

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS : CONSOLIDATED UNDER
LIABILITY LITIGATION (No. VI) : MDL DOCKET NO. 02-875
: :
VARIOUS PLAINTIFFS : :
: :
: :
v. : Certain cases on the Maritime
: Docket ("MARDOC"), listed in
: Exhibits "A," attached
: :
VARIOUS DEFENDANTS :

O R D E R

AND NOW, this **14th** day of **September, 2012**, upon considering the parties' briefing on the issue, and following a hearing on Plaintiffs' Motion to Reconsider and to Vacate the Order of August 7, 2012, No. 02-875 (E.D. Pa. Aug. 15, 2012), ECF No. 1769, it is hereby **ORDERED** that Plaintiffs' Motion to Reconsider and to Vacate is **GRANTED IN PART** and **DENIED IN PART**, as follows:

1. To the extent that the Motion to Reconsider and to Vacate challenges the correctness of the Court's Memorandum Opinion of August 7, 2012 (ECF No. 1754), corrected on August 13, 2012 (ECF No. 1764), the Motion is **DENIED**.¹

¹ The Court today reiterates the decision "that maritime law, rather than a given state's law, applies to all of these cases[,]" and that "a seaman without physical impairments resulting from asbestos exposure, including one who manifests only pleural changes, has not suffered an 'injury' under maritime law, and therefore has no cognizable claim." Corrected Mem. Op. at 6-7, Various Pls. v. Various Defs., No. 02-875 (E.D. Pa. Aug. 13, 2012), ECF No. 1764 (footnote omitted).

2. To the extent that the Motion to Reconsider and to Vacate challenges the correctness and accuracy of the list, which was included as Exhibit "A" ("the List")² to the August 7, 2012 Order (ECF No. 1755) accompanying the Memorandum Opinion, and which was based on the Defendants' submissions, the Motion is **GRANTED**.

The Court bases its decision on the following:

1. The List, by Defendants' own admission, is at least partially incorrect.
2. The List was developed prior to the Court's ruling on August 7, 2012, and therefore, Defendants did not have the benefit of the Court's reasoning concerning the applicable law (that is, maritime or Ohio law) while developing the List.
3. The procedural posture of the case did not clearly put Plaintiffs on notice of the requirement that, if appropriate, they were to file individual objections to the List. See Tr. at 9-10, No. 02-875 (E.D. Pa. April 26, 2012), ECF No. 1184.

² The List was compiled by the Court upon reliance on the various lists submitted by Defendants. See Tr. at 8-9, No. 02-875 (E.D. Pa. April 26, 2012), ECF No. 1184.

Therefore, it is further **ORDERED** that:³

1. The dismissal of the 1,679 cases is **VACATED**, and the cases shall be returned to the active docket.
2. Discovery is to **CONTINUE** in all cases pursuant to the case management orders issued by Magistrate Judge Hey.
3. Defendants may submit revised lists on such terms and on a schedule to be fixed by Magistrate Judge Hey.
4. Each Plaintiff may object to the inclusion of his or her case on any list, and in doing so shall point to evidence of record which, in the Plaintiff's view, supports a finding of physical impairment, on such terms and on a schedule to be fixed by Magistrate Judge Hey.

The Court will review the submissions and decide whether to rule on the papers or whether a hearing will be needed. At an appropriate time the Court will determine in each individual case

³ See Corrected Mem. Op. at 7 n.10, Various Pls. v. Various Defs., No. 02-875 (E.D. Pa. Aug. 13, 2012), ECF No. 1764 (quoting Owens-Illinois v. Armstrong, 591 A.2d 544, 560 (Md. Ct. Spec. App. 1991) aff'd in relevant part, rev'd in part sub nom. Owens-Illinois, Inc. v. Armstrong, 604 A.2d 47 (Md. 1992) (describing pleural plaques and pleural thickening and finding them to be non-compensable)).

whether the Plaintiff has stated a cause of action under the Court's Order of August 7, 2012.

In light of the foregoing, it is further **ORDERED** that Plaintiffs' Motion for Leave to File a Reply in Support of their Motion to Reconsider and to Vacate, filed in the cases listed in Exhibit "A," attached, is **DENIED** as moot.

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno, J.

EDUARDO C. ROBRENO, J.