

**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

January 31, 2011

**Asbestos MDL 875 Mediation: Items Set at the January 26, 2011 Mediation Management  
Planning Conference for the Cascino Vaughan Asbestos Cases Referred to Judge Reed**

Via E-Mail

To: All Counsel

Dear Counsel:

This letter order summarizes the deadlines set and items discussed, and/or ordered at the MDL-875 mediation management planning conference on January 26, 2011:

(1) A transcript of the conference is available from Suzanne White, official court reporter. You may contact Ms. White for a copy of the transcript by phone at 215.627.1882 and by email at szwht@verizon.net. Any copy of the transcript purchased from Ms. White is for your use only and is not to be shared with counsel for plaintiffs or other defendants.

(2) All defendants should be aware that if they are not in bankruptcy, were properly served with a complaint, and are listed as a defendant in an active CVLO MDL-875 case, they shall submit to the mediation of their cases, regardless of having previously accepted or declined the invitation to mediate.

(3) All such parties are subject to this court's confidentiality order (attached hereto). There is no need to sign a copy of the order in order to be bound by it or to gain access to the IKON repository. Instead, admittance to the IKON repository will be based on, *inter alia*, the defense counsel list currently being completed by plaintiffs' counsel and delivered to IKON.

(4) By **4 p.m. on February 7, 2011**, plaintiffs' counsel shall submit to chambers: (a) the completed list of all defense counsel; (2) a suggested system for authorizing defense counsel of record, national counsel, and their support staff to gain access to the IKON repository; and (3) a draft letter order setting forth the names and status of those who shall have access to the IKON repository.

(5) The only possible omissions from the defense counsel list are defense counsel who have refused to respond to plaintiffs' counsel's requests for information. Mr. Riley of the defense liaison committee has agreed to reach out to these defendants in order to help ascertain the identity of their counsel. To further that purpose, plaintiffs' counsel has agreed to forward to Mr. Riley the list of defendants without verified counsel of record or informally identified counsel and the case captions of each case involving each such defendant by **January 31, 2011**. Failing that, by **February 9, 2011**, plaintiffs' counsel shall file any necessary motions for a rule to show cause why judgment should not be entered against defendants with truant counsel.

(6) By **February 21, 2011**, in addition to having submitted all plaintiffs interrogatory answers to the IKON repository, plaintiffs' counsel shall also submit to the IKON repository all available x-ray films or CD's containing digital files of x-rays for each plaintiff.

(7) Relevant defense counsel shall discuss with plaintiffs' counsel any discovery requests to which they object by **February 14, 2011**.<sup>1</sup> If such discussions do not fully alleviate defense counsels' concerns, defense counsel shall submit objections to plaintiffs' counsel and chambers by **4 p.m. on February 21, 2011**. The mediator will then rule on the remaining objections or other disputes on discovery issues relating to these requests of plaintiffs.

(8) The mediator's January 13, 2011 letter order staying without prejudice certain third-party subpoenas is extended to the subpoena issued to Marathon Oil. Marathon Oil and plaintiffs' counsel are directed to discuss any objectionable discovery requests and attempt to reach a resolution of the subpoena requests and possible settlement of the one CVLO case involving Marathon Oil and report their progress to the court by letter no later than **4 p.m. on February 14, 2011**.

(9) By **4 p.m. on February 28, 2011**, plaintiffs' counsel shall submit to chambers with a copy to all relevant third parties, a status report on the discovery of third-party materials.

(10) By **4 p.m. on February 2, 2011**, plaintiffs' counsel shall write a letter to the defense liaison committee, with a copy to chambers, *inter alia*, setting up a schedule to depose certain ill or going witnesses and detailing for which plaintiffs each witnesses' testimony will be used, the defendants against which each witnesses' testimony will be used, the relevant time periods involved, and a stipulation regarding which defendants will not need to attend the depositions.

(11) By **February 3, 2011**, the defense liaison committee shall draft a stipulation allowing the use of witness depositions for any particular purpose in the CLVO cases assigned to mediation. The stipulation shall be signed and submitted to the mediator by **4 p.m. on February 10, 2011**.

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<sup>1</sup> Plaintiffs' counsel has so far only served discovery requests on certain larger defendants.

(12) By **4 p.m. on February 11, 2011**, plaintiffs' counsel shall submit to the mediator, with copies to the defense counsel, a list identifying each remaining case diagnosed as non-malignant claims and a separate list diagnosed as malignant claims.

(13) The relevant parties shall continue to investigate and discuss the role of the so-called mining defendants (Rapid American, Amchem a/k/a Rhone-Poulenc, and Union Carbide) in the remaining Indiana cases. The parties shall report on this issue at the next mediation management planning conference.

(14) I am in receipt of the January 24, 2011 letter from plaintiffs' counsel listing the cases involving only asbestos exposures in Indiana. Plaintiffs' counsel reports that they are willing to dismiss all defendants from these cases with the exception of the so-called mining defendants. To facilitate this end, as soon as practicable, plaintiffs' counsel shall submit to chambers a draft motion seeking the above described dismissals. After I review and approve the motion, plaintiffs' counsel shall file the motion and order for Judge Robreno's signature.

(15) By **4 p.m. on February 9, 2011**, plaintiffs' counsel and counsel for Owens Illinois shall submit a report to the mediator regarding the progress towards settlement of the 51 disputed cases involving Owens Illinois.

(16) By **4 p.m. February 16, 2011**, plaintiffs' counsel and the defense liaison committee shall submit separate *ex parte* letters to chambers detailing the items discussed in caucus with the mediator at the end of the planning session including a set of recommended mediation planning procedures for, *inter alia*, the 50 most serious cases and a separate set of recommended procedures for the non-malignant cases, and a description of any further informal discovery needed to prepare for and participate in the case evaluation required for actual mediation.

Counsel and the parties should be ever mindful that all of the remaining efforts noted above are intended to bring the parties to the mediation table with basic knowledge of the proofs and defenses arguably available to each party, knowledge of the legal or factual issues which are not yet resolved and, thus, have sufficient confidence in their ability to fairly evaluate these cases to make settlement likely. We are yet to agree (or not) on procedures for mediation, which must not undermine the confidence the parties have that the mediation process will support fair settlements.

It is so ordered,

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

cc: The Honorable Eduardo C. Robreno