

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	:	(GROUP 1)

ORDER

And now, this 23rd day of July, 2012, upon consideration of plaintiffs' motion to compel defendant IMO Industries, Inc. ("IMO") to more fully respond to discovery requests (Docs. 1278 and 1405),¹ it is hereby ORDERED that the motion is GRANTED IN PART. Unlike other cases within MDL 875 upon which IMO relies, in which either the discovery schedule was completed or plaintiff failed to produce evidence in compliance with a specific order, IMO seeks to avoid its discovery obligations by asserting that plaintiffs have not yet identified an asbestos-containing product associated with IMO to which a plaintiff was exposed. This is not a permissible objection to discovery. These cases are also unlike the traditional land-based cases in which a defendant's products could be anywhere within an entire plant or industry, because here plaintiffs have identified specific commercial ships on which they served including sailing dates and each plaintiffs' rating on those ships, and plaintiffs have recently

¹Plaintiffs filed two identical motions (Docs. 1278 and 1405) and IMO's response to the second incorporated its response to the first (Docs. 1422 and 1543).

provided co-worker statements identifying products about which each witness can provide testimony. Although such information alone does not establish exposure, it is more than sufficient to permit a manufacturing defendant to search its records and respond to discovery with respect to its products on those ships at the identified time periods.

Finally, I reject IMO's argument that compliance with discovery will cause undue burden. IMO argues that information is not located in an IMO facility and is not electronically available, and that responding to discovery "will require manually sifting through years of documents to determine which of its products, if any, were located on the numerous ships at issue during the 70-year span of the careers of the hundreds of Plaintiffs that have named IMO as a defendant in Trial Group 1." Doc. 1422 at 18. While such an undertaking may be burdensome, IMO has provided no facts supporting the conclusion that it would be unduly burdensome within the meaning of Rule 26, and it is the very type of search manufacturing defendants have engaged in many times in asbestos litigation.

IMO shall supplement its discovery responses within 21 days of this Order.

BY THE COURT:

/s/ Elizabeth T. Hey

ELIZABETH T. HEY
UNITED STATES MAGISTRATE JUDGE