

### ***Additional Background on Status of Compensation Claims:***

In its final report, the Advisory Committee on Human Radiation Experiments recommended, in effect, that the government offer an apology and compensation to the families of eighteen subjects of certain plutonium injection experiments conducted at several hospitals under contracts with a Department of Energy predecessor agency in the mid-1940s. Representatives of sixteen of the eighteen families filed lawsuits against the hospitals, the doctors involved in the experiments, and the United States (or former employees of the United States), or filed administrative claims with the Department of Energy. The United States has now settled all of these lawsuits and administrative claims, providing for compensation for the families of all of the plutonium injection subjects who have come forward and to one additional subject of a uranium injection experiment that was not included in the Advisory Committee recommendation.

The total amount of these settlements was \$6,332,500 (\$2,755,625 of which is payable from the Judgment Fund, a continuing appropriation to pay settlements by the United States, the balance being paid by the Department of Energy pursuant to its contracts with the hospitals where the experiments took place).

Examples of some of the additional cases that the Advisory Committee identified for further consideration were the following:

#### **In re Cincinnati Radiation Litigation** (Southern District of Ohio)

The United States has cooperated with counsel for the plaintiffs and the defendants in this case involving total body irradiation at the University of Cincinnati and has agreed to share in the \$4,269,500 in compensation to be paid there. The United States' share will be \$1,030,000. That class-action settlement is currently under consideration for preliminary approval by the district court.

#### **Vanderbilt University Nutrition Study**

##### **Craft v. United States** (M.D. Tenn.)

Plaintiffs are two subjects and the child of one of these subjects, who participated in an iron uptake study among pregnant women in the Vanderbilt University Medical Center. The only defendant is the United States; but Plaintiffs filed a related class action against the State of Tennessee, private institutional entities, individuals, and Monsanto, a government contractor that operated Oak Ridge National Laboratory. Plaintiffs agreed to accept a monetary settlement and dismiss the United States.

## **Fernald School Cases**

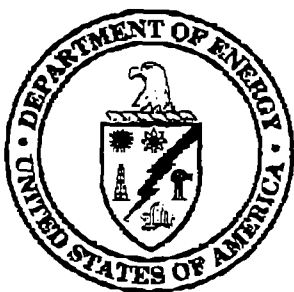
### **Beaulieu v. Blemont, Shattuck v. M.I.T.** (District of Massachusetts)

These cases involve claims of 26 individuals arising from experiments in calcium metabolism at the Fernald State School, a residential school in Massachusetts, some of the students of which had special needs. The claimants have sued the State of Massachusetts, Massachusetts Institute of Technology, Quaker Oats Company, individual researchers, and the United States. The United States has joined all of the other parties in court-annexed mediation.

## **Oregon Prisoner Case**

### **Bibeau v. Pacific Northwest Research Foundation, Inc., et al.** (District of Oregon)

A husband and wife, Harold and Melanie Bibeau, have filed an action premised upon Mr. Bibeau's voluntary participation in a testicular irradiation experiment while he was an inmate of the Oregon State Penitentiary from 1963 to 1969. Defendants are Pacific Northwest Research Foundation, Battelle Memorial Institute, Oregon Department of Corrections officials in their individual and official capacities, former federal employees of the AEC in their individual capacities, and the United States.



U.S. DEPARTMENT OF ENERGY  
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## FAX TRANSMITTAL

**To:** Elizabeth Drye                      **Date:** December 13, 1996  
**Fax #:** 456-7028                      **Pages:** 4, including this cover sheet  
**From:** Dr. Steven K. Galson  
**Subject:** Radiation Experiments

Plutonium injection cases  
12 claims settled as a group (of 18)  
7 plaintiffs and family members

Rochester

- RECA
- Directive classified human research
-

**Note**

**To:** Kris Balderston, Cabinet Affairs  
Phil Caplan, Staff Secretary  
Elizabeth Drye, Domestic Policy

**From:** Steven Galson, Chief Medical Officer, Office of the Secretary of Energy



**Re:** Secretary O'Leary's visit on Monday with radiation experiment settlement plaintiffs

As you know, Secretary O'Leary will be in Rochester on Monday for a 45 minute meeting with 7 plaintiffs (and other family members) who recently settled their claims with the government. Carmen McDougal from DOE has been in contact with your press staff concerning the media aspects of the trip. Attached are some talking points we have prepared for the Secretary covering anticipated press questions about remaining unsettled claims against the government.

## Talking Points for Rochester Meeting Concerning Injection Settlement

### Status of Four Remaining Plutonium Injection Cases

Questions will almost certainly come up, by the family representatives and the press, as to why the Government has not settled the remaining cases. The following is background information on how settlement discussions have proceeded, which explains why the remaining cases have not yet settled. In short, the Government (both DOE and the Department of Justice) has pursued settlements by evaluating the merits of each case and seeking agreement on a settlement amount that is justifiable with respect to the particular case, or cases as grouped together:

- To date, 13 cases involving plutonium and uranium injections have been settled. The current group of 12 that was recently announced concerned Ebenezer Cade, Arthur Hubbard, Albert Stevens, Amedeo Lovecchio, Eda Charlton, Jean Daignault, Paul Galingier, John Mousso, William Slack, Fred Sours, Daniel Nelson, and Mary Jean Connell (the one surviving subject, who received uranium). One additional case of Janet Stadt was settled in the spring of 1996.
- Claims for four remaining plutonium injection subjects -- Edna Bartholf, Una Macke, Simeon Shaw, and Elmer Allen -- have not yet been settled.
- The Advisory Committee on Human Radiation Experiments Final Report recommended financial compensation for the surviving family members of these experiments. ACHRE, however, did not specify an amount, and expected that such payment would likely require legislation from Congress.
- Because Congress has not legislated compensation, the Government only has authority to make payments in response to *viable* legal claims. The 13 cases settled to date involved legal claims made against the Government and its contractors. The amount of settlement was determined based on an evaluation of those legal claims.
- The 12 cases that were recently settled were all represented by a single group of attorneys ("consortium attorneys"). Group settlement discussions began in February 1996, at which time some form of legal action had been initiated in each of the 12 cases. The final settlement amount agreed to (\$4.8 million) was based on our assessment of the aggregate value of these 12 legal claims.

(The first case that was settled last spring (Stadt) was represented by separate counsel who was willing to reach an agreement with the government much more easily than the other cases.)

- Two of the remaining cases -- Bartholf and Macke -- are represented by the consortium attorneys; these claims were not filed until July 1996, when it appeared that a settlement for the group of 12 might be imminent, in an apparent attempt to latch on to the settlement

process begun much earlier.

The Government made clear that because these claims were filed so late, they could not be valued the same as the other 12; settlement discussions on these two cases were postponed until after the others were completed. Discussions are currently ongoing, but will require more time, as did the previous group.

The Justice Department has vigorously asserted that these claims have zero litigation value with respect to the claims against the United States, and therefore to date will not agree to a settlement amount similar to the other cases.

- The third case -- Shaw -- is represented by separate counsel, who sought the assistance of the consortium attorneys upon preliminary knowledge of the settlement package for the group of 12. Settlement discussions for this case have been joined with Bartholf and Macke. Justice also believes that this case has little litigation value, and has limited its settlement offer.
- The last remaining case -- Allen -- is represented by separate counsel, who have continued to demand more than \$2 million in settlement.



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**Subject:** Radiation Experiments

More information.

## Talking Points for Rochester Meeting Concerning Injection Settlement

### Q&As on Four Remaining Plutonium Injection Cases

**Question:**

Why hasn't DOE settled the remaining plutonium injection cases for the same amount as these 12 -- i.e., \$400,000 a case?

**Answer:**

I cannot discuss the details of settlement requirements or our settlement position. However, I should say that DOE and DOJ can only respond to viable legal claims, which we have been doing aggressively. Because the 12 cases now settled were part of a common group of cases with a single group of attorneys representing them, we were able to reach a global settlement on all 12 claims. The remaining cases were either filed at much later times, or are represented by different attorneys, requiring different handling of them.

**Question:**

Do you believe that the remaining cases should be treated differently? Isn't the government action the same, warranting similar response? If the remaining cases would agree to \$400,000 each, why won't DOE settle?

**Answer:**

These remaining cases are being negotiated jointly by DOE and DOJ. We are proceeding on the basis of a fair litigation settlement of each case, based on litigation risk. I cannot comment on the specifics of cases that are the subject of ongoing litigation or claims. I note, however, that the Department of Justice, in particular, believes that the remaining cases present markedly different legal claims than the ones already settled, and therefore warrant different treatment.

**Question:**

Didn't you say at the press conference in New York announcing the settlement of the 12 cases that the remaining cases should be treated in the same way? Doesn't that mean that you should settle those cases for \$400,000 each?

**Answer:**

At that press conference, I very clearly and deliberately refrained from discussing any of the details of the settlement discussions concerning ongoing cases. What I did say was that the remaining plutonium cases should be *resolved* in the same manner as these cases that were just settled -- that is, through settlement as opposed to protracted litigation.