level alleged by plaintiffs, is capable of causing a particular injury or condition in the general population. In considering proof of generic causation, the panel rejected the defendants' proffered "doubling of the risk standard," which would have required plaintiffs to demonstrate that they had been exposed to a specific dose of radiation from Hanford emissions that more than doubled a plaintiff's risk of harm.

The panel further held that after determining generic causation, the district

court then should examine individual causation under the standards set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311 (9th Cir. 1995), and consider whether toxic substances were the cause-in-fact of individual plaintiff's specific conditions. The panel wrote that *Daubert* also must be distinguished from the facts of this case, however, because scientific authority recognizes that radiation is capable of causing a broad range of illnesses even at the lowest doses, while the facts in *Daubert* involved far less clear scientific evidence. The panel remanded for the district court to apply the proper standard.

In the second opinion, *In re Berg*, the panel applied its *In re Hanford Nuclear Reservation Litigation* decision and affirmed in part and reversed in part District Judge McDonald's partial summary judgment of numerous similar claims, and the panel remanded for the district court to apply the standards set forth in the first opinion. The panel also held that plaintiffs' claims for emotional distress damages and for medical monitoring because of a future risk of disease were not within the scope of claims cognizable under the Price-Anderson Act.

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