

SUPREME COURT OF THE STATE OF NEW YORK
SEVENTH JUDICIAL DISTRICT

.....
In RE: SEVENTH JUDICIAL DISTRICT ASBESTOS LITIGATION
.....

This Document Relates To:
All Cases

Master Index No:
2001-012718

.....
SEVENTH JUDICIAL DISTRICT ASBESTOS LITIGATION

(7JDAL)

CASE MANAGEMENT ORDER

Revised: March 1, 2012

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I. Applicability of This Order

This Order applies to procedures involving all personal injury and wrongful death cases, based upon claims of exposure to asbestos, whether commenced prior to this order and currently pending, or hereafter commenced in the Supreme Court, State of New York, Seventh Judicial District, comprising the Counties of Monroe, Livingston, Ontario, Wayne, Cayuga, Seneca, Yates and Steuben, except as otherwise directed by the Court upon motion and for cause shown. This order supersedes all previous case management orders and amendments in regard to such litigation.

Pursuant to separate orders, all cases, now pending or hereinafter filed, will be assigned to one or more Supreme Court Justices, to be designated, therein.

A copy of this Case Management Order, as well as other material pertaining to the Seventh Judicial District Asbestos Litigation, including the trial calendar, is available on the Monroe County Supreme Court website: <http://www.nycourts.gov/courts/7jd/courts/s%26c/asbestos/>

II. Purpose and Objectives

It is in the interests of justice to encourage and bring about the fair, expeditious, and least expensive resolution of these cases. This Case Management Order (CMO) is established in an effort to achieve this goal by allowing the parties to obtain necessary documents and information without imposing undue burdens, and to permit the parties to evaluate these cases, reach early settlements, and frame the issues in order to prepare unsettled cases for trial. The essential elements of the CMO include to the extent feasible:

11. Automatic assignment of all pending and hereafter commenced asbestos litigation in each of the counties of the Seventh Judicial District to one designated Part of Supreme Court.
12. Standardization of discovery in order that parties may obtain the necessary information to evaluate cases for settlement or to prepare them for trial at minimum expense.
13. Scheduling and conducting pre-trial conferences within 60 days of the filing of a

Request for Judicial Intervention (RJI) to resolve pretrial management problems, establish discovery schedules, set a trial Day Certain pursuant 22NYCRR §125.1(g), appoint Liaison Counsel(s) on behalf of Defendants, and obtain consent for utilization of one of the panel of available JHO's provided herein to preside over motions and trials.

14. Consider settlement opportunities including the grouping of cases and any other orders as necessary to avoid duplication, contain costs and expedite disposition through settlement or trial.

III. Index Numbers and Filing Procedures

A. Files

A master file, known as Seventh Judicial District Asbestos Litigation ("7JDAL") Master File, has been established in the Office of the County Clerk of Monroe County for all asbestos cases commenced in the Seventh Judicial District and designated as Monroe County Index No. 2001-012718. Entries in the 7JDAL Master File shall be applicable to each personal injury and wrongful death case, commenced in the Seventh Judicial District, which is governed by this Order or any amendment thereof.

The original of this Order shall be filed by the County Clerk in the 7 JDAL Master File, and a copy shall be provided to each of the County Clerk's Offices in the remaining seven Counties in the Seventh Judicial District, and a copy shall be deemed to be part of the Record of each and every case commenced in the Seventh Judicial District.

A separate file shall also be maintained under a Separate Index Number in the County, venued by the Plaintiff(s), for each individual action and each individual Plaintiff in the applicable County Clerk's Office, and entries shall be made therein in accordance with this Order.

Copies of all papers filed under the Master Index Number and in the respective County Clerk's offices must also be submitted to the Supreme Court Justice designated to receive all assignments under this Order.

B. Captions of Cases

Every document filed in these coordinated actions, which has general application to all cases, shall bear a caption as follows:

SUPREME COURT OF THE STATE OF NEW YORK
SEVENTH JUDICIAL DISTRICT

.....
In RE: SEVENTH JUDICIAL DISTRICT ASBESTOS LITIGATION
.....

This Document Applies to: Master File
Index No. 2001-012718
.....

C. Names of Defendants

1. Pursuant to an order signed by this Court and filed with the County Clerk of each respective county in the Seventh Judicial District, Counsel may substitute "et al" in place of a full list of defendants' names on the captions of motions, stipulations, judgments or other related papers. Note: the Summons, Complaint, Amended Complaint, and RJI will still require a full caption. A copy of the Court's order on the issue may be found as a link on the Asbestos web page.

D. Filing of Papers

1. Whenever a paper has general application to all cases, such as a Notice of Filing of Bankruptcy by a named Defendant, the caption shall bear Index No. 2001-012718 and the Monroe County Clerk shall file such a paper in the 7 JDAL Master File. Any document so filed shall be deemed to have been filed in each case to which this Order applies, and shall constitute part of the record of each such file.
2. Whenever a paper, such as a Plaintiff's Initial Fact Sheet ("PIFS") or a motion, is applicable only to an individual case, the attorney submitting such paper for filing

shall supply to the Clerk of the County in which the action is venued a cover sheet containing the caption, name, and Index Number to which the paper is applicable. The County Clerk shall file such paper in the individual file for the action under the appropriate Index Number. The Monroe County Clerk shall NOT file such paper in the 7 JDAL Master File.

3. Whenever a paper is filed that is applicable to two or more, but less than all of these coordinated actions, the captions shall state the case names and separate Index Numbers of the actions to which that paper is applicable. The Clerk of the counties, in which the actions so identified are venued, shall file a copy of the paper in each separate file under the index numbers so identified. It is the responsibility of the attorney submitting such paper for filing to supply a cover sheet containing the captions, titles, and index numbers of all actions to which the paper is applicable and to supply the appropriate County Clerks with sufficient copies of the paper to facilitate compliance with the directives of this paragraph.
4. When a paper is filed that requires some action by the Court, such as an RJI, Notice of Motion, Request for a Pre-Trial conference, or a Note of Issue and Certificate of Readiness, the attorney submitting such paper to the appropriate County Clerk shall be responsible for serving a copy to all counsel of record and forward a copy to the Court.
5. Following the filing and service of the Complaint and the appearance by or on behalf of defense counsel, but in no event more than ninety (90) days from the filing of the Complaint, Counsel for the Plaintiff(s) shall cause to be filed an RJI in the office of the appropriate County Clerk, where the case is venued, requesting a Preliminary Conference. In addition, counsel for the Plaintiff(s) shall submit to the Court a copy of said RJI, together with a list of the Defendants' counsel, including mailing address, telephone, fax, and e-mail address, by e-mail or on a disk, in a format which may be converted to Word Perfect. Plaintiff(s)' counsel shall have the obligation to update said disk within thirty (30) days of any change. Counsel for each Plaintiff and Defendant shall be obligated to identify trial counsel within 14 days of the trial date,

as provided in the scheduling order issued in each case, and to so advise the designated Supreme Court Justice, accordingly, including trial counsel's phone number, fax, and e-mail address.

6. Following receipt of the RJI, together with the required information for Defendants' counsel, Chambers of the designated Supreme Court Justice, shall notify all counsel of record of a date and time for a Preliminary Conference, which will be scheduled, within sixty (60) days, at the Hall of Justice, Rochester, New York.
7. In addition to the foregoing, all counsel representing Plaintiffs shall file with the Court, and serve Liaison Counsel, a current chronological list of each and every personal injury and wrongful death case pending and subject of this Case Management Order. The list shall include the name, date of birth, and trade of the Plaintiff, or decedent, as well as filing date of the action. The list shall be updated on a monthly basis.

IV. Judicial Hearing Officers

The Civil Practice Law and Rules and the applicable Uniform Court Rules, together with the express provisions of this Order, shall govern all cases, based upon claims of exposure to asbestos, in the Seventh Judicial District.

Consistent with the objectives of this CMO and in order to expedite the processing of these claims, a panel of Judicial Hearing Officers shall be available for assignment to rule on motions and preside over jury trials. Failure, at the Preliminary Conference, on the part of any party to object to the assignment of a JHO from this panel to hear and determine any part of the case will be deemed a consent pursuant to CPLR Section 4317(a). Following the Preliminary Conference, and absent objection by a party, counsel for the Plaintiff(s) and Liaison Counsel for the Defendants shall execute a Stipulation, as required by CPLR 4317, and in a form annexed hereto and contained in Appendix "D." The Stipulation shall be filed in the Office of the Clerk of the County, in which the case has been venued, under the Index Number for that case, and a copy provided to the Court. Thereafter, an Order will be issued appointing a specific Judicial Hearing Officer to preside over issues in the

case. The panel of Judicial Hearing Officers will be contained in a separate Court Order, which will be filed in the Master File.

V. Pleadings

A. Plaintiff's Statement:

A Plaintiff's Initial Fact Statement ("PIFS"), annexed hereto as Appendix "A," shall be submitted to the Court and be included with the Complaint or served upon the Defendants within sixty (60) days after filing of the Complaint or sixty (60) days from the date of this Order, whichever date is later. If the PIFS is not attached to the Complaint, the original PIFS shall be filed by counsel in the office of the County Clerk of the County in which the action is venued under the Index Number of the action to which it applies. The PIFS shall include the Plaintiff's specific work site(s) at which it is claimed that injurious asbestos exposure occurred. In a case of alleged derivative exposure, the PIFS shall include the specific work site(s) of the person(s) through whom Plaintiff was exposed, to the extent known. In no event are the PIFS intended to limit proof and are not admissible for any purpose.

If at any time after the filing of the PIFS, but before service of Plaintiff's Answer to Standard Interrogatories, Plaintiff's claimed asbestos-related illness changes from a non-malignancy to a malignancy, the PIFS shall be amended accordingly. All such amendments must be filed and served, as hereinbefore set forth, within sixty (60) days of notification to Plaintiff's counsel of such change in claimed illness.

B. Standardized Pleadings:

1. Plaintiff's counsel may file in the 7 JDAL Master File and serve on Defendants, a Complaint, or set of Complaints, containing standard allegations generally applicable to all claims of a similar nature. Thereafter, counsel may file and serve a short form Complaint which incorporates by reference all of the allegations contained in the appropriate standard Complaint.
2. Regardless of whether or not Plaintiff has elected to serve and file a Standard Complaint, any Defendant may file in the 7 JDAL Master File and serve on

Plaintiff(s)' and other Defendants' counsel a standard Answer with affirmative defenses. When such standard answer has been filed, a Defendant may within 60 days of service of the Complaint, serve an Acknowledgment of Service, in a form annexed hereto, and contained in Appendix "B," incorporating a standard answer by reference. All Defendants to which any cross claim has been asserted will be deemed to have denied all material allegations contained in the cross claim. Nothing herein shall preclude a Defendant from filing an individual answer, which may be served within 60 days of service of the Complaint.

3. Third-Party Plaintiff(s)' counsel may file in the 7JDAL Master File and serve on Third-Party Defendants a Third-Party Complaint or set of Third-Party Complaints containing standard allegations generally applicable to all Third-Party claims of a similar nature. Thereafter, Third-Party Plaintiffs may file and serve short form Third-Party Complaints that incorporate by reference all of the allegations contained in the appropriate standard Third-Party Complaint.
4. A Third-Party Defendant may file, in the 7JDAL Master File and serve on Third-Party Plaintiff(s), a Standard Answer to a Third-Party Complaint with affirmative defenses. When a Standard Answer to a Third-Party Complaint has been filed, a Third-Party Defendant may serve a Third-Party Plaintiff in an action with an Acknowledgment of Service of Third-Party Complaint, in a form annexed hereto and contained in Appendix "C." Upon service of an Acknowledgment of Service of a Third-Party Complaint, a Third-Party Defendant will be deemed to have denied all material allegations contained in the Third-Party Complaint, except as stated in such Acknowledgment, and to have raised each affirmative defense contained in its Standard Answer to Third-Party Complaint, except as stated in such Acknowledgment. Nothing herein shall preclude a Third-Party Defendant from filing an individual answer, if it so chooses.

C. Amendments/Substitution Following Death of Plaintiff

Upon the death of an injured Plaintiff, and prior to the date set for filing the Note of Issue, the personal representative of the deceased injured Plaintiff may be substituted as Plaintiff,

without leave of the Court, if said personal representative submits to the Court and serves upon all attorneys of record in the pending action:

1. The date and place of the deceased injured Plaintiff's death;
2. The name and address of the deceased injured Plaintiff's personal representative;
3. A copy of the death certificate for the deceased injured Plaintiff;
4. A copy of the Surrogate's certification of the appointment of the personal representative; and
5. A proposed Order of Substitution.

Prior to the date set for filing the Note of Issue, a substituted Plaintiff may, without leave of Court, amend the original Complaint to add a claim of wrongful death. Service of such amendments on counsel who has appeared for a Defendant shall be considered service on that Defendant. Defendants may answer as set forth in this Order.

A substituted Plaintiff seeking to amend a Complaint to add claims, based upon wrongful death, must support the enlargement of the Complaint, to include such cause of action, with medical documentation including: the certificate of death; and an autopsy report or hospital admission/discharge summary or a report prepared and signed by a physician supporting the allegation of a connection between the alleged injurious exposure to asbestos and the death. No presumption regarding causation is created by such enlargement of a Complaint. The issue of the connection between the alleged injurious exposure to asbestos, if any, and the death shall be preserved for the trier of fact or for the Court upon motion. A Defendant who served an Acknowledgment of Service or answer in the original action is not required to serve an answer to the amended Complaint as all new material allegations contained in the amended Complaint will be deemed denied by any such Defendant.

D. Other Amendments to Pleadings

Amendments to the pleadings, other than those set forth in Section V(C) of this Order shall be made in compliance with CPLR Section 3025. The parties are encouraged to consent to amendments where appropriate based upon New York State's recognition that leave to amend is to be freely granted.

VI. LIAISON COUNSEL

A. Appointment of Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel to act on behalf of Plaintiffs' counsel and Defendants' counsel, respectively, after appropriate consultation where necessary, will facilitate communication between the Court and counsel, minimize duplication of effort, and provide for the efficient progress and control of this litigation.

B. Subject to the right of any party to present individual positions or divergent positions or to take individual actions, Liaison Counsel are vested by the Court with the following responsibilities and duties:

1. Coordinating the conduct of discovery procedures, including but not limited to coordination of the preparation of joint written interrogatories, joint requests to admit, and joint requests for the production of documents, where applicable;
2. Coordinating the examination of witnesses in depositions;
3. Calling meetings of counsel for Plaintiffs' counsel and Defendants' counsel, respectively, for the purpose of proposing joint actions, including but not limited to responses to questions and suggestions of the Court or of adversaries with regard to orders, schedules, briefs, and stipulations of the facts.
4. Draft and consent to proposed scheduling and other orders, and agree upon stipulations.

C. Liaison Counsel are authorized to receive orders, notices, correspondence and telephone calls from the Court regarding general case management issues on behalf of all Defendants, and receive medical authorizations from counsel for Plaintiffs. Liaison Counsel shall be responsible for notifying all Defense counsel of all communications received from the Court and to send medical records received from counsel for Plaintiff(s) to any counsel for a Defendant upon request for same. Liaison Counsel is not responsible for obtaining medical records from other Defendants, and further, may not be used by any party for service and/or distribution of papers, orders, notices or correspondence to other counsel.

D. Notwithstanding the appointment of Liaison Counsel, each counsel shall have the right to participate in all proceedings before the Court as fully as such counsel deems necessary.

E. Liaison Counsel shall not have the right to bind any party except Liaison Counsel's own respective clients as to any matter without the consent of counsel for any other party.

F. Subject to approval of the Court, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall be reimbursed periodically, by counsel for Plaintiffs and Defendants, respectively, for necessary and reasonable disbursements actually incurred in performing their responsibilities pursuant to this Order. Liaison Counsel shall keep records of such disbursements in reasonable detail for examination by counsel. Liaison Counsel shall be paid, respectively, by each Plaintiff or Defense law firm on an equitable basis to be agreed upon by the parties or fixed by the Court with each Plaintiff and Defense law firm having to pay a proportionate share of the disbursements incurred by its respective Liaison Counsel in representing its interest. Liaison Counsels' invoices for services as Liaison Counsel pursuant to this Order shall be due and payable when submitted. Interest shall be computed at the rate applicable to judgments starting thirty (30) days after the date of their submission.

G. In the event that the client of Liaison Counsel ceases to be a party, because of settlement, discontinuance, dismissal or otherwise, counsel may be relieved of further responsibility as liaison upon application to the Court, or arranging for substitute Liaison Counsel.

VII. Standard Consolidated Discovery

A. Interrogatories and Document Requests:

Standard Interrogatories and Requests for Production of Documents shall be used as set forth herein. The Court on its own motion hereby permits the use of interrogatories in addition to depositions pursuant to CPLR §3130.

1. Defendants' Interrogatories and Document Requests:

- a. A standard set of interrogatories to Plaintiff(s) has been filed in the 7JDAL Master File. These standard interrogatories, captioned "Defendants' First Set of Interrogatories and Request for Production of Documents" ("Defendants' Standard Interrogatories"), are annexed hereto and contained in Appendix "F." An alternative, short form, standard set of interrogatories have also been

filed in the 7JDAL Master File. These alternative, standard interrogatories, captioned "Defendants' Short Form, First Set of Interrogatories and Requests Production of Documents" ("Defendants' Alternative Standard Interrogatories") are annexed hereto and contained in Appendix "E."

- b. Unless otherwise directed by the Court, upon request by a Defendant, Plaintiff(s) may respond to either "Defendants' Standard Interrogatories" or "Defendants' Alternative Standard Interrogatories." Plaintiff(s) shall serve responses to such Interrogatories ("Plaintiffs' Answers to Standard Interrogatories") upon all Defendants in an action and in accordance with the applicable discovery and trial submission schedule for that action. Such Interrogatories shall be answered in full, unless appropriate objections are stated in lieu of an answer. "Plaintiffs' Answers to Standard Interrogatories" shall be verified by the individual injured Plaintiff(s) or Plaintiff estate representative. In the event that Plaintiff(s) has responded to "Defendants' Alternative Standard Interrogatories," and upon receipt of same, any Defendant may specifically make a written request, to the Court, that Plaintiff(s) also respond to "Defendants' Standard Interrogatories."
- c. Defendant may serve supplemental, non-repetitive interrogatories and requests for production of documents ("Defendant's Supplemental Interrogatories") in accordance with the applicable discovery and trial submission schedule for an action.
- d. Copies of any records obtained by a Defendant pursuant to authorization of a Plaintiff, other than those records which are obtained through a mutually agreed upon records retrieval service, shall be made available to Plaintiff's counsel by notice of receipt mailed to Plaintiff's counsel within ten (10) days of Defendant's receipt of such records.

2. Plaintiffs' Interrogatories and Document Requests:

- a. Plaintiffs' standard set of general liability interrogatories have been filed in

the 7JDAL Master File. These standard interrogatories, captioned "Plaintiffs' First Standard Set of Liability Interrogatories and Request for Production of Documents" ("Plaintiffs' Standard Interrogatories"), are annexed hereto and contained in Appendix "G." In the event that a Plaintiff's counsel commences an action against a Defendant not previously a party, said Plaintiff's counsel will serve Plaintiffs' Standard Interrogatories on such Defendant.

- b. Each Defendant shall file a single set of responses to "Plaintiffs' Standard Interrogatories" ("Defendants' Answers to Standard Interrogatories") and shall give notice of the filing to, or serve same on, Plaintiff's counsel in accordance with the applicable discovery schedule in each individual action. In the event that a Plaintiff's counsel commences an action against a Defendant not previously a party, and fails to serve Plaintiffs' Standard Interrogatories, such Defendant is not required to file and serve responses to Plaintiffs' Standard Interrogatories.
- c. A Plaintiff may serve supplemental, non-repetitive interrogatories and requests for production of documents ("Plaintiffs' Supplemental Interrogatories") in accordance with the applicable discovery and trial submission schedule for an action.
- d. A Plaintiff may serve non-duplicative, standard product identification interrogatories with respect to particular work sites ("Plaintiffs' Standard Product Identification/Work Site Interrogatories") in accordance with the applicable discovery and trial submission schedule for an action.

B. General Guidelines Regarding Document Requests:

1. A party requesting discovery and inspection of documents shall specify a reasonable time, place, and manner for making the inspection. The request will describe each item with reasonable particularity.
2. Responses to requests for discovery and inspection of documents should be, to the extent practicable, in such form as will make clear the request to which the document is responsive.

3. Any response that a document cannot be located, shall state with reasonable particularity the efforts made to obtain the requested document.
4. Counsel are to exercise good faith in making requests for and in responding to requests to production of documents.
5. Counsel are to exercise their best efforts to resolve, on an informal basis, disputes arising out of the document requests and responses and objections thereto.

C. General Guidelines Regarding Discovery:

1. Disputes with regard to discovery shall be called immediately to the attention of the Court for resolution and, unless otherwise directed by the Court, shall not be relied upon by any party, as a justification for not adhering to any applicable discovery and trial submission schedule.
2. Objections to discovery based on privilege shall clearly identify the privilege claimed and shall provide sufficient information concerning (i) the basis for the claim of privilege to establish, prima facie, the validity of the claim, and (ii) the privileged information to permit identification of the information or document as to which privilege is claimed. If not so identified, the privilege shall be deemed waived. The parties shall negotiate in an effort to preserve the confidentiality of trade secrets.
3. Any objection to discovery based on burdensomeness shall describe the burden with reasonable particularity. Any objection to the time, place, or manner of production shall state a reasonable alternative as a counterproposal.
4. Any response that information cannot be determined, shall state with reasonable particularity, the efforts made to obtain the requested information.
5. Any notice and/or motion for discovery served upon a non-party shall be served contemporaneously upon all parties to the action.

VIII: Medical Examinations of Plaintiff(s)

Physical examinations of Plaintiff(s) shall be conducted in accordance with the CPLR and applicable case law. Counsel for Plaintiff(s) shall provide Liaison Counsel with original, or duplicate

original, authorizations for Plaintiff(s)' medical records.

IX. Depositions

A. General Guidelines:

1. All depositions of parties shall be held in the Seventh Judicial District unless otherwise ordered by the Court or agreed to by the parties, and coordinated with Liaison Counsel.
2. All counsel shall avoid unnecessary and repetitive questioning of witnesses.
3. Unless all parties otherwise agree, all objections, except as to the form of the question, shall be reserved for determination by the trial judge.
4. All counsel may attend any deposition.
5. Counsel may notice any deposition to apply to more than one case and shall use best efforts to insure that depositions are noticed to apply to all appropriate cases. Nothing in this provision shall be deemed to prohibit a party from moving to limit the use of deposition testimony based upon good cause shown.
6. All depositions shall be conducted with due regard for the physical and emotional condition, health, and disability of the deponent.
7. In the event that a notice for a discovery deposition is not served, but such deposition is scheduled by agreement of counsel or order of the Court, any such deposition of an injured Plaintiff, Plaintiff's spouse or personal representative will be deemed to have been noticed for or scheduled by Defendant's counsel and any such depositions of a Defendant will be deemed to have been noticed for or scheduled by Plaintiff's counsel.
8. Deposition testimony may be used only against those parties which received actual written notification of the deposition stating the date, time and location of the deposition. Said notification must be served in compliance with the CPLR, this Order, or other court order and, in any event, unless good cause is shown, must be served no later than three (3) business days prior to the scheduled date of the deposition.

B. Depositions of Plaintiff(s)

1. Depositions of injured Plaintiff(s) will be scheduled by Liaison Counsel when preparing discovery and trial submission schedules for actions scheduled for trial. In all actions, the rights of Defendants and Third Party Defendants to depose Plaintiff's spouse, personal representative, and distributees of a decedent at any time prior to jury selection are reserved. Such a deposition may be requested, noticed for, and/or scheduled by any defense counsel.
2. Questioning of the injured Plaintiff by defense counsel shall begin with interrogation by Defendants' Liaison Counsel, followed by interrogation by other defense counsel in an order agreed to by defense counsel or as decided by Defendants' Liaison Counsel when such an agreement cannot be reached.
3. Questioning a Plaintiff's spouse, personal representative and distributees of a decedent shall begin with interrogation by the defense counsel who requested, noticed, and/or scheduled the deposition, followed by interrogation by other defense counsel in an order agreed to by defense counsel or as decided by Defendants' Liaison Counsel when such an agreement cannot be reached. If the above deponent is a present or former officer or employee of a Defendant, such Defendant shall question first, followed by other defense counsel in the order described in Section IX (B) (2) of this Order.

C. Depositions of Defendants and Non-Party Witnesses

1. Depositions of Defendants and non-party witnesses will be noticed for, and/or scheduled, by the party seeking the deposition during the period of time provided in the applicable discovery and trial submission schedule for the action.
2. The parties shall make every effort to use depositions as well as other discovery obtained from Defendants in other actions in New York State and other jurisdictions for all purposes as if taken in each action in these cases in accordance with this Order.
3. Any Plaintiff may serve notice of intent to take non-repetitive depositions of Defendants' representatives pertaining to issues which were not covered or not

adequately covered by prior depositions of that Defendant. All corporate depositions shall be noticed at a time and place convenient to the parties and witnesses, taking into account the expense to the parties and the health of the Defendants' witnesses.

4. Questioning by Plaintiff's counsel shall begin with interrogation by the Plaintiff's counsel, who noticed the deposition, followed by other Plaintiffs' counsel in the order of their appearance in this litigation and defense counsel in the order described in Section IX (B)(2) of this Order. If the above deponent is a present or former officer or employee of a Defendant, questioning by a defense counsel shall begin with counsel for such Defendant, followed by other defense counsel in the order described in Section IX (B)(2) of this Order.

D. Stenographers' Fees

1. Unless otherwise agreed, when a deposition of a party to an action is taken at the request of any other party, the cost of the stenographer's appearance, the preparation of the transcript, and the party deponent's copy of the transcript shall be divided equally among all counsel who appear at the deposition, other than counsel for the party-deponent. Each party, other than the party-deponent, who requests a copy of the transcript shall bear the cost of that copy.
2. Unless otherwise agreed, when a party elects to take his, her, or its own testimony, that party shall bear the cost of the stenographer's appearance and the preparation of the transcript. Any party who requests a copy of the transcript shall bear the cost of that copy.
3. Unless otherwise agreed, when a deposition of a non-party is taken, the cost of the stenographer's appearance, the preparation of the transcript, and the non-party's copy of the transcript will be divided equally among all counsel who appear at the deposition, other than counsel for the non-party. Any party, other than the non-party's counsel, who requests a copy of the transcript shall bear the cost of that copy.

E. Videotaped Depositions

1. For the purpose of this section, the term videotaped depositions shall include videotaped trial testimony.

2. Any party, upon service of a proper notice of deposition, may videotape the depositions for any use permitted by the CPLR. All videotape depositions shall be conducted in accordance with 22 NYCRR 202.15, with the exceptions and stipulations set forth below:
 - a. If the party noticing for or scheduling a deposition wants the deposition to be videotaped, that party shall so advise all parties either in its notice of the deposition or by letter;
 - b. The video technician may not be an employee of any party or any party's counsel.
 - c. The videotaped deposition shall be taken before a person authorized by statute who will swear the deponent and make a stenographic record of the proceedings;
 - d. At the beginning of the deposition, the video technician will state, on camera, in addition to that required by Uniform Rule Section 202.15(d)(1): the title and venue of the action; the name of the deponent; and the name of the officer before whom the deposition is being taken.
3. Unless otherwise agreed to by counsel, videotaped depositions of deponents who have not been previously deposed in the pending action and who are not terminally ill may not be taken sooner than fifteen (15) days after completion of that witness' non-videotaped discovery deposition. Upon agreement of all counsel, this provision may be waived.
4. A videotape deposition of a terminally ill Plaintiff, who has previously submitted to a discovery deposition, and whose availability for trial may reasonably be doubted, may be promptly taken on notice and without further order of the Court provided that Plaintiff serves on all parties: a medical affidavit executed by a treating physician specifying Plaintiff's present diagnosis and prognosis and indicating any prescribed medication which would in any way affect Plaintiff's mental faculties and ability to understand and respond to questioning; and all other documents, requested by defense counsel, including, but not limited to, supplemental responses to Defendants'

Standard Interrogatories and all new medical records and reports in the possession of Plaintiff and Plaintiff's counsel. Plaintiff's counsel should confer with Defendants' Liaison Counsel to schedule the deposition with reasonable notice, giving due consideration to Plaintiff's medical condition. If notice of the deposition is given seven (7) days or less prior to the date when the deposition is to be taken, notice must be served by facsimile. In no event shall the taking of the videotape deposition be delayed more than ten (10) days from the date of receipt of Plaintiff's counsel certification and notice to take the videotape deposition, except with agreement of Plaintiff's counsel, or by order of the Court. Plaintiff's counsel shall permit Defendants to take a further discovery deposition for the purposes of obtaining non-repetitive testimony off-camera at Defendants' expense prior to the videotape deposition.

5. Unless all counsel agree otherwise or unless the Court on motion directs otherwise, only one camera may be used and the camera will record the witness' head and shoulders view only, with the exception that, at the request of questioning counsel, the camera may record a close-up of a deposition exhibit or other exhibit, including demonstrative exhibits, while the witness is being questioned concerning the exhibit.
6. All objections to questions and testimony given, at a videotaped deposition, except as to the form of the question, are preserved until the time of trial.
7. The cost of the videotape, as a material, and the cost of recording the deposition on videotape will be borne by the party noticing the videotaped deposition; that party shall have ownership of the videotape.
- 8.

X. Expedited Discovery and Trials for *In Extremis* Plaintiffs

A. When an injured Plaintiff is *in extremis*, Plaintiff's counsel may make application to the Court for an Order providing for a jury selection date and an expedited discovery and trial submission schedule, in accordance with CPLR Rule 3407. Any such application shall be served on all parties and/or prospective parties and in addition to the requirements of CPLR Rule 3407, shall

include and/or be accompanied by:

1. A medical affidavit executed by a treating physician specifying the injured Plaintiff's present diagnosis and prognosis and indicating any prescribed medication which would in any way affect the injured Plaintiff's mental faculties and ability to understand and respond to questioning.
2. A copy of the summons and complaint and any amended and/or supplemental summonses and complaints.
3. Plaintiff's responses to Defendants' Standard Interrogatories and to any supplemental interrogatories previously served;
4. All medical records and reports in the possession of Plaintiff and Plaintiff's counsel; and
5. All other documents in Plaintiff's or Plaintiff's counsel's possession relating to taxes, workers' compensation and social security

B. In the event that Plaintiff's counsel seeks to conduct videotaped trial testimony of the injured Plaintiff, Plaintiff's counsel will permit Defendants to conduct a discovery deposition prior to the videotaped trial testimony.

C. Plaintiff may not conduct videotaped trial testimony of an *in extremis* injured Plaintiff unless the materials set forth in Section X(A) have been provided to all defense counsel and defense counsel have completed their discovery deposition.

D. The parties will make a good faith effort to schedule the *in extremis* discovery deposition and videotaped trial testimony at mutually agreeable times and locations. All parties are encouraged to act reasonably concerning the scheduling.

XI. Motion Practice

A. General Provisions

Unless otherwise directed by the Court, all motions shall be made returnable in Monroe County.

B. Discovery Motions:

Parties will make a good faith effort to resolve all discovery disputes without the need for Court intervention. However, when a dispute cannot be resolved by the parties, a motion may be brought pursuant to the applicable provisions of the CPLR.

C. Accelerated Judgment:

Each party, at any time, has a right to seek or oppose an accelerated judgment pursuant to CPLR Sections 3211 and/or 3212. However, in an effort to avoid unnecessary motion practice and to streamline the conclusion of these cases, the Court hereby adopts the following process:

1. At any time, Plaintiff's counsel may notify a Defendant that, upon the review of a particular action, it appears unlikely that Plaintiff will be able to produce any evidence of Defendant's presence at a job site and/or identification of products containing asbestos manufactured, supplied or applied by that particular Defendant. Upon receipt of such notification, such Defendant may prepare and serve on Plaintiff's and co-Defendants' counsel a proposed order dismissing Plaintiff's claims and all cross-claims, giving notice to all parties of Defendant's intention to enter said order. If no party serves written objection to such proposed order within twenty (20) days of its service, the Defendant may submit the proposed order to the Court, with copies to all parties. If, within twenty (20) days of service of a proposed order and notice pursuant to this paragraph, any co-Defendant advises in writing that it intends to pursue in good faith its cross-claims against the submitting Defendant, that co-Defendant's cross claims and reflecting the revised caption, or may move for other or different relief.
2. Unless otherwise specified in the scheduling order, at any time after Plaintiff's service of Responses to Defendants' Standard Interrogatories and Requests for Production of Documents, or at any time after the date for Plaintiff's disclosure of job site and/or Product Identification, pursuant to a scheduling order, whichever is later, a Defendant may, in good faith, serve upon the Plaintiff a statement in writing that there is no evidence that the Defendant was present at any of the job sites identified by Plaintiff ("Job site Identification Letter") and/or that there is no evidence of product identification ("Product Identification Letter"). When a Product Identification Letter

and/or "Job site Identification Letter" is served, Plaintiff shall within 30 days, respond by:

- a. Advising the Defendant of the identities of co-worker(s) or other witness(es) who will testify concerning job site and/or product identification or specifying documents that will evidence job site and/or product identification, and in doing so, Plaintiff will not be precluded from presenting additional witnesses or documents at the time of trial so long as such witnesses or documents have been identified as required by the CPLR and/or this Order;
or
 - b. By advising the Defendant that no evidence of job site and/or product identification will be forthcoming, in which case, defendant may proceed to enter an order in accordance with Section XI(C)(1) of this Order.
3. In the event that a Plaintiff responds by advising Defendant of identities of co-workers and/or other witnesses, the Plaintiff must refer the Defendant to prior testimony substantiating job site and/or product identification or provide sworn affidavit(s) of the designated witnesses stating: (a) the job sites and the time period's, affiant was at the job sites; and (b) a summary of the anticipated testimony regarding the identification of products and the circumstances of injured Plaintiff's/decendent's exposure to the product.
 4. If Plaintiff fails to respond to Defendant's demand for job site and/or product identification, such Defendant is entitled to submit to the Court, on notice, an order dismissing Plaintiff's complaint against that Defendant. Plaintiff retains the right to be heard in opposition to the signing and entry of such an order by the Court, and also retains their right to oppose an accelerated judgment pursuant to CPLR Sections 3211 and 3212, or both.
 5. If, based upon Plaintiff's response to its Job site and/or Product Identification Letter, a Defendant desires to depose co-workers and/or other witnesses, such Defendant shall advise Plaintiff's counsel in writing. Noticing and/or scheduling of the depositions will proceed in accordance with Section IX of this Order.

6. When a Plaintiff discontinues an action against a Defendant, such Defendant may proceed in either of the following manners:
 - a. Such Defendant may serve written notice of the discontinuance upon all parties to the action and a proposed order dismissing all claims and cross-claims against it, giving notice to all parties of Defendant's intention to enter said order. If no party serves written objection to such proposed order within twenty (20) days of its service, the Defendant may submit the proposed order to the Court, with copies to all parties. If, within twenty (20) days of service of said proposed order and notice, a co-Defendant serves a written objection to dismissal on the ground that it intends to pursue in good faith its cross-claims against the Defendant obtaining the discontinuance, the Defendant's cross-claims may be converted to third-party claims in accordance with Section 1007 of the CPLR. The Defendant obtaining the discontinuance may then submit to the Court a revised order dismissing all claims and all cross-claims except those of the objecting co-Defendant and reflecting the revised caption, or may move the Court for other or different relief.
 - b. In the alternative, such Defendant may move for an order dismissing all claims and cross-claims against it in the action. The return date of such motion shall be at least twenty (20) days following service of said motion unless, by Order to Show Cause, the Court permits a shorter notice period. If no party serves written objection to such dismissal within twenty (20) days following service of such motion, or within such other time period as the Court may set, the motion will be granted and the moving Defendant may submit to the Court, with copies to all parties, an order dismissing all claims and cross-claims against it and deleting it from the action. If any party to the action serves written objection to such motion for dismissal within the applicable time period, the Court shall hear the motion and issue such order as is just.

XII. Scheduling of Trials and Discovery

At the Preliminary Conference, the Court will, issue Orders setting forth dates for filing of Notes of Issue and trials in actions pending in the 7JDAL in accordance with this Order. For the purpose of this section of this Order, the term "injured Plaintiff" is meant to refer to the individual who was allegedly injured by reason of exposure to asbestos and, when the Plaintiff is a personal or estate representative, is meant to refer to the decedent.

A. Trial Dates:

The Court will issue individual trial dates for asbestos actions pending in the 7JDAL. The Court may group for discovery and trial purposes: (1) actions of injured Plaintiffs, who were the direct employees of a legal entity at a plant site in the Seventh Judicial District (2) the action of an injured Plaintiff who alleges injurious exposure to asbestos by reason of kinship or cohabitation with the action of a related person who also has an action pending in the 7JDAL; and (3) other cases which under the circumstances would warrant discovery and/or trial grouping. Nothing in this Case Management Order shall be construed to prevent the Court from consolidating two or more actions in groups for trial. Nothing in this Case Management Order shall be construed to prevent the Court from directing the removal or severance of one or more Plaintiffs from a group for a trial.

B. Procedure for Scheduling Trial Dates:

At the Preliminary Conference, the Court will set a day certain trial date for each case or group of cases. In the event of a severance of one or more cases within a group, the cases with the earliest Index Numbers, together with other cases continued to be joined in the same group, will first proceed to trial, followed by the severed cases, in an order based upon the same procedure, unless otherwise ordered by the Court.

C. Schedule:

Following the Preliminary Conference, Liaison Counsel will meet and confer in order to develop a proposed Scheduling Order for each action assigned a trial date. Unless otherwise agreed upon, the Discovery and Trial Submission Schedule will be in the form and contain dates as set forth in Appendix H.

XIII. Pretrial Submissions

A. Pretrial submissions shall be served in accordance with the applicable discovery and trial submission schedule. Pretrial submissions include a list of all expert witnesses, fact witnesses and all exhibits that the parties intend to use at trial. Counsel shall have an opportunity to designate additional witnesses and exhibits in response to their adversaries' designations as set forth in the discovery and trial submission schedule or at some later time for good cause shown.

B. The trial judge shall make such further orders, deemed appropriate, for submission of proposed *voir dire*, requests for jury charges or other submissions. Additionally, the trial court shall direct a schedule for objections to exhibits or proposed deposition testimony, as necessary and as the Court so chooses.

C. Plaintiff's counsel shall deliver seventy (70) copies of the completed juror questionnaire (attached as Appendix I) to the appropriate county's Jury Commissioner *no later than* the Thursday before the commencement of jury selection.

D. All motions *in limine* shall be served in letter form. No transcripts or exhibits need be attached. Counsel may be required to provide additional information at the Court's discretion. In the instance where counsel seeks to serve expanded papers to support a motion on a truly novel issue, leave of Court shall be required in writing.

XIV. Settlements

A. Counsel attending specifically designated *settlement* conferences must have authority to settle their case or shall have persons with such authority available by phone during the conference.

B. If Plaintiff(s) and Defendant(s) stipulate to discontinue the action, the parties' counsel shall sign a Stipulation of Discontinuance, provide all parties with 20 days notice, thereof, and forward same to the Court, with an Order approving same, and providing that said discontinuance/dismissal is on the merits and applies to any and all cross-claims or counterclaims.

C. Any settlement of a wrongful death case will be subject to the approval of this Part, and shall be submitted to the designated Supreme Court Justice and no other Court or Judge. EPTL §5-4.6, as interpreted by the Court of Appeals, in *Pollincina v. Misericordia Hospital*, (82 NY2d 332 [1993]), requires the “Court to evaluate and resolve the fairness and reasonableness of the settlement, including the amount to be paid, the manner in which the payment obligation is amortized and the parties’ arrangements for payment of costs and attorney’s fees.”

Accordingly, within 60 days of resolution of all claims, in a pending wrongful death action, Plaintiff’s counsel must submit a proposed order for approval of the settlement, including an allowance for attorney’s fees and expenses. The papers, submitted in support of such application, should include an affidavit from the personal representative, consenting to the compromise on behalf of the distributees. In lieu of an affidavit, a personal representative may be produced, in person, for purposes of examination by the Court.

In addition, an affirmation from counsel should be submitted, setting forth the time expended and other bases for the requested amount of attorney’s fees and an itemized list of expenses. Further, the application should contain the specific amounts to be contributed by each Defendant, who has participated in the settlement, and the reasons for agreeing to accept such amounts. If a settlement has been reached with a Defendant for a total amount, which encompasses other, unrelated claims, Plaintiff’s counsel must set forth the manner and method used in the allocation of such amount among the respective cases. In the event that monies have been paid by a Defendant, such amounts are to be retained in an interest bearing trust account, maintained by Plaintiff’s counsel for the benefit of the distributees, and thereafter, disbursed only after approval by the Court, and in accordance with the Order.

D. If claims against one or more, but not all, Defendants are resolved by settlement, approval by the Court, as required herein, will be withheld until final resolution of all claims. Alternatively, the parties may request approval of settlement of one or more such claims as well as permission to disburse monies already or to be paid, prior to resolution of all claims, but only upon compliance with the foregoing requirements relating to approval following resolution of all claims. In such circumstances, the affirmation, submitted by Plaintiff’s counsel, should indicate the reasons for such request and, insofar as possible, an estimate of anticipated future proceeds.

E. An application, made pursuant to this section, may request issuance of an order approving the total amount of a settlement without an allocation between wrongful death and

other types of claims. In such event, and upon approval, the Court will refer the matter to the appropriate Surrogate's Court for purposes of making such allocation and directing distribution of the proceeds. Alternatively, Plaintiff(s) may request that the entire proceeds, or a portion, thereof, be allocated to the wrongful death claim. In such event, and upon approval, the Court may make a determination concerning the proper allocation for the wrongful death claim, and after making an allowance for payment of counsel fees and disbursements, direct a distribution of the net proceeds. Any portion of the settlement, which has not been allocated to the wrongful death claim, will be referred to the appropriate Surrogate's Court for approval and distribution.

F. An action, which has been resolved by settlement, following the filing of a Note of Issue and Certificate of Readiness, will remain on the trial calendar until compliance with the requirements of this section. Nevertheless, a case may be marked "Off" the calendar, and subject to restoration to the trial calendar, if counsel submits an application for, and the Court grants, preliminary approval of a settlement, pending a formal application for approval in compliance with the requirements of this section. Such application for preliminary approval must include a statement from Plaintiff's counsel, certifying that the personal representative has consented to the compromise, the specific amounts to be contributed by each Defendant, and a brief statement of the reasons for compromise of such amounts.

G. Upon the entry of any order, approving a settlement of a wrongful death claim under this section, counsel for Plaintiff(s) shall give written notice, thereof, to all counsel of record for Defendants who have agreed to pay monetary amounts in consideration of resolution of the claim.

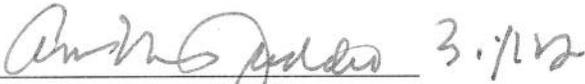
XV. Miscellaneous

The Court recognizes that cooperation among counsel and parties is essential for the orderly and expeditious resolution of this litigation. The communication of information among the Plaintiff's counsel, among defense counsel, and among Defendants shall not be deemed a waiver of the attorney-client privilege, the protection afforded by the attorney work-product doctrine, or any other privilege to which a party may be entitled. Any cooperative efforts described above shall not, in any way, be used against any of the parties, shall not constitute evidence of conspiracy, concerted action, or any wrongful conduct, and shall not be communicated to the jury. The exchange of information or documents by counsel will not, by

itself, render such information or documents privileged.

The failure to comply with any provision contained in this Order, or subsequent Scheduling Order, either upon a party's motion or the Court's own motion, may result in a case being marked Off the calendar, preclusion, dismissal, the imposition of costs or sanctions, or other appropriate remedy.

SO ORDERED.



Hon. Ann Marie Taddeo
Supreme Court Justice