

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 : MARDOC GROUPS 1 & 2

ORDER

And now, this 23rd day of July, 2012, upon consideration of multiple motions to compel filed by plaintiffs in these actions (see list of motions attached as Exhibit A) and responses to those motions, it is hereby ORDERED that the motions are GRANTED IN PART as follows:

1. Defendants argue that they are not required to produce insurance information because they do not maintain general liability insurance, but are rather participants in one or more maritime mutual protection and indemnity associations, which undertake to insure the defendant only for what it has become liable to pay and has actually paid. Rule 26 requires that as part of its initial disclosures a party provide “any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment . . . or to indemnify or reimburse for payments made to satisfy the judgment.” F. R. Civ. P. 26(a)(1)(A)(iv). Defendants offer no caselaw supporting their argument that the mutual protection associations and the agreements or understandings between the associations and participant members are not covered by Rule 26. Rather, as defined by

Defendants, such agreements appear plainly to fall within the language of the Rule referring to agreements to indemnify or reimburse for payments made. An analogy can be made to reinsurance agreements even though they also may not meet the traditional definition of an insurance agreement. See, e.g., Tardiff v. Knox County, 224 F.R.D. 522, 523-34 (D. Me. 2004). Following the same logic, under the mutual protection agreements or understandings between the associations and their participants, the associations may be exposed to potential liability when judgment is entered against a participant. Therefore, defendants shall, no later than July 31, 2012, provide initial disclosures and respond to interrogatory responses and provide documents responsive to document requests concerning all mutual protection association agreements and policies that cover defendants in this litigation.¹ Although Rule 26 allows for the inspection and copying of such agreements, I conclude that it would be impracticable for plaintiffs to inspect and copy all such agreements in light of the number and location of defendants, and that on balance defendants should provide the copies.

2. With respect to Rule 30(b)(6) depositions, the motions and responses make clear that such depositions have yet to be under way, and it is necessary for the Court to exercise greater control over this process. All defendants as to which this Order applies

¹The July 31, 2012 deadline shall apply to discovery Groups for which the initial disclosure and discovery response dates have already passed. The deadline for the later Groups shall be governed by the previously scheduled deadlines for initial disclosures and discovery responses in those respective Groups.

and which do not yet have a date certain scheduled for deposition shall identify a person or persons designated and available to speak on the defendant's behalf about information known or reasonably available to the defendant, consistent with Rule 30(b)(6), on the areas listed below in items a through c. Failure to do so will put that defendant at risk of being precluded from presenting a defense. Defense counsel shall serve the information on Plaintiffs' counsel and all other counsel no later than July 31, 2012, and shall include all available dates, times and locations for deposition over the next 30 days, 60 days and 90 days (including dates available in each 30-day period). If a deposition has been noticed and defendant maintains that the deposition would be duplicative because a prior deposition of the witness was taken pursuant to Fed. R. Civ. P. 30(b)(6) and covered all areas that are appropriate under that Rule, the defendant shall file a motion to quash the deposition stating specifically what areas were covered in the prior the deposition and why the deposition would be duplicative in its entirety. The parties are permitted to agree among themselves to forego these procedures for a given defendant in lieu of other arrangements for providing the requested information.

- a. the location of documents (including electronic and paper files) that were or could be searched to respond to plaintiffs' discovery requests, including search efforts that were made in this litigation;
- b. the history of the defendant's awareness of the potential hazards of asbestos exposure, including the presence of any warnings of such hazards on defendant's vessels;
- c. as to each ship identified in the vessel history summaries provided by plaintiffs which was owned or operated by the defendant, information about

(1) the ship's construction, ownership and repair history, (2) any asbestos or asbestos-containing products on the ship, and (3) any training provided for crewmen regarding use, handling or removal of asbestos or asbestos-containing products.

BY THE COURT:

/s/ Elizabeth T. Hey

ELIZABETH T. HEY
UNITED STATES MAGISTRATE JUDGE