

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN J. VAN BUSKIRK, et al.,

Plaintiffs,

CONOCOPHILLIPS, INC. a foreign
corporation, and INTALCO ALUMINUM
CORPORATION, a foreign corporation,

Defendants.

No. C06-1220-JCC

**STIPULATION AND ORDER TO
CONTINUE DISPOSITIVE MOTION
DEADLINE**

STIPULATION

Plaintiffs John Van Buskirk, *et al.*, by and through their attorney of record, Richard M. Stephens of Groen Stephens & Klinge LLP, Defendant ConocoPhillips Company, by and through its attorneys of record, Grant S. Degginger and Michael A. Nesteroff of Lane Powell PC, and Defendant Intalco Aluminum Corporation, by and through its attorneys of record Bradley Fisher of Davis Wright Tremaine LLP and Belynda Reck of Hunton & Williams LLP, stipulate and agree as follows:

1. On September 23, 2008, this Court entered an Order setting, *inter alia*, trial and pretrial dates in this action as follows:

1 Trial Date: July 9, 2009
2 Dispositive Motions: April 6, 2009
3 39.1 Mediation: May 13, 2009
4 Motions in limine: June 9, 2009
5 Pretrial Order: July 2, 2009
6 Voir dire/jury instructions/trial brief July 2, 2009

7 The remaining dates set by the Court in the September 23, 2008 Order have already passed.

8 2. On April 3, 2009, this Court entered an Order continuing trial and pretrial dates in
9 this action as follows:

10 Trial Date: January 11, 2010
11 Proposed voir dire/jury instructions/trial briefs: January 7, 2010
12 Pretrial Order: December 31, 2009

13 The Court's April 3, 2009 Order was silent as to the Dispositive Motions, 39.1 Mediation and
14 Motions in Limine deadlines, which have not yet passed.

15 3. In light of the Court's April 3, 2009 Order, the parties agree that it would be
16 appropriate to continue the remaining pretrial deadlines that have not yet passed as follows:

17 Dispositive Motions: October 1, 2009
18 39.1 Mediation: November 17, 2009
19 Motions in limine: December 31, 2009

20 4. The parties agree that no extension of the pretrial deadlines that have already
21 passed is necessary, except as the parties have already agreed. Specifically, Plaintiffs' counsel
22 has represented that their expert, Jeffrey Layton, was unable to comply with the Court's schedule
23 for rebuttal expert reports and deposition due to a medical condition. Accordingly, the parties
24 have agreed to extend the expert discovery cut-off only with regard to the depositions and
25 rebuttal reports of Mr. Layton and Defendants' experts Duncan Hay and Robert Wallace.
26 Plaintiffs' counsel estimates that Mr. Layton's medical condition requires an extension until
April 30, 2009 in order to prepare his rebuttal report and make himself available for deposition.

1 Further, Plaintiffs' survey expert, Rod Miller's medical status remains uncertain and Plaintiffs'
2 counsel will keep the parties apprised of any change in his condition that may necessitate
3 substitution of a new expert. Defendants do not at this time agree to the substitution of a new
4 expert for Mr. Miller, and further note that any substitution ultimately allowed by the Court may
5 not provide testimony beyond the scope of, or inconsistent with, the expert testimony and
6 opinions previously provided by Mr. Miller. If such substitution expert is later allowed,
7 Defendants are not foreclosed from a rebuttal expert on that issue, if needed. Plaintiffs also
8 agree that Rowland Atkins' sediment budget may be provided by April 30, 2009, and Defendants
9 agree that Plaintiffs may take Mr. Atkins' deposition on that issue if desired.

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11 RESPECTFULLY SUBMITTED:

12 Dated: April 6, 2009.

GROEN STEPHENS & KLINGE LLP

13
14 By: /s/ Richard M. Stephens
15 Richard M. Stephens (WSBA # 21776)
16 Attorneys for Plaintiffs

17 Dated: April 6, 2009.

LANE POWELL PC

18
19 By: /s/ Michael A. Nesteroff
20 Grant S. Degginger, (WSBA #15261)
21 Michael A. Nesteroff (WSBA # 13180)
22 Attorneys for Defendant
ConocoPhillips Company

23 Dated: April 6, 2009.

HUNTON & WILLIAMS LLP

24
25 By: /s/ Belynda Reck
26 Belynda Reck, *Admitted pro hac vice*
Attorneys for Defendant
Intalco Aluminum Corporation

1 Dated: April 6, 2009.

DAVIS WRIGHT TREMAINE LLP

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3 By: /s/ Bradley Fisher
4 Bradley Fisher (WSBA # 19895)
5 Attorneys for Defendant
6 Intalco Aluminum Corporation

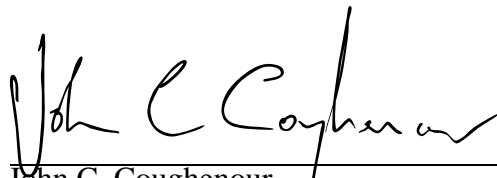
7 **ORDER**

8 Based on the foregoing stipulation of the parties, and being fully advised,
9 IT IS HEREBY ORDERED that the below pretrial deadlines will be continued as
10 follows:

11 Dispositive Motions: October 1, 2009
12 39.1 Mediation: November 17, 2009
13 Motions in limine: December 18, 2009

14 The parties are ordered to disclose the rebuttal reports of Jeffrey Layton, Duncan Hay and Robert
15 Wallace on or before April 30, 2009. Depositions of Msrs. Layton, Hay and Wallace shall be
16 conducted within 30 days thereafter.

17 Dated: April 9, 2009.

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21 John C. Coughenour
22 UNITED STATES DISTRICT JUDGE