

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: ASBESTOS PRODUCTS LIABILITY
LITIGATION (NO. VI)

Civil Action No. MDL-875

THIS DOCUMENT RELATES TO:
All Actions Filed By Cascino Vaughan Law
Offices Assigned To The Hon. David R.
Strawbridge For Mediation

PRETRIAL ORDER

**RULES AND PROCEDURES RELATING TO THE AUTHORIZATION FOR RELEASE OF
BANKRUPTCY RECORDS RELATING TO PLAINTIFFS
IN THE ASBESTOS PRODUCTS LIABILITY LITIGATION**

This matter is before the Court upon the joint application of the Plaintiffs (“CVLO”) and the Defendants, for an Order aiding in the collection and distribution of bankruptcy trust information and records in compliance with all of this Court’s previous Orders. After consideration of this joint request and finding that such an Order would facilitate the orderly, uniform and cost-effective acquisition of relevant information and materials for this litigation, this ____ day of _____, 2011, **IT IS ORDERED** as follows:

1. *The basis for this Order.* Pursuant to this Court’s previous orders governing discovery and collection of bankruptcy information, several defendants have propounded bankruptcy discovery to plaintiffs. The Court issued a written Order regarding bankruptcy discovery on August 4, 2011, and since that time additional discussions have taken place between the parties as well as with the Court. It has been determined by all parties that there is a need to standardize the written discovery related to bankruptcy trust information as well as a standardization of authorizations as previously done by this Court in the collection of medical records. The purpose of this Order is to provide for a simple, uniform, and cost-effective process for the collection of records relevant to cases pending before this Court. Accordingly, this Order is issued pursuant to the Court’s authority to direct and control the coordinated discovery in this litigation pursuant to 28 U.S.C. § 1407, Fed.R.Civ.P. 16 and Fed.R.Civ.P. 26(b), and the Court’s inherent authority regarding case-specific discovery in the MDL.

2. *Plaintiffs Affected By This Order.* This Order applies to all cases pending before this Court in all actions filed by CVLO under MDL-875 which are or will be subject to a scheduling order.

3. *Discovery Affected by this Order.* This Order applies to the procurement of information and materials from bankruptcy trusts and/or their administrators, and claims processing facilities, or any 3rd party entities authorized or designated by the bankruptcy trusts for claims processing or document retention that have access to bankruptcy trust information relating to plaintiffs referred to in paragraph 2 above. The Court anticipates that this will constitute all necessary document production from the trusts but it is without prejudice to any party’s right to seek permission to obtain records from the bankruptcy trusts in unexpected circumstances.

4. Duty To Accept Court-Approved Authorization To Release Records and Information. The Authorization Form attached to this Order is HIPAA compliant and has been approved for use in all cases affected by this Order. Accordingly:

- (a) All entities asked to produce records relating to a plaintiff shall accept the Authorization Form as valid for all plaintiffs affected by this Order;
- (b) Entities may not request or insist upon different forms or terms different from the Authorization Form;
- (c) When signed by the plaintiff in cases affected by this Order, the Authorization Form shall be relied upon by all Entities to authorize the release of all records, including all medical records;
- (d) No facility-specific or different form shall be necessary for production of any records relating to a plaintiff;
- (e) A photocopy or *PDF* image of the Authorization Form shall be accepted;
- (f) No original signatures shall be required on the Authorization Form for production of any records relating to a plaintiff; and
- (g) Entities may not condition the release of requested records upon the payment of unreasonable “processing” or “handling” fees.

The third party entities in receipt of such release requests shall presume that the Court has reviewed and deems appropriate the provision outlined above. However, this provision does not preclude any affected third party from raising any objection that it feels is appropriate.

5. Signature of Plaintiff’s Representative. In an effort to obtain records for plaintiffs in a timely fashion, the Court finds it necessary for the efficient procurement of those records to have specific rules pertaining to the signing of the Authorization Form by representatives of plaintiffs. For the sole and limited purpose of obtaining records associated with a case covered by this Order, Plaintiffs’ Counsel, Cascino Vaughan Law Offices, is considered the representative of any plaintiff they represent and the Court orders Cascino Vaughan Law Offices to sign the Court-Approved Authorization to obtain records. All Entities are hereby Ordered to accept an Authorization signed by Plaintiffs’ counsel without additional documentation required.

6. Authorization for Release of Records. Plaintiffs’ counsel shall serve all counsel of record with a copy of the Court-Ordered Authorization for Release of Bankruptcy Trust Information attached hereto as Exhibit “A” within a reasonable time period, not to exceed 30 days, for cases currently on scheduling orders except for “Top 10” cases. Plaintiffs will provide bankruptcy trust authorizations for “Top 10” cases within 7 days of entry of this Order. For cases not currently subject to a scheduling order, Plaintiffs’ counsel will provide bankruptcy trust authorizations within 30 days of entry of a scheduling order. The parties may agree to the service of this Authorization on any party who the defendants may designate as their counsel for service of bankruptcy trust discovery and/or authorizations to assist in the procurement of bankruptcy documents, but the use of the information is limited to the defendants in each particular case.

7. Standard Written Discovery. The discovery requests in the form attached hereto as Exhibit “B” shall be applicable to all MDL 875 cases filed by CVLO and assigned to this Court. No other

bankruptcy discovery may be served without prior approval of the Court and plaintiff shall not be required to respond to any other outstanding bankruptcy discovery which does not meet the requirements of this Order. The parties acknowledge that CVLO has provided several hundred sets of bankruptcy discovery responses, including over 10,000 individual documents, and approximately 65,000 pages, that conform with the discovery requests in Exhibit "B". If not previously served on all counsel of record, any responses to previously provided discovery, which are in the form attached, shall be served on all counsel of record pursuant to the Federal Rules of Civil Procedure and subsequent service agreements entered by the parties in groups of 30 cases per week beginning with cases on scheduling orders.

Notwithstanding the forgoing schedule, a plaintiff's responses to the bankruptcy discovery shall be served in compliance with the Protocol for Plaintiff and Co-Worker Depositions, and amendments thereto, prior to any deposition of a plaintiff or fact witness in the plaintiff's case. For all cases currently under a scheduling order, plaintiffs shall fully and completely respond to the discovery requests attached hereto as Exhibit "B" without further objections. Plaintiffs shall not be required to respond to requests for production of bankruptcy trust records for cases that are placed under scheduling orders after the date of this order. Plaintiffs will fully respond to interrogatories and requests for admissions in the discovery attached as Exhibit "B" and will include in the responses a list of all trusts a submission was made to as well as all available information regarding the status of the submission, the date of the submission, the date the claim was settled, and the aggregate amount of payment from all trusts. The defendants may use these responses and the authorization to obtain bankruptcy records directly from the trusts. All bankruptcy trust records that are obtained by defendants will be provided to CVLO as detailed below.

8. Records to be Requested. CVLO has provided or will provide via interrogatory answers and answers to requests for production of documents for each case currently on a scheduling order a list of all bankruptcy trusts a submission was made to and/or any bankruptcy trust compensation was received for each plaintiff.

Bankruptcy trust records will be requested from trusts named on each plaintiff's answer to standard interrogatories and requests for production of documents. In cases currently under a scheduling order, requests will be made to the trusts only where submission records provided by plaintiffs in their discovery responses are missing or incomplete. In cases that are placed under future scheduling orders, bankruptcy trust records can be obtained by requests from defendants to these trusts. Additionally, defendants may request trust submissions from any other trust the defendants believe possess records for the plaintiffs.

If Forman Perry requests records from a trust not listed in CVLO discovery responses, Forman Perry shall immediately notify CVLO in writing of the identity of the trust and date those records were requested. All records shall be timely produced without reservation.

9. Transmittal of Records. Defendants will provide CVLO with portable document format ("PDF") files of all documents it receives in response to requests to bankruptcy trusts. These documents will be OCRed (optical character recognition), burned to CD and sent to CVLO within 5 days of receipt by the defendant. CDs will be sent via FedEx standard overnight delivery using the FedEx account number provided by CVLO to:

Robert Niewiarowski
Docket Manager
Cascino Vaughan Law Offices
220 South Ashland Avenue
Chicago, Illinois 60607

Plaintiffs shall be responsible for immediate payment of costs incurred for compilation of the CDs which are provided.

10. *Non-compliance of trusts.* This Order expressly dictates that all entities served with the approved authorization shall accept that authorization as valid and comply with all of its terms. Should any trusts fail to comply with the terms of the authorization, the party seeking those records may notify the Court and file any and all appropriate motions with the Court. The Court will address any alleged non-compliance on the part of a trust in an expedited process.

11. *Reports and Attorney Communication.* Allen Vaughan of CVLO and Jennifer Studebaker of Forman Perry are designated as the contact attorneys regarding all bankruptcy records acquisitions issues. Jennifer Studebaker will confer with Allen Vaughan as needed to confirm receipt of bankruptcy documents and discuss any issues that have arisen during the collection of records. Jennifer Studebaker and Allen Vaughan will work together to resolve any problems arising from this Order.

Nothing in this Order shall be construed to affect the current scheduling order deadlines in place for any cases currently on scheduling orders. Any need for extensions of such deadlines will be considered based on the circumstances of the particular case.

IT IS SO ORDERED.

BY THE COURT:

/s/ David R. Strawbridge, USMJ
Hon. David R. Strawbridge
United States Magistrate Judge