

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

IN RE: ASBESTOS PRODUCTS	:	MDL 875
LIABILITY LITIGATION (No. VI)	:	
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This Document Relates To:	:	
	:	
GEORGE DONALD ELLIS	:	EDPA CIVIL
v.	:	NO. 10-83254
3M COMPANY, et al.	:	
	:	
EDWARD BREWER GREGORY	:	EDPA CIVIL
v.	:	NO. 10-83253
CBS CORPORATION, et al.	:	
	:	
JOHN HARRELL MANNING	:	EDPA CIVIL
v.	:	NO. 10-84912
AIR & LIQUID SYSTEMS CORP., et al.	:	
	:	
SIDNEY WILLIAM MAUNEY	:	EDPA CIVIL
v.	:	NO. 10-83255
AO SMITH CORP, et al.	:	
	:	
DONALD ROBERT WRIGHT	:	EDPA CIVIL
v.	:	NO. 10-84913
AIR & LIQUID SYSTEMS CORP., et al.	:	
	:	
ERIK ROSS PHILLIPS, et al	:	EDPA CIVIL
v.	:	NO. 11-60074
ALBANY INTERNATIONAL CORP., et al	:	

ORDER ON DISCOVERY MOTIONS

And now, this 24th day of October, 2011, upon consideration of the discovery motions and responses pending in the above-listed cases, and following oral argument on October 20,

2011, it is hereby ordered that the motions are GRANTED IN PART and DENIED IN PART as follows. All motions not specifically addressed below are withdrawn at plaintiffs' request.¹

A. Applicable to all Motions

1. Certain oral rulings were made at the hearing, which are incorporated herein. The parties also reached agreement on certain items during the hearing. A transcript of the hearing will be available promptly through the electronic docket (ECF).

2. With respect to many of the motions, it was clear that plaintiffs and defendants continue to work cooperatively toward resolving their discovery questions and disputes, and many of the issues raised in the motions have become moot. The court endorses such cooperation, and directs the parties to continue to comply with their obligations to attempt to resolve their differences before seeking the court's assistance. Nothing in this Order is intended to limit the parties' cooperatively working together to arrange productions and depositions as has occurred in most instances.

3. It was also clear through the briefing and argument that most disputes primarily involved the method of production, not the substance of production. Many defendants have offered plaintiffs access to records repositories or other document storage locations to which

¹Withdrawn motions: In Ellis, motions of Air & Liquid Systems, Inc. (Doc. 101), ITT (Doc. 104), Reliance Electric (Doc. 108), Zurn (Doc. 102); in Gregory, motions of Air & Liquid Systems, Inc. (Doc. 91), General Electric Co. (Doc. 96), ITT (Doc. 95); in Manning, motion of Air & Liquid Systems, Inc. (Doc. 106); in Mauney, motions of Air & Liquid Systems, Inc. (Doc. 78), BW/IP (Doc. 86), Carrier Corp. (Doc. 83), Cleaver Brooks (Doc. 80), Flowserve (Anchor Darling) (Doc. 85), Gardner Denver (submitted but not on docket), ITT (Doc. 82), Zurn Industries (Doc. 89); in Wright, motions of Air & Liquid Systems, Inc. (Doc. 175), Gardner Denver (Doc. 179), ITT (Doc. 177), Reliance Electric (Doc. 186), Sterling Fluid Systems (Doc. 176), Warren Pumps (Doc. 181), Zurn Industries (Doc. 187); in Phillips, motion of Albany International (Doc. 111).

plaintiffs have objected on grounds related to the adequacy of indexing and that defendants rather than plaintiffs should undertake the burden and expense of searches. Weighing the competing interests and having reviewed the caselaw cited in the briefs and at the hearing, and unless otherwise directed below, all defendants making productions in this manner are directed to provide to plaintiffs the most detailed index or “finding aid” available and shall provide details on how the records’ keepers search the inventory of documents. A defendant is not required by this order to turn over attorney work product, but it may be reasonable and therefore necessary to make use of its attorney work product to assist a plaintiff in locating potentially responsive documents. It will then be for plaintiffs to determine whether to review the documents, and plaintiffs’ request that defendants be ordered to review such documents for production is denied. For those defendants who have conducted the document search themselves, to the extent they have not already done so, they shall provide to plaintiffs a description of the search conducted including all search parameters such as dates, locations, and products, and shall certify that all responsive documents have been produced.

4. To the extent plaintiffs request that defendants produce discovery provided in prior asbestos cases, the request is denied as overbroad and not reasonably calculated to lead to the discovery of admissible evidence. As discussed at the hearing, prior trial and/or deposition transcripts of witnesses identified as corporate designees with respect to corporate knowledge or with respect to the same or a related product line are relevant and shall be provided. Additionally, all documents defendants have identified in their discovery responses as trial exhibits shall be produced.

5. To the extent a defendant has objected to a discovery request on the ground that a plaintiff has not established exposure to its products, or that a plaintiff has not established that a product contained asbestos, or that a plaintiff has not established corporate successor liability, or similar objections based on a failure of a plaintiff's proof, all such objections are overruled. A plaintiff must provide sufficient information to each defendant concerning the claim to allow a defendant to assess the relevance of the requested discovery; however, an objection based on the adequacy of a plaintiff's proof is improper in the discovery context.

6. With respect to corporate designee depositions, to the extent documents relevant to the deposition have not been produced one week prior to the deposition, plaintiffs shall be permitted to notice a second deposition limited to the later production. When identifying a corporate designee, defense counsel shall identify the topic areas on which the witness can offer testimony.

7. All requests for monetary sanction whether made in a motion or response are denied. All requests for protective order are denied.

B. Applicable to Specific Defendants

1. A.O. Smith (Mauney, Doc. 79)

This defendant was cautioned during the hearing that its initial discovery responses were inadequate. Also, counsel was not able to verify that it had conducted a search for all documents relating to its products that contained or could have contained asbestos that were at the job sites identified by plaintiff for the years identified. As discussed at the hearing, this defendant shall supplement its discovery responses and production as soon as possible in light of the scheduled corporate designee deposition scheduled for December 6, 2011.

2. Albany International (Wright, Doc. 180)

As discussed at the hearing, this defendant will certify whether its representative or agent visited the plant at issue to remove asbestos-containing dryer felt products, and if such a visit or visits took place, identify the relevant dates, names and identifying information. Also, this defendant shall supplement its production to include product information on all of its products (asbestos-containing or not) at the plant at issue during the time Mr. Wright worked there, and if not already produced, identify the salespersons who visited the plant.

3. Aurora Pumps (Ellis, Doc. 97; Wright, Doc. 172)

This defendant described a supplemental production which should be made forthwith in light of the corporate designee deposition scheduled to take place November 2, 2011.

4. CBS Corp. (Ellis, Doc. 98; Mauney, Doc. 77)

As discussed at the hearing, this defendant will undertake to provide a more detailed description or index of the documents in its repository and any other information that will assist plaintiffs in retrieving relevant documents, and to provide names and last known contact information for Westinghouse employees who were present at the relevant Duke sites to care for or check the turbines during the relevant time periods, to the extent such persons are still living.

5. Dana Corp. (Wright, Doc. 178)

The parties will continue to work together to identify specific relevant products or product lines to help narrow plaintiff's document search.

6. Daniel International Corp. (Ellis, Doc. 109; Manning, Doc. 108; Mauney, Doc. 88)

To the extent not already provided, this defendant shall identify in a verified response when it (or its predecessor) learned of the dangers of asbestos.

7. Eaton Corp. (Ellis, Doc. 105; Wright, Doc. 182)

As discussed at the hearing, this defendant shall produce prior corporate designee deposition transcripts and shall conduct a search of responsive documents in its possession, not limited to documents of a particular entity or successor entity and not limited to a particular product identified by a witness at a deposition.

8. General Electric Co. (Mauney, Doc. 87; Wright, Doc. 185; Phillips, Doc. 115)

As discussed at the hearing, this defendant will endeavor to provide a more comprehensive index of its stored documents and the parties will continue to work together to determine what records plaintiffs will review and the estimated cost of productions.

9. Genuine Auto Parts (Phillips, Docs. 113, 114)

As discussed at the hearing, this defendant will supplement its responses and production with respect to manufacturer/distributor information reported in a recent Pneumo Abex corporate designee deposition and with respect to molded or woven industrial brake lining products, or verify that it has no further responsive information or documents.

10. Pemco, Inc. (Phillips, Doc. 109)

This defendant correctly noted that the motion to compel was premature because the defendant was served later than the other defendants. Nevertheless, as discussed at the hearing, it will endeavor to locate and produce all corporate and successor liability documents and documents relevant to the six sheeter machines at the identified site.

11. Pneumo Abex (Phillips, Doc. 112)

As discussed at the hearing, this defendant will supplement its interrogatory responses with respect to manufacturer/distributor information reported in a recent Pneumo Abex corporate

designee deposition and with respect to molded or woven industrial brake lining products, or verify that it has no further responsive information. If additional information or documents are produced, plaintiff is permitted to redepose the corporate designee limited to the new production.

12. Rockwell Automation (Ellis, Doc. 100; Wright, Doc. 173)

To the extent it has not already done so, this defendant is directed to provide corporate/successor liability documents with respect to its potential liability for products plaintiffs have identified. With respect to product-related documents, like many other defendants, this defendant invited plaintiffs to come to the location where potentially relevant documents are stored, rather than perform the search itself, or in the alternative has offered to copy all its documents for an estimated cost in the range of \$40,000. However, it states that it has no index of any kind and could not even estimate the number of boxes it has other than to say that it would fill approximately a “corner” of the courtroom where the hearing was held. As described by counsel, these documents are not being kept in the ordinary course of business, nor are they in a storage facility; rather they were collected as potentially relevant to asbestos litigation and kept at an attorney’s office in Cleveland. The defendant manufactured hundreds if not thousands of different products, and plaintiffs asserts that they have limited their request to specific switchgears. However, without any index whatsoever, this becomes a “needle in the haystack” exercise. The defendant is directed to gather further specific information from the staff responsible for overseeing the storage and retrieval of the documents to assist plaintiffs in locating boxes or files that may contain responsive documents. I will reconsider requiring defendants to index the documents, conduct the search, or share the costs of a search at a later date if necessary.

13. Schneider Electric (Ellis, Doc. 106; Wright, Doc. 183)

As discussed at the hearing, this defendant will verify the search it has conducted and that it has produced all responsive documents, and will continue to work with plaintiff to produce documents relevant to specific identified product serial numbers not limited to motor starters.

14. Siemens Industries, Inc. (Ellis, Doc. 107; Wright, Doc. 184)

This defendant's discovery is complicated by questions concerning whether the correct defendants have been named with respect to certain products. The parties will continue to work together to iron out these issues and, if a party intends to move to amend to add a defendant(s), it must do so promptly. The defendant shall, if it has not already done so, produce all documents in its possession relevant to corporate and successor liability for the products at issue and also all documents in its possession relevant to the products, regardless of liability for such products.

15. Union Carbide (Manning, Doc. 105; Phillips, Doc. 110; Wright, Doc. 174)

As discussed at the hearing, this defendant will produce prior corporate designee witness transcripts concerning corporate knowledge, and shall continue to work with plaintiffs to narrow the documents to be searched at defendant's repositories.

BY THE COURT:

/s/ELIZABETH T. HEY

ELIZABETH T. HEY
UNITED STATES MAGISTRATE JUDGE