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	:	
Cases Listed on the Attached	:	
Exhibit A	:	

ORDER

AND NOW, this 8th day of May, 2012, upon consideration of the "Motion for Protective Order to Prohibit Certain Actions Against Expert Witnesses by Alvin Schonfeld, D.O." (09-60286 Doc. 72) ("Def. Mot."), the responses by non-party Dr. Schonfeld and plaintiffs (09-60286 Doc. 74, 01-MD-875 Doc. 8533), and defendants' reply (09-60286 Doc. 79), it is hereby **ORDERED** that the motion is **DENIED without prejudice**.[1]

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[1] Defendants complain that Alvin Schonfeld, D.O., one of plaintiff's principal experts in these MDL asbestos cases, has "unilaterally contacted the university employers of defendants' experts and the review board that approved the x-ray study protocol with the intent of forcing the retraction of Dr. Henry's expert report and with a clear message that if retraction does not follow, Dr. Schonfeld will take additional action . . . by contacting the United States Department of Health and Human Services with the intent to urge them to eliminate or reduce funding of those institutions [referring to defendants' experts' employers]." (*See* Def. Mot., pp. 1-2). Defendants ask this Court to enter a protective order "to prohibit threats or complaints by CVLO's experts against defendants' experts involved in the x-ray study, or against their employers." (*Id.*, p. 13). Defendants also request that the Court "conduct a hearing or allow defendants to conduct discovery to determine whether attorneys participated in Dr. Schonfeld's actions." (*Id.*, p. 14). In their papers, defendants asserts that Dr. Henry feels "threatened and intimidated" (*Id.*, p. 7) although it appears that the institutions to whom the letters were addressed concluded that they need not take the action Dr. Schonfeld recommended. (*Id.*, Exh. F-H).

In support of their motion, defendants principally rely upon 18 U.S.C. § 1512(b) and (d), a criminal witness tampering statute and the court's inherent power to deal with abusive litigation practices. With respect to the reference to 18 U.S.C. § 1512 (the "Statute"), defendants have produced no authority, nor has our independent research found any authority, to support the proposition that the statute provides a civil remedy. We presume then that defendants refer to the Statute to suggest to us that the conduct of Dr. Schonfeld may well have been criminal in nature and should therefore be worthy of the court's attention. Without commenting one way or another as to the nature of the conduct, we decline to take any action predicated upon the Statute, leaving those who feel they may have been aggrieved to take whatever action they think is appropriate under the circumstances.

(continued...)

It is hereby further **ORDERED** that, upon consideration of plaintiffs' motion to seal Exhibit "D" attached to their response (09-60286 Doc. 78), defendants' response and plaintiffs' reply (09-60286 Docs. 80 & 83), the motion is **DENIED** as Exhibit "D" contains records prepared for litigation purposes rather than pure medical records, and plaintiffs' counsel has failed to show good cause for its sealing.

BY THE COURT:

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

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[1](...continued)

The defendants then urge the Court to take action based upon its inherent power to "to restrain excesses of the participants and to preserve the integrity of the judicial process." (*Id.*, p. 11) citing *Derzack v. County of Allegheny Pennsylvania*, 173 F.R.D. 400, 411 (W.D. Pa. 1996) which, in turn, cites to *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991). Defendants have brought to our attention what they characterize as "a strikingly similar situation" where the District Court for the Northern District of Illinois exercised its inherent power by directing a defendant physician in a medical malpractice case to withdraw charges of unethical and unprofessional conduct made against plaintiff's medical expert. *See Konrad v. DeLong*, 57 F.R.D. 123 (N.D. Ill. 1972). While there may be similarities, what is dissimilar in this case from the *Konrad* authority is that Dr. DeLong, who had made the charge of unethical conduct against plaintiff's expert, was a defendant in the case and a party over whom the court clearly had jurisdiction. We see this as a meaningful distraction from the exercise of our inherent authority over a non-party. While acknowledging that we would have such authority, we decline to exercise that authority with respect to Dr. Schonfeld on the record before us at this time. This is not to say that our inherent authority is limited to taking action only as to parties, but we decline at this stage, to take any such action against Dr. Schonfeld.

We are aware that there are very strongly held views by the defendants with respect to the work of Dr. Schonfeld and it is equally clear to us that there are strongly held views held by Dr. Schonfeld and CVLO with respect to the work of defendants' expert, Dr. Henry. This Court has permitted wide-reaching discovery being sought and undertaken by both parties with respect to this dispute. That discovery is being actively pursued. We assume that such will continue to be the case up until the time that the parties and experts appear before me for a scheduled *Daubert* hearing in September 2012 at which time we will make a determination pursuant to the *Daubert* criteria and otherwise as to the extent to which the work of Dr. Schonfeld and Dr. Henry will be permitted to be utilized in these cases. We decline, however, to enter an order of prohibition at this time as the defendants have requested. Observing that discovery with respect to Dr. Schonfeld an Dr. Henry is continuing, our declination to take action at this point is without prejudice to revisiting the issue up to and including at the scheduled *Daubert* hearing.