

**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 all	:	
Cases Listed on the Attached	:	
Exhibit A	:	

ORDER

AND NOW, this 27th day of June, 2012, upon further consideration of defendants' "Motion and Brief for a Protective Order Concerning Requests to Admit and Requests for Production Propounded by Plaintiffs" (e.g. 01-MD-875, Doc. 8554), plaintiffs' response (e.g. 01-MD-875, Doc. 8568), and defendants' reply (e.g. 08-88398, Doc. 69), and after a June 7, 2012 oral argument and the receipt of further letter briefs from the parties on June 14, 2012, it is hereby **ORDERED** that the June 26, 2012 order regarding this motion (e.g. 01-MD-875, Doc. 8636), is **VACATED**.

It is hereby further **ORDERED** that defendants' motion (e.g. 01-MD-875, Doc. 8554) is **GRANTED in part and DENIED in part** as follows:

- (1) the objections to Requests to Produce 1 and 4 are **DENIED AS MOOT** in light of the parties' agreement, discussed at oral argument on June 7, 2012, that defendants would stipulate to which of the 90 X-rays provided to Dr. Henry for his study were copies;
- (2) the objections to Requests to Produce 2, 3, 5, 6, and 7 are **SUSTAINED** for the reasons stated at oral argument on June 7, 2012;
- (3) the objections to Requests to Produce 11, 12, and 13 are **SUSTAINED** as plaintiff has failed to respond to defendants' arguments regarding these requests;

(4) the objections to the Requests to Admit 6, 23, 24, and 25, are **OVERRULED**,¹ and defendants Westinghouse, General Electric, Georgia Pacific, Union Carbide, and Owens-Illinois, through Forman, Perry, Watkins, Krutz, & Tardy, LLP, or otherwise, are directed to respond to these Requests **by July 3, 2012**; and

(5) the objections to Request to Produce 8 are **OVERRULED** for the same reasons as the objections to Requests to Admit 6, 23, 24, and 25 were overruled. Defendants Westinghouse, General Electric, Georgia Pacific, Union Carbide, and Owens-Illinois, through Forman, Perry, Watkins, Krutz, & Tardy, LLP, or otherwise, are directed to submit to CVLO all responsive B-reads, with the exception of any B-reads which defendants received from CVLO, **by July 9, 2012**.

BY THE COURT:

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

¹ These requests seek admissions with respect to the question of when and from where certain defendants, through their counsel, obtained certain B-reads and X-rays. The requests do not seek to uncover how or why defense counsel chose to select specific B-reads and X-rays from that record collection to give to Dr. Henry. To the extent that defense counsel did select a particular group of B-reads and X-rays for submission to Dr. Henry for his study, plaintiffs are entitled to a response to these requests in order to determine, as they appear to believe, that defense counsel, prior to the submission of its sample to Dr. Henry, was in possession of a larger group of B-reads and/or X-rays. By this Order, we require only that defendants respond to the requests, mindful of the requirements of Fed. R. Civ. P. 36. We do not see these requests as requiring defense counsel to respond to any particularized inquiry as to how the sample selection process was undertaken. Such inquiries regarding defense counsel's thought processes and strategies in choosing the materials to give to Dr. Henry would be inappropriate and protected as attorney work product. We do note, however, that the credibility of Dr. Henry's study could well be compromised if defendants cannot demonstrate that they chose the X-rays and B-reads to give to Dr. Henry in some type of rational, scientifically valid manner.

Defendants have made clear that they will seek to rely upon Dr. Henry and his study at the time of the presentation of evidence at the anticipated Daubert hearing concerning the defendants' challenge to Drs. Schonfeld, Anderson, and Sadek. To this extent, plaintiffs are entitled to the discovery of "facts or data considered by [Dr. Henry] in forming [his opinion]." Fed. R. Civ. P. 26(a)(2)(B)(ii). The question of whether X-rays and B-reads provided to Dr. Henry included X-rays and B-reads provided by a particular source as asked by plaintiffs is relevant to establishing the "facts or data considered" by Dr. Henry.