

**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 those cases	:	
listed on Exhibit A¹	:	

ORDER

AND NOW, this 9th day of December, 2011, upon consideration of the seven² motions before the Court related to discovery matters involving one or more of plaintiffs’ principal diagnosing and testifying expert physicians, Dr. Alvin J. Schonfeld, Dr. Henry Anderson, and Dr. Ibrahim Sadek, the substantial briefing provided to the Court by counsel, the arguments of counsel in open court, the *in camera* review of sample documents for which plaintiffs seek protection (including transmittal letters provided to us by plaintiffs’ counsel, the Cascino Vaughan Law Office (“CVLO”)), it is hereby **ORDERED** that:

1. Plaintiffs’ Motion for Protective Order Regarding Drs. Anderson and Sadek (01-MD-875, Doc. No. 8060) is **GRANTED in part and DENIED in part**. With respect to Exhibit B to the subpoenas served on Drs. Anderson and Sadek (“Materials to be Produced”), which is the subject of the motion:

- a. Plaintiffs’ Motion with respect to all materials sought in Paragraphs 1, 5, 7-9,

¹ This Order applies to all cases currently on scheduling orders within MDL-875, but we expect that the same conclusions would apply to cases subsequently placed on scheduling orders.

² For organizational purposes, we set out paragraphs 1 through 5 of our Order with reference to the five original motions that were filed. We point out, however, that responses to the first and third of these motions added two opposing motions dealing with the same discovery disputes, thereby adding two additional motions to be resolved.

11-13, is **DENIED as moot and without prejudice**,³

- b. Plaintiffs' Motion with respect to all materials sought in Paragraphs 2 and 4, is **GRANTED** as to "litigants or potential litigants" who are not currently pending CVLO plaintiffs in MDL-875. It is **DENIED** with respect to all currently pending CVLO plaintiffs in MDL-875.
- c. Plaintiffs' Motion with respect to all materials sought in Paragraph 3, is **DENIED**. As discussed at the December 5 hearing, we conclude that defendants are entitled to materials necessary to measure "positive" and/or "negative"⁴ rates. Counsel for plaintiffs and defendants, through CVLO and

³ At the December 5, 2011 hearing, counsel for defendants advised the Court that there had been a substantial narrowing of the issues presented in the motions and, accordingly, made a specific recommendation, to which the plaintiffs agreed, that the material defendants continued to seek could be grouped into six categories: they were: (1) the exposure histories of all currently pending CVLO plaintiffs within MDL-875; (2) the medical and smoking histories of all currently pending CVLO plaintiffs within MDL-875; (3) the "positive-negative" rates, or those materials used to determine the percentage at which the diagnosing doctors found asbestos-related diseases when screening potential plaintiffs; (4) materials regarding the daily volume of screenings performed by each diagnosing doctor; (5) the "transmittal letters" authored by CVLO and sent to the diagnosing doctors for their signature; and (6) the pulmonary function tests ("PFTs") and x-ray orders performed by Dr. Sadek in connection with screenings in Wisconsin. With respect to all material that fell outside of the six categories (sub-paragraphs a. and e.), we deem those requests to be withdrawn and accordingly deny as moot and without prejudice the protective relief sought by plaintiffs to consider the merits if necessary.

With respect to the material sought in Paragraph 7 of the subpoena, we deny plaintiffs' motion as moot and without prejudice in that the Court stated to counsel at the December 5 hearing that we would allow discovery of redacted versions of the doctors' "calendars, date books, memoranda books, and appearance diaries" for any dates on which they engaged in any activity regarding any CVLO plaintiffs. In apparent appreciation for the relevance of this information, but the potential for the disclosure of irrelevant material or material that would otherwise be the subject of protection, counsel for defendants indicated that there may well be other, less burdensome ways to capture information regarding the daily volume of screenings performed by each diagnosing doctor (category 4 above). Counsel for plaintiffs and defendants, through CVLO and Forman Perry, advised the Court that they would consult on the issue. We now **ORDER** them to do so in an effort to reach an agreement on the least intrusive, most expeditious way to provide defendants with this information sought by the discovery request.

⁴ We acknowledge that there exists some debate, articulated both in the parties' papers, (*see, e.g.*, 11-66288 No. 94) and at the December 5 hearing, about what constitutes a "positive" or "negative" B-read result. For the purposes of this discussion, we consider a "negative" result
(continued...)

Forman Perry Watkins Krutz & Tardy, LLP (“Forman Perry”), are **ORDERED** to work diligently to reach an agreement on the least intrusive, most expeditious way to provide defendants with information to undertake this testing exercise. If counsel are unable to do so on or before December 15, 2011, each side shall submit to the Court a specific proposal, including an appropriate form of order, on or before December 16, 2011.

- d. Plaintiffs’ Motion with respect to all materials sought in Paragraph 6, is **GRANTED** as to “litigants or potential litigants” who are not currently pending CVLO plaintiffs in MDL-875. It is **DENIED** with respect to all currently pending CVLO plaintiffs in MDL-875.
- e. Plaintiffs’ Motion with respect to all materials sought in Paragraph 10, is **DENIED** with respect to the PFTs and x-ray orders performed by Dr. Sadek in connection with screenings in Wisconsin.⁵ With respect to all materials sought regarding Dr. Anderson, we deem this subpoena request to be withdrawn (*see* footnote 2) and accordingly plaintiffs’ motion is **DENIED as moot and without prejudice**.

1A. Defendants’ Motion to Compel (concerning production of documents regarding Drs. Anderson and Sadek) (01-MD-875, Doc. No. 8096) is **DENIED in part** and **GRANTED in part**. In that this motion concerns the same materials sought in the same subpoena that is the subject of plaintiffs’ Motion for Protective Order Regarding Drs. Anderson and Sadek (01-MD-875, Doc. No. 8060), where plaintiffs’ Motion for Protective Order is granted, defendants’ Motion to Compel is **DENIED**, and where plaintiffs’ Motion for Protective Order is denied, defendants’ Motion to Compel is **GRANTED**.⁶ All materials to be produced pursuant to this Order must be produced on

⁴(...continued)
one that did not lead to the filing of a claim in either a state or federal district court, or the submission of a claim to a bankruptcy trust.

⁵ At the December 5 hearing, Mr. McCoy represented that CVLO would produce this information.

⁶ An exception exists with respect to the materials sought in the Paragraphs the Court deems withdrawn. Both defendants’ and plaintiffs’ motions with respect to those paragraphs are
(continued...)

or before December 30, 2011;

2. Defendants' Motion to Compel Production of Documents from Alvin J. Schonfeld, D.O. (e.g. 08-89293, Doc. No. 26) is **GRANTED in part** and **DENIED in part**. With respect to Exhibit B to the subpoena served on Dr. Schonfeld ("Materials to be Produced"), which is the subject of the motion:

- a. Defendants' Motion with respect to all materials sought in Paragraphs 1, 5, 7-13, is **DENIED as moot and without prejudice**.⁷
- b. Defendants' Motion with respect to all materials sought in Paragraphs 2 and 4, is **DENIED** as to "litigants or potential litigants" who are not currently pending CVLO plaintiffs in MDL-875. It is **GRANTED** with respect to all currently pending CVLO plaintiffs in MDL-875.
- c. Defendants' Motion with respect to all materials sought in Paragraph 3, is **GRANTED**. As discussed at the December 5 hearing, we conclude that defendants are entitled to materials necessary to measure "positive" and/or "negative" rates. Counsel for plaintiffs and defendants, through CVLO and Forman Perry, are ordered to work diligently to reach an agreement on the least intrusive, most expeditious way to provide defendants with information to undertake this testing exercise. If counsel are unable to do so on or before December 15, 2011, each side shall submit a specific proposal, including an appropriate form of order, on or before December 16, 2011.
- d. Defendants' Motion with respect to all materials sought in Paragraph 6, is **DENIED** as to "litigants or potential litigants" who are not currently pending CVLO plaintiffs in MDL-875. It is **GRANTED** with respect to all currently pending CVLO plaintiffs in MDL-875.

⁶(...continued)
denied as moot and without prejudice.

⁷ At the December 5, 2011 hearing, counsel for defendants advised the Court that there had been a substantial narrowing of the issues presented in the motions and, accordingly, made a specific recommendation, to which the plaintiffs agreed, that the material defendants continued to seek could be grouped into six categories. With respect to all material that fell outside of the six categories (sub-paragraph a.), we deem those requests to be withdrawn and accordingly deny as moot and without prejudice the relief sought by defendants (to compel the production of this material) to consider the merits if necessary.

All materials to be produced pursuant to this Order must be produced to counsel for defendants on or before December 30, 2011;

3. Plaintiffs' Motion for Protective Order Regarding Screening Documents (e.g. 11-66288, Doc. No. 74) is **GRANTED in part**, and **DENIED in part**, as discussed below and in the accompanying memorandum.

To the extent that Interrogatory #1 pertains to the identification of "personnel or entities involved in screenings or medical evaluations of Plaintiff," who is a currently pending CVLO plaintiff in MDL-875, Plaintiffs' Motion for Protective Order is **DENIED**. To the extent that Interrogatory #1 pertains to the identification of "personnel or entities involved in screenings or medical evaluations of Plaintiff," who is not a currently pending CVLO plaintiff in MDL-875, Plaintiffs' Motion for Protective Order is **GRANTED**.

To the extent that Interrogatory #2 pertains to the identification of documents regarding any "Plaintiff" who is a currently pending CVLO plaintiff in MDL-875, Plaintiffs' Motion for Protective Order is **DENIED**. To the extent that Interrogatory #2 pertains to the identification of documents regarding any "Plaintiff" who is not a currently pending CVLO plaintiff in MDL-875, Plaintiffs' Motion for Protective Order is **GRANTED**.

With respect to the production of materials, defendants' request again must be limited to all currently pending CVLO plaintiffs in MDL-875. To the extent that the request for production pertains to "all other persons represented by Cascino Vaughan Law Offices," plaintiffs' motion is **GRANTED**. To the extent that the request for production pertains to any currently pending CVLO plaintiffs in MDL-875, plaintiffs' motion is **DENIED**.

All materials to be produced pursuant to this Order must be produced to counsel for defendants on or before December 30, 2011;

3A. Defendants' Motion to Compel (concerning Screening Documents) (e.g. 11-66288, Doc. No. 80) is **GRANTED in part**, and **DENIED in part**. In that this motion concerns the same materials sought in the same interrogatories that is the subject of plaintiffs' Motion for Protective Order Regarding Screening Documents (e.g. 11-66288, Doc. No. 74), where plaintiffs' Motion for Protective Order is granted, defendants' Motion to Compel is **DENIED**, and where plaintiffs' Motion for Protective Order is denied, defendants' Motion to Compel is **GRANTED**.⁸ All materials to be produced pursuant to this Order must be produced to counsel for defendants on or before December 30, 2011;

4. Plaintiffs' Motion to Compel and/or Verify Compliance with Rule 26(a)(1)(A)(ii) (e.g. 10-67807, Doc. No. 10) is **DENIED**;

5. Plaintiffs' Motion to Compel Forman Perry Watkins Krutz & Tardy, LLP to Turn Over W.R. Grace Study Documents Relating to Drs. Schonfeld and Anderson (e.g. 11-63482, Doc. No. 235) is **DENIED**.

Our Memorandum Opinion will follow.

BY THE COURT:

/s/ David R. Strawbridge USMJ
DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

⁸ An exception exists with respect to the materials sought in the Paragraphs the Court deems withdrawn. Both defendants' and plaintiffs' motions with respect to those paragraphs are denied as moot and without prejudice.