

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

IN RE: ASBESTOS PRODUCTS : MDL DOCKET No. 875
LIABILITY LITIGATION (No.VI) : (MARDOC)
: :
: :
: :
: : CIVIL ACTION NO.
THIS DOCUMENT RELATES TO : 2:02-md-875
ALL ACTIONS : :

ADMINISTRATIVE ORDER NO. 25 (MARDOC ONLY)

And now, this 4th day of October, 2011, after examination of current procedures in place in these matters, and with a desire to facilitate the expeditious movement of pending cases on the MDL 875 (MARDOC) docket, and having had the benefit of input from counsel at a hearing held before Magistrate Judge Hey on September 28, 2011, the Court hereby imposes the following requirements and procedures:

A. Procedural Matters

1. Special Master

The Court having vacated its June 27, 2011, Order appointing Bruce Lassman Special Master (see Doc. 540 on the MARDOC docket), the duties, powers and limitations set forth in paragraphs 2 through 5 and 7 of that order are assigned to Christopher Lyding, Esquire, who has worked for many years in concert with the Presiding Judge and with Mr. Lassman on MDL 875. As Mr. Lyding is an employee of the Court, the matter of compensation addressed in paragraph 6 of the prior order is moot.

2. Website

The MARDOC cases have a dedicated page on the Court's MDL 875 website, where orders, updates and contact information can be found. Counsel are expected to check the website regularly, and are charged with knowledge of information posted on both the MDL 875 website (<http://www.paed.uscourts.gov/mdl875.asp>) and the MARDOC page of the website (<http://www.paed.uscourts.gov/mdl875m.asp>).

3. Appearances/Admission

At this point in time, all counsel who are not members of the bar of this Court should have submitted their entry of appearance through the Court's pro hac vice procedures, and also registered on the Court's Electronic Case Filing (ECF) system. See Judge Hey's September 29, 2011, Order Regarding Pro Hac Vice Admission and ECF Registration. All counsel who have

not done so, including counsel who are newly entering their appearance in any of these matters, shall follow the following procedures with respect to pro hac vice admission.¹

No formal motion for pro hac vice admission is required.² To be admitted pro hac vice for purposes of MDL 875 (MARDOC) an attorney must (1) submit a one-time payment of the appropriate attorney admission fee, and (2) register once on the Eastern District of Pennsylvania's ECF system. For the attorney admission fee, each attorney must submit a check in the amount of forty (40) dollars, payable to Clerk, U.S. District Court, mailed to:

Michael E. Kunz, Clerk of Court
United States District Court for the Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

To register on ECF, each attorney must submit an ECF Registration form, available at <https://ecf.paed.uscourts.gov/html2/us16000.html>. **An email address must be provided on this form for the attorney to be registered on ECF.** The form can be mailed to the Clerk of the Court with the attorney admission fee, and should indicate that the attorney wishes to be admitted pro hac vice for purposes of MDL 875 (MARDOC).

By registering on ECF as part of their pro hac vice admission, counsel agrees to review and become familiar with the Pennsylvania Rules of Professional Conduct and the rules of this Court, agrees to be bound by them, and consents to discipline thereunder.

4. Filing Procedures

With respect to motions contemplated in this Order and all other motions and filings, the following procedures shall apply:

a. Whenever a filing is accompanied by a list of cases to which it applies, the cases shall be listed in chronological order by docket number in the Eastern District of Pennsylvania.

¹If counsel has already completed his/her pro hac admission and registered on ECF on another MDL 875 matter, counsel need not do so again with respect to MDL 875 (MARDOC).

²See Judicial Panel on Multidistrict Litigation Rule 1.4 ("Any attorney of record in any action transferred under Section 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred."). Counsel in these matters are excused from the requirements of Eastern District of Pennsylvania Local Rule 83.5.2.

b. There shall be no motions to join other parties' motions. Motions must be filed either individually on behalf of a party, or jointly on behalf of more than one party.

c. Parties shall not file or submit reply memoranda in support of their motions without leave of court, except in the case of motions for summary judgment.

d. In light of the volume of filings expected in these cases given the number of claims involved, the following procedures apply for the filing of all motions or pleadings that apply identically to ten cases or more: Counsel shall send (1) an original signed copy of the document and any exhibits; (2) a cover letter listing the attorney filing the motion, the parties on whose behalf the document is being filed, and the case numbers to which the document applies; and (3) a disk containing the document and any exhibits in PDF form (each PDF file not to exceed 5MB and the file name for each file shall identify the moving party, the name of the motion, and, if an exhibit, the exhibit number) to

Mary Chase
Re: MARDOC filing
U.S. District Court
Eastern District of Pennsylvania
Clerk's Office
Room 2609, 601 Market Street
Philadelphia, PA 19106

This procedure applies only to motions that are identical on each docket. Counsel are responsible for filing all pleadings and motions that apply to under ten cases on the docket.

B. Motions and Discovery

1. Pending Motions to Dismiss

All motions to dismiss pending on this date in these matters are hereby denied without prejudice.

2. Plaintiff's Certifications:

No later than October 17, 2011, Plaintiffs' counsel shall file with the Court a certification in each plaintiff's case that they have provided all defense counsel in that case (1) a copy of the medical report or opinion containing a physician's diagnosis of the plaintiff with the asbestos-related disease or injury alleged in the complaint; and (2) a copy of the plaintiff's work history including dates of service on each ship and/or at each site for which asbestos exposure is alleged.

Defense counsel will be permitted to challenge the certifications in the following limited circumstances, and any motion under this paragraph must be brought no later than November 14, 2011.

a. If no certification has been filed in an individual plaintiff's case, any defendant in that case may file a motion for a rule to show cause why the matter should not be dismissed for failure to comply with this administrative order. Dismissals will be summarily issued unless plaintiff's counsel, within seven days of the filing of the motion, files a response demonstrating good cause for failure to file the certification.

b. If a defendant disputes that it received the diagnosis and work history as certified by plaintiff, it shall immediately contact plaintiff's counsel and the parties shall confer and resolve the matter either by way of plaintiff withdrawing the certification (and thereby consenting to dismissal of the case) or providing defendant with the missing material. If the parties are unable to resolve the issue, they shall seek assistance from Mr. Lyding, who will submit proposed resolutions to the Court as necessary and appropriate.

c. If a defendant contends that the physician providing the diagnosis did not possess a valid credential allowing him/her to render a medical diagnosis, that defendant may file a motion to strike the certification on that ground only (i.e., that the physician held no valid credential to render a medical diagnosis). All Daubert challenges to the admissibility of a medical expert's opinion at trial will be reserved for post-discovery motions practice, as will be set forth in scheduling orders to be entered in these cases.

Counsel in these matters are excused from the requirements of Administrative Orders 12 and 12A.

3. Authorizations

No later than October 31, 2011, in no fewer than 950 cases of plaintiffs' counsel's choosing, plaintiffs shall provide to defendants authorizations for the release of medical (HIPAA compliant), tax, military, and personnel records of each plaintiff or plaintiff's decedent. No later than January 6, 2012, plaintiffs shall provide such authorizations in the remainder of the cases. The parties shall continue to confer with respect to the keeping and sharing of documents received in response to the authorizations, but in any event copies of records shall be shared with plaintiff within 14 days of receipt.

4. Defense Motions as to Choice of Law and Compensability of Claims

Any defendant claiming that the asbestos-related injury alleged in a plaintiff's case is not compensable as a matter of law shall file a motion to dismiss in each such plaintiff's case. Such motions shall address the choice of law that applies to plaintiff's claim against that defendant in addition to the applicable governing law respecting compensable injuries. The parties are

referred to the Court's recent decisions addressing similar issues in the non-MARDOC cases, which should be addressed in briefing on these motions to the extent counsel believes relevant.³

A motion to dismiss on the ground that the claim is non-compensable under applicable law shall be filed no later than January 9, 2012. Responses to such motions shall be filed no later than February 8, 2012. No replies shall be filed without leave of court.

5. Other Motions to Dismiss

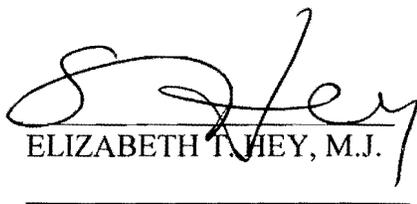
There shall be no preliminary motions to dismiss other than those described above; all other dispositive motions are reserved for post-discovery motions practice. The parties are expected to resolve other issues discussed at the September 28 hearing (including issues relating to service and process, standing, statute of limitations, failure to amend complaints, prior settlements or dismissals, and the correct naming of defendants/successor liability) amongst themselves, and if necessary with the help of Mr. Lyding, who shall submit proposed resolutions to the Court as necessary and appropriate.

6. Discovery

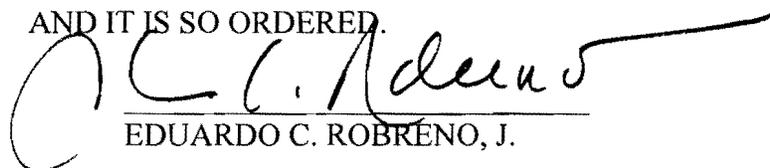
Judge Hey will be issuing scheduling orders in these matters. The parties shall continue to work with Mr. Lyding, as they have worked with Mr. Lassman in the past, to coordinate discovery matters. The parties are encouraged to develop standard forms and protocols respecting the issuance of and responses to written and document discovery as well as depositions to be submitted to the Court for approval. Once scheduling orders are entered, discovery shall continue irrespective of whether motions are pending.

C. Settlement Conferences

The parties shall coordinate settlement conferences through Mr. Lyding. Settlement conferences may be requested at any time, but will not affect the schedules as set forth in the scheduling orders.


ELIZABETH T. HEY, M.J.

AND IT IS SO ORDERED.


EDUARDO C. ROBRÉNO, J.

³Judge Robreno issued a Memorandum Opinion on July 21, 2011, which addresses the choice of maritime versus state law in a non-MARDOC case in MDL 875. See Conner v. Alfa Laval, Inc., __ F. Supp.2d __, 2011 WL 310810 (No. 09-67099). The opinion can also be found on the opinions page of the MDL 875 website at <http://www.paed.uscourts.gov/mdl875n.asp>, along with a spreadsheet of Judge Robreno's decisions, including other decisions that address issues specific to maritime law.

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