

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)
: :
CERTAIN PLAINTIFFS : :
: : CIVIL ACTION NO.
VS. : 2:02-md-875
: :
CERTAIN DEFENDANTS :

**ORDER ON PLAINTIFFS' MOTION FOR
RULE 30(b)(6) DEPOSITIONS (GROUP ONE)**

And now, this 30th day of April, 2012, upon consideration of plaintiffs' motion for leave to conduct Rule 30(b)(6) depositions (Doc. 1008), responses by various defendants to the motion (Docs. 1107, 1129, 1132, 1133, 1141, 1142, 1145), and following oral argument during an on-the-record telephone conference on April 27, 2012, it is hereby ORDERED that the motion is DENIED WITHOUT PREJUDICE. Any future motion must identify each defendant for which plaintiffs are seeking relief and the grounds specific to each defendant.

The parties' briefs and arguments highlight a lack of mutual understanding as to the meaning of paragraph 11 of the Case Management and Scheduling Orders, albeit that the parties agreed upon the language of that paragraph. Paragraph 11 states that in response to a request for a Rule 30(b)(6) deposition,

Defendants who have previously provided Rule 30(b)(6) depositions in the maritime cases shall be permitted to produce such transcripts in lieu of producing a representative. Plaintiff shall seek leave of court to conduct any further deposition of said representative.

The parties agree that the prior deposition need not have taken place in one of the MARDOC cases, but could be in any maritime asbestos personal injury case, to fall under paragraph 11. However, they do not agree on the meaning of a prior “Rule 30(b)(6) deposition” under that paragraph. Certain defendants have provided deposition transcripts from state cases and seek to avoid deposition under paragraph 11, whereas plaintiffs maintain that a deposition taken under a different procedural rule (that does not require a party to provide a witness “to testify about information known or reasonably known to the organization”) does not satisfy paragraph 11. The parties may also dispute whether a prior deposition that addressed certain areas covered by plaintiffs’ deposition notice but not others requires the defendant to produce another witness and to identify specifically which topics were/were not addressed.

Paragraph 11 by its terms refers not just to a prior corporate designee deposition but to a prior deposition pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedures, and therefore I construe it to incorporate all elements of that Rule. Any disputes as to the adequacy of a prior deposition on this ground as well as on grounds relating to issues covered by the prior deposition I leave in the first instance to the parties’ obligation to meet and confer. As discussed during the hearing, the parties shall review the prior depositions carefully with an eye toward minimizing the individuals and areas that must be addressed in the Rule 30(b)(6) depositions and to preserving their mutual resources. Disputes that remain after conferring shall be addressed with Mr. Lyding, and

as necessary by motion with the Court. To the extent prior depositions do not cover areas that are appropriate under Rule 30(b)(6), it is my intention to grant leave to conduct depositions in these cases.

I make two additional observations prompted by comments made during oral argument. First, paragraph 11 is directed to a particular type of prior deposition, and does not operate to limit discovery by interrogatories or document production. To the extent prior deposition transcripts fall within the parties' discovery requests, they should be produced separate and apart from offering or identifying them in lieu of a Rule 30(b)(6) deposition under paragraph 11. Second, paragraph 11 and the process of corporate depositions do not provide any limitation on a party's obligation to review and produce relevant documents and respond to interrogatories. In other words, as should be quite obvious, defendants shall not wait until responding to documents identified in a Rule 30(b)(6) deposition notice to review and produce responsive discovery.

BY THE COURT:

/s/ Elizabeth T. Hey

ELIZABETH T. HEY
UNITED STATES MAGISTRATE JUDGE