

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

In Re: ASBESTOS PRODUCTS	:	
LIABILITY LITIGATION (No. VI)	:	Civil Action No: MDL-875
	:	
This Document Relates to	:	E.D. Pa. Case No:
	:	
O'KEEFE v. AGA GAS, INC, et al.,	:	08-92210

**ORDER**

**AND NOW**, this 1st day of October, 2012, upon consideration of “Defendant Owens-Illinois, Inc.’s Motion for Reconsideration and Second Motion to Compel Production of the O’Keefe ‘Asbestos Screening Packet’” (Doc. 197), and the response (Doc. 199), it is hereby **ORDERED** that the motion is **GRANTED** in that we have reconsidered our August 3, 2012 order denying the Defendants’ motion to compel the production of the asbestos packets. See (09-60286 Doc. 138). However, after reconsidering our August 3, 2012 order, we are not persuaded that the order should be vacated and, thus, OI’s requested relief, that we compel Plaintiff to produce a copy of his screening packet, is **DENIED**.<sup>1</sup>

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<sup>1</sup> Owens Illinois, Inc. (“OI”) argues that we made two clear errors of law in our August 3, 2012 order. First, OI claims that we erred regarding who has the initial burden of establishing the attorney-client privilege. OI contends that we erroneously concluded that it had the initial burden of establishing that the privilege did not apply. This is incorrect. We agree with OI that the party asserting the privilege has the initial burden of proof. We attempted to articulate our conclusion that CVLO had established its initial burden when we stated “[t]hese screening packets were completed and submitted to CVLO by various individuals as a preliminary step in determining whether those individuals might have a viable asbestos-related injury claim.” We could have been more clear that this was our finding that Plaintiffs had met their *prima facie* burden. Thus, we now express that holding more clearly: Plaintiff has established to our satisfaction that the packet was protected by the attorney-client privilege. Plaintiff was seeking legal advice regarding whether he had a claim for an asbestos injury when he sent CVLO the asbestos screening packet. The asbestos packet related to his inquiry and Plaintiff filled out and sent off the packet in confidence, as evidenced (though not conclusively) by the statement on the packet that it was “Confidential Attorney-Client Work Product.” Finally, Plaintiff had no expectation that the information would be disclosed. See People v. Adam, 280 N.E.2d 205, 207 (Ill. 1972).

BY THE COURT:

/s/ David R. Strawbridge  
DAVID R. STRAWBRIDGE  
UNITED STATES MAGISTRATE JUDGE

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OI's second contention is that we erred in concluding that the privilege had not been waived. OI, relying on People v. Wagener, 752 N.E.2d 430, 437 (Ill. 2001), asserts that because CVLO submitted the asbestos packet to a physician, CVLO waived the attorney-client privilege for Plaintiff. However, Wagener, only applies if the attorney voluntarily provides the previously protected documents to a third party. OI recognized this fact when it summarized Wagener: "As the Illinois Supreme Court held in Wagener, an attorney has authority to act on a client's behalf, and therefore any *voluntary* disclosure by counsel constitutes a waiver of the client's privilege." (Doc 197, pg. 10) (emphasis added). We find that CVLO's disclosure of the asbestos packet to Plaintiff's physician was inadvertent. Therefore, it was not a waiver of the privilege. We previously considered the remainder of OI's arguments when we denied the Defendants' motion. OI has given us no reason to reconsider those issues.