

**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:	:	
	:	
MARLENE WOODS	:	09-cv-62583
MARIE H JURGLANIS	:	12-cv-60003

ORDER

And now this 27th day of December, 2012, upon consideration of “Plaintiff’s Motion To Perpetuate the Testimony of Expert Witness Samuel Wineman” (09-62583 Doc. 186; 12-60003 Doc. 133) and the responses (09-62583 Docs. 188 & 189; 12-60003 Doc. 139) it is hereby **ORDERED** that:

1. All relevant motions to join in Defendants’ responses are **GRANTED**; and
2. the motion to perpetuate is **DENIED**.¹

¹ On November 20, 2012 we recognized the potential need to preserve the trial testimony of individuals of advanced age who were ill and had not been previously deposed. (10-64567 Doc. 150). Plaintiffs contend that we should allow a deposition to preserve Mr. Wineman’s expert trial testimony solely on the basis that he is 82 years old and that “trials in these cases is [*sic*] likely at least 18 months away.” (09-62583 Doc. 186). Mr. Wineman was deposed on September 19 and 24, 2012, just over two months before Plaintiffs filed this motion. This fact is significant to our consideration of the motion. The depositions produced a 300 page transcript.

Pursuant to Fed. R. Civ. P. 30(a)(2)(A)(ii), a party must seek leave to take a second deposition. The Court may decline to grant leave if, *inter alia*, “the party seeking discovery has had ample opportunity already to obtain the information sought.” Melhorn v. New Jersey Transit Rail Operations, Inc., 203 F.R.D. 176, 180 (E.D. Pa. 2001)(*quoting* Fed. R. Civ. P. 26(b)(2)(C)). “Absent some showing of need or good reason for doing so, a deponent should not be required to appear for a second deposition.” Id. Here, Plaintiffs provide no explanation for why they did not elicit any testimony they deemed necessary from Mr. Wineman during his recent two-day deposition. Plaintiffs knew of Mr. Wineman’s advanced age during those depositions and had the opportunity to protect themselves by recording such testimony. Should Mr. Wineman be unavailable to testify at the trial, his deposition testimony will be admissible. Fed. R. Civ. P. 32(a)(4). As a result, the urgency typically associated with a request to preserve

(continued...)

BY THE COURT:

/s/ David R. Strawbridge
DAVID R. STRAWBRIDGE
United States Magistrate Judge

¹(...continued)
trial testimony is not present since Plaintiffs recently had the opportunity to depose Mr. Wineman.