

**UNITED STATES DISTRICT COURT  
for the  
Eastern District of Pennsylvania**

Chambers of  
LOWELL A. REED, JR.  
Senior Judge

4001 United States Courthouse  
Independence Mall West  
601 Market Street  
Philadelphia, PA 19106-1705  
215-597-0022

May 10, 2010

**Asbestos MDL 875 Mediation: Progress Report and Case Management Order**

Via E-Mail

To: All Counsel Who Are Involved in the Mediation of the Southern District of Illinois Cases

Dear Counsel:

1. I have decided to cancel the mediation planning session scheduled for May 11, 2010. The main purpose of that meeting was to solidify the minimum medical criteria for determining which cases were to be mediated and which cases were to be dismissed. Because plaintiffs' counsel has obtained an opinion from their ethics counsel raising serious ethical questions about agreeing to such minimum medical criteria on behalf of their clients, counsel and the mediator have decided against using that tactic, thus largely obviating the need for the May 11th meeting.
2. However, plaintiffs' counsel have agreed to identify a sub-group of cases from all of the approximately 2,600-plus remaining cases referred to me for mediation pursuant to Judge Robreno's May 4, 2009 order (Doc. No. 6206) which they will recommend to their clients be dismissed. In furtherance of this goal, by **June 8, 2010**, plaintiffs' counsel shall have contacted all of the affected plaintiffs and inquired whether they will agree to have their cases dismissed with prejudice and without compensation or any other agreement with defendants. Dismissals shall be filed on a continuing basis as client's signatures are received.
3. By **June 22, 2010**, plaintiffs' counsel shall provide an update on their progress to the mediator including the number of cases which they recommended be dismissed, the number of responses from the affected plaintiffs, and an estimate of how many cases will be dismissed and how many will remain for mediation, by disease classification.
4. By **July 6, 2010**, plaintiffs' counsel shall have voluntarily dismissed all appropriate cases and reported the results to the mediator and the defense liaison counsel. It is the intent of the mediator and the parties that this plan of voluntary dismissal be aggressively executed. Failure to meet these deadlines and other requirements runs contrary to that intent.

5. I remain eager to have an accurate list of all of the defendants and their counsel who, by reason of Judge Robreno's May 4, 2009 order, are involved in this mediation. As a result, by **May 11, 2010**, plaintiffs' counsel shall submit to Robert Spinelli, Esq, their list of all of the defendants involved in the cases referred to me for mediation in Judge Robreno's May 4, 2009 order. Mr. Spinelli and plaintiffs' counsel shall then endeavor to update that list to reflect current counsel with all alacrity.
6. I encourage the parties to negotiate settlement of the cases without my involvement. However, plaintiffs' counsel shall give notice to the defense liaison committee of any extra-mediation negotiations occurring between the plaintiffs and any individual defendants.
7. There remains disagreement between the parties regarding the previous alleged settlement of cases between the plaintiffs and Owens Illinois. I expect the parties involved in this dispute to resolve the issue and report to me the resolution by **June 8, 2010**.
8. Plaintiffs' counsel have filed, and will likely continue to file, motions to substitute deceased plaintiffs with special administrators, personal representatives in decedents' estates, or guardians. As to those cases subject to mediation by me as a result of Judge Robreno's May 4, 2009 order, Judge Robreno has asked me to have these motions directed to me for resolution . If no response to these motions is filed by defendants within the time allotted to them pursuant to Eastern District of Pennsylvania Local Rule of Civil Procedure 7.1, I will consider the motions to be uncontested. These motions must be filed by **July 6, 2010**, except for good cause shown to be alleged in any motion filed after that date.
9. Assuming that the good faith efforts of plaintiffs' counsel to substantially reduce the number of cases of seeming little or no remaining value is successful, then the mediator intends to direct the parties' attention to creating a methodology for mediating the balance of the cases. A structure and a methodology should be considered by the plaintiffs and defendants starting right now. Thus, the mediator requires that counsel discuss between and among themselves some agreements as to a structure and methodology for mediation of these cases. Counsel shall report the results of this effort to the mediator, in a written report no later than **June 1, 2010**.
10. If any party has a question of interpretation of any provision of this order, counsel for such party shall make a reasonably timely attempt to secure an agreement from opposing counsel and present such agreement to the mediator for acceptance or resolution. Resolution of any interpretation issue shall not delay the meeting of any scheduled deadlines without the mediator's approval.

Sincerely,

/s/ Lowell A. Reed, Jr  
LOWELL A. REED. JR.

cc: The Honorable Eduardo C. Robreno