



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: ASBESTOS PERSONAL
INJURY LITIGATION

Master File
Civil Action No. 03-C-9600
(Judge Wilson)

ORDER

Pursuant to Rule 26.01 of the West Virginia Trial Court Rules, as well as Rule 42 of the West Virginia Rules of Civil Procedures, **THE COURT HEREBY ORDERS** that all asbestos personal injury litigation cases assigned to Judge Ronald E. Wilson shall be governed by the terms of a new Case Management Order (hereinafter CMO) that will be entered.


The court understands that several Liaison Counsel have negotiated and approved the language to the new Section 22, regarding Bankruptcy Disclosure, of the Case Management Order attached hereto. After review of the language, the court does hereby approve and shall substitute the new Section 22 language into a new CMO.

The objections and exceptions of those parties who oppose any provision of this Order are hereby noted and preserved.

A copy of this Order has been sent by this office to: Cathy S. Gatson, Kanawha County Circuit Court Clerk for filing and Liaison Counsel, who is directed to forward a copy of this Order to all counsel of record.


It is so ORDERED.

ENTERED this 3 day of MARCH 2010:



Ronald E. Wilson, Judge

Prepared by:



Scott Segal
William K. Schwartz
David Hendrickson
Joseph Beeson
Anne Kearse
Bruce Mattock

22. Claims Against Bankruptcy Trusts

(A) Required Disclosures - For any asbestos action with a trial date established after the October, 2010 Trial Group:

(1) Upon the designation of a claim for trial, claimant shall provide the parties a disclosure setting forth at a minimum the name of plaintiff, name of spouse, address, date of birth, the nature of diagnosis of the asbestos related disease, the civil action number, the work history and/or exposure history including the worksites, employer and trade or occupation. The court may require other items for disclosure.

(2) No later than one hundred twenty (120) days prior to the date set for trial for the asbestos action, a claimant shall provide to all parties a statement of any and all existing claims that may exist against asbestos trusts. In addition, the statement shall also disclose when a claim was or will be made, and whether there has been any request for deferral, delay, suspension or tolling of the asbestos trust claims process. The statement must contain an Affidavit of the Plaintiff or Plaintiff's counsel that the statement is based upon a good faith investigation of all potential claims against asbestos trusts.

(3) As to any claims already asserted against asbestos trusts, the claimant shall produce final executed proofs of claim together with any supporting materials used to support such claim against the asbestos trusts, all trust claims and claims material, and all documents or information relevant or related to such claims asserted against the asbestos trusts, including but not limited to, work histories, depositions, and the testimony of the claimant and others as well as medical documentation.

(4) In the event information obtained subsequent to the submission of the statements supports the filing of additional claims against asbestos trusts, the claimant shall update the statement by amendment filed and served within thirty (30) days of the receipt of the information but in no event later than the commencement of the trial.

(B) Sanctions for Non-Compliance

(1) Any defendant after thirty days of receipt of the statement from the claimant may proceed by motion that the plaintiff has failed to comply with the requirements set forth in subsection (A)(2) above. The burden remains with the defendant to show lack of compliance. If the court determines lack of good faith compliance the failure of the plaintiff to

abide by the disclosure requirements may result in the case being stricken from the trial group and whatever other sanctions the court deems appropriate. The Court may also impose sanctions if it determines the Motion was not brought in good faith by defendants.

(2) Motions regarding noncompliance with the disclosure requirement shall be heard no later than thirty (30) days prior to the trial date.

(C) Treatment of trust claims and claims material - Trust claims and claims material (as well as related discovery materials) may be relevant to and shall be discoverable in an asbestos action and shall be presumed by the court to be authentic, and counsel for Plaintiff may not raise work product or other privileges and such trust claims and claims materials may be used by the parties in the asbestos action to prove alternative causation for the claimant's asbestos exposure as well as any other purpose provided for under the laws of the State of West Virginia. Notwithstanding the above, before any such material is admitted, the Court may issue a limiting instruction setting forth the fact that the trusts requirements for exposure may differ from the exposure required by the Court of the remaining defendants. Furthermore, the Court may note, that an application to a trust for compensation only requires providing information about the specific product alleged to have contributed to injury and not the fact that claimant may have been exposed to other products. Nothing contained in this CMO shall be deemed to affect the authority of a Federal Bankruptcy Court.

(D) Discovery of other materials - In addition to the mandatory disclosure requirements of this CMO, additional disclosure and discovery of information relevant to the asbestos action may be sought by any mechanism provided by the applicable Rules of Civil Procedure. Defendants in an asbestos action may also seek discovery from the asbestos trusts. The claimant shall assist in any discovery from the asbestos trusts and provide whatever consent or expression of permission may be required by the asbestos trusts for release of such information and materials.

(E) Set-offs and Assignments - The defendants will be entitled to set-offs or credits of the paid liquidated value of the trust claims against any judgment rendered against them in the asbestos action and the Court shall provide a hearing for this purpose. The Court can require each claimant to disclose the total amount received or reasonably expected to be received from the bankruptcy proceedings, or any settling defendant. In the event that a judgment is rendered in

an action before a claimant has received a payment, the claimant shall assign to all defendants against whom the judgment is rendered his or her rights to all unpaid bankruptcy claims, whether filed with trust or not, and the claimant shall cooperate with and assist the defendants in obtaining damages due and owing to claimant from each asbestos trust as provided by each trust's trust distribution process. It shall be the intention of the claimant and of the court that any such defendant's claim filed with any such asbestos trust will be treated exactly as if the claimant had submitted the claim for any and all purposes under the terms, conditions and provisions of the trust claim procedures. To the extent that any applicable law provides broader relief to the defendants than is set forth herein, nothing in this provision shall prohibit any defendant from pursuing such broader relief.

(F) As used in this section 22, terms will have the following meanings:

(1) "Trust claims and claims material" means all documents and information including, but not limited to, claim forms and supplementary material, relevant or related to pending or potential claims against asbestos trusts.

(2) "Asbestos trusts" means all trusts or claims facilities created as result of bankruptcies, including but not limited to, all trusts created pursuant to 11 U.S.C. §524(g), intended to provide compensation to claimants alleging claims as a result of asbestos exposure.