

**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

September 3, 2009

Asbestos MDL 875 Mediation: Progress Report and Case Management Order

Via E-Mail

To: All Counsel Who Participated in the August 27, 2009 Mediation Planning Conference

Dear Counsel:

This letter order commemorates the dates set during our August 27, 2009 mediation planning conference:

1. a. On or before **September 2, 2009**, any defense counsel who believes there are discrepancies between their own case inventory list and that of plaintiffs' counsel shall contact plaintiffs' counsel to address those discrepancies.
- b. On or before **September 16, 2009**, plaintiffs' counsel shall respond completely to any such alleged discrepancies.
- c. On or before **September 16, 2009**, plaintiffs' counsel shall also provide to defense counsel and the mediator a comprehensive case inventory list with a representation that the list is an accurate list of the cases now before the mediator for resolution.
2. On or before **September 2, 2009**, defense counsel shall choose a three to four person liaison committee and choose a negotiating committee for the items listed in section VIII of the August 27, 2009 agenda.
3. On or before **September 3, 2009**, plaintiffs' counsel shall provide to defense counsel and the mediator an estimate of the disease mix for the Southern Illinois Cases.

4.
 - a. On or before **September 9, 2009**, plaintiffs' counsel shall provide to defense counsel a draft form for detailing, *inter alia*, each plaintiff's asbestos exposure history and claimed disease diagnosis, the alleged manufacturer of the products involved, and how long the plaintiff worked at each job site and what job he or she performed.
 - b. On or before **September 18, 2009**, defense counsel shall submit any proposed changes to these forms to plaintiffs' counsel and discuss such proposed changes with plaintiffs' counsel.
 - c. On or before **November 2, 2009**, plaintiffs' counsel shall provide the completed forms and any other relevant affidavits or information to defense counsel for all cases on the Southern Illinois Case list. If defense counsel believes that the information is incomplete, they shall contact plaintiffs' counsel to resolve the issue.
5. On or before **October 12, 2009**, plaintiffs' counsel shall review each of the Southern Illinois Cases and voluntarily dismiss any cases or individual defendants for which no viable claim is present.
6.
 - a. On or before **October 12, 2009**, plaintiffs' counsel shall place in their chosen copy service repository all AO12 submissions for all Southern Illinois Cases and provide to defense counsel any other relevant medical information, with copies to the mediator.
 - b. Any application to the mediator to amend the date to submit additional medical evidence must be made by **October 2, 2009**.
 - c. On or before **October 22, 2009**, if defense counsel believe that any of the relevant AO12 submissions or other medical evidence are missing, they shall contact plaintiffs' counsel so that plaintiffs' counsel may add those submissions as soon as possible.
7. On or before **November 12, 2009**, defense counsel shall file with the Clerk of Court any necessary rule to show cause motions seeking dismissal due to lack of necessary evidence per AO12A dated December 23, 2008 and serve copies on plaintiffs' counsel.
8.
 - a. A second mediation planning conference is hereby scheduled for **November 19, 2009 at 9:30 a.m.** in Courtroom 4B, United States Courthouse, Philadelphia, Pennsylvania, between counsel and the mediator. **Please set aside the entire day for this proceeding.** The purpose of the meeting will be to determine the procedure for mediating

the Southern Illinois Cases along with the other items listed in section VIII of the August 27, 2009 agenda.

- b. The parties shall submit a **joint** agenda for this conference by **November 12, 2009**.

- 9. The transcript of the August 27, 2009 conference, though filed under seal, sets forth the general procedures for the management of the Southern District of Illinois cases. The parties shall abide by those procedures unless otherwise ordered by the mediator. The mediation rule “Confidentiality of Mediation Proceedings” was adopted and distributed at the August 27, 2009 conference. A copy is attached to this letter order.

Thank you very much for your anticipated cooperation.

Sincerely,

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

cc: The Honorable Eduardo C. Robreno

August 27, 2009 - MDL 875
Mediation Rules of Judge Reed

Confidentiality of Mediation Proceedings.

All documents produced, orders of the mediator and statements made at mediation and management conferences with the mediator as well as statements made and other documents issued to facilitate settlement shall be kept confidential and are not to be disclosed to any person or organization except consulting counsel, the parties, expert consultants or other witnesses to be produced as part of mediation proceedings. Fed.Rule of Evidence 408 shall apply. Moreover, all parties, counsel, witnesses and support staff personnel for the parties herein are prohibited from entering, or submitting to another to enter, any confidential information described above, into or on the Internet, Worldwide Web or any website, blog, twitter, social network or similar location whether private or available to the public. The same described persons are all prohibited from granting interviews, submitting any press release or similar statement for general circulation or industry publication, as well as, tv and radio personnel or outlets. Rather all said persons will merely tell the inquirer that the matter is in mediation and is confidential at this time.

The foregoing rule is subject to change only upon order of the mediator or other legally authorized judicial officer or court.

Whether or not the final settlement of an individual case or claim, including supporting documents, will be kept confidential will be decided on a case-by-case basis upon application of the parties to the mediator.