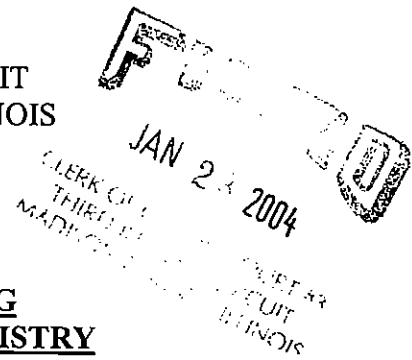


THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS



IN RE: ALL ASBESTOS LITIGATION)
FILED IN MADISON COUNTY)

**ORDER ESTABLISHING
ASBESTOS DEFERRED REGISTRY**

A. Findings of Fact and Conclusions of Law

1. This Court has the inherent power to control cases on its docket and to order the trial or disposition of these cases in a manner consistent with an economical allocation of judicial resources and the parties' interests.

2. This Court has over seventeen (17) years of experience managing asbestos cases, and has conducted numerous trials involving the cause, development and consequences of latent diseases that occur due to exposure to asbestos.

3. This Court is currently managing a particularly high volume of asbestos malignancy cases. The demands created by those cases make it important for the Court to manage its resources judiciously.

4. A substantial number of asbestos personal injury cases filed in Madison County involve plaintiffs who claim exposure to asbestos, but who are not now physically impaired. In some of these cases, an asbestos-related condition resulting in physical impairment of the plaintiff may develop, but in many cases, the disease process will not progress to physical impairment.

5. Plaintiffs and their attorneys have filed many lawsuits that do not involve any present impairment because they reasonably believe that the statute of limitations would expire before their conditions progressed to a stage of actual physical impairment.

6. Defendants have expended substantial sums in appearing, engaging in pretrial discovery, and defending against claims which do not involve physical impairment. In fact, over 600 non-malignant cases were on the trial docket in Madison County in 2003, many of which involved no physical impairment. Many defendants with strained and depleted resources have expressed a preference to allocate those scarce resources to malignancy cases.

7. This Court has been advised of methods employed by other courts in the United States in their efforts to manage large numbers of asbestos cases and conserve judicial resources. In particular, this Court has been advised that courts in Cook County, Illinois, Baltimore City, Maryland, New York City, New York, the states of Massachusetts and Connecticut, and the U.S. District Courts for the Eastern District of Pennsylvania and the Northern District of Illinois have deferred discovery and trial in claims involving asbestos-related conditions which do not involve actual impairment. This Court has also been advised that in 2003, the American Bar Association adopted a Standard for Non-Malignant Asbestos-Related Disease Claims after an ABA commission interviewed a cross-section of experts in the area of asbestos-related conditions and diseases.

8. Motions for an Asbestos Deferred Registry have been before the Court since March 2003. At a hearing in December 2003, arguments and objections regarding a deferred registry were heard, during which substantial portions of the Madison County bar representing asbestos claimants either supported the creation of a registry or did not actively oppose one. This Court then set the motion for final hearing on January 23, 2004.

9. Commensurate with its inherent authority to control its docket, this Court has the authority to place certain claims or potential claims in a deferred status until such time that the claim is appropriate for judicial attention and relief. The Court finds that an asbestos deferred registry under the terms set forth herein is justified to control its docket and to manage cases involving asbestos-related conditions that have not progressed to a stage of actual impairment.

10. Part of the rationale for deferring the allocation of limited judicial resources to non-impaired asbestos cases is the high volume of asbestos malignancy cases currently being managed by this Court. If the volume of asbestos malignancy cases changes, then the Court reserves the right to reevaluate whether non-malignancy cases will be allocated priority trial time.

11. The placement of a deferred claim on the Court-supervised registry [to be known as the Asbestos Deferred Registry (or the "Registry")], and notice (as defined herein) to such persons or entities who may be subject to suit at a later date constitutes public notice to such persons that is sufficient to satisfy the "commencement" requirements embodied in the statutes of limitations, e.g., 735 ILCS 5/13-202 (1992), 735 ILCS 5/13-203 (1997 Supp.), and 735 ILCS 5/13-209 (1992), the product liability statute of repose, 735 ILCS 5/13-213 (1992), and the construction statute of repose, 735 ILCS 5/13-214 (1992).

12. This Order is entered over the objection of Goldenberg, Miller, Heller & Antognoli, P.C. in Edwardsville, Illinois.

13. In accordance with the aforesaid Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the "Asbestos Deferred Registry" ("Registry") is established as of the date of entry of this Order, as a repository for claims for unimpaired nonmalignant asbestos-related personal injury filed on or after December 1, 2003.

IT IS FURTHER ORDERED that the Asbestos Deferred Registry is intended as a device to administer and direct the handling of claims for unimpaired nonmalignant diseases allegedly caused by exposure to asbestos. This Registry shall not affect the manner in which claims for asbestos-related malignancies, or asbestosis or diffuse pleural thickening with impairment, are filed and prosecuted. This Registry shall also not affect claims against railroad defendants alleging asbestos injury brought under the Federal Employees Liability Act.

IT IS FURTHER ORDERED that this Registry shall be administered by the Judges and Clerk of the Third Judicial Circuit, Madison County, Illinois pursuant to such terms and provisions as follow.

B. Filings on Registry

1. *Master File:* The Clerk's office shall maintain a separate Court file for "ALL CLAIMS ON THE ASBESTOS DEFERRED REGISTRY." Parties filing pleadings relating to general issues which are not unique to an individual claim shall be filed in "ALL CLAIMS ON THE ASBESTOS DEFERRED REGISTRY."

2. *Listing of Claims:* The Clerk's office shall maintain a master list of all claims on the Registry which shall be kept in the master file. The Clerk's office shall place all non-malignant asbestos claims on the master list until such time as the Court orders their removal from the Registry.

3. *Caption:* The caption of all non-malignant claims shall include the words "ASBESTOS DEFERRED REGISTRY" immediately under the cause number (See the captions of Exhibits A & B attached to this Order). The caption for all notices, motions

and orders pertaining to claims on the Registry shall also include the words "ASBESTOS DEFERRED REGISTRY" immediately under the cause number.

4. *Designation of Defendant's Counsel:* Within ten (10) days of the entry of this Order, each Defendant who is presently a party in any currently filed asbestos lawsuit in Madison County shall, using the "ALL CLAIMS ON THE ASBESTOS DEFERRED REGISTRY" caption, file with the Clerk of the Court a designation by name, address and title, of the person who is to be served with documents and filings made in accordance with this Order. The designation shall be served upon all Defendants' counsel and all Plaintiffs' counsel with whom they have present claims pending. Notice of any changes of counsel shall promptly be given to the Clerk and to all counsel.

5. *Service:* Whenever the provisions of this Order require that counsel make service of the specified material, counsel shall file the original document with the Clerk of the Court, and shall include with such filing a Certificate of Service which shows the names, addresses and dates of service upon all other persons.

If the document is filed by the Claimant, counsel shall serve a completed and legible copy of the document filed upon each Defendant's designee by first-class mail.

If the document is filed by a Defendant, counsel shall serve a complete and legible copy of the document filed upon the Claimant (or Claimant's counsel) by first-class mail.

6. *Dissolved Corporations:* Notices regarding the expiration of the five-year statute of limitations for dissolved corporation pursuant to the Business Corporation Act of 1983, 805 ILCS 5/12.80, as amended, or the dissolution statutes of other jurisdictions, may be filed using the "ALL CLAIMS ON THE ASBESTOS DEFERRED REGISTRY" caption. Proper filing of such notice constitutes notice to all Claimants' counsel

participating in the Registry that said corporation is no longer a viable Defendant, and may not be named in any claims added to, or current claims removed from, the Registry.

7. *Effect of Signature:* Illinois Supreme Court Rule 137 shall apply to all papers filed by counsel or parties in connection with the Registry.

8. *Multiple Claims:* All filings shall be on an individual basis. No claims on behalf of a group or class of claimants shall be permitted.

C. Transfer of Present Claims to the Registry

1. Within ninety (90) days from the date of entry of this Order, each Plaintiff's attorney with non-malignant claims filed on or after December 1, 2003 and prior to entry of this Order in the Third Judicial Circuit, Madison County, Illinois, shall file with the Clerk of the Court (along with a certificate of service) and serve upon Defendants' counsel a listing of all such claims, except for those which allege an asbestos-related cancer or mesothelioma. The listing shall be filed using the "ALL CLAIMS ON THE ASBESTOS DEFERRED REGISTRY" caption. The listing of such claims shall be organized as follows:

(a) A general listing of all such claims, alphabetically by last name, and for each claim providing also first name, date of filing, cause number, a listing of Defendants named and served, exposure period, and asbestos-related condition alleged to exist, and

(b) A "Claimant Registry Form—Present Claim," in the format attached hereto as Exhibit A, for all such claims, and

(c) A draft order transferring to the Asbestos Deferred Registry each such claim.

(d) For each claim alleged by the Plaintiff to be eligible for removal from the Registry, the documentation set forth in Paragraph E below is required to support removal. All claims for which no request or documentation for removal is submitted shall remain on the Registry.

(e) All present lawsuits in which an asbestos-related cancer or mesothelioma is alleged shall remain on the active docket. All present lawsuits filed before December 1, 2003 in which a non-malignant asbestos disease is alleged shall remain on the active docket.

2. Within thirty (30) days of the Plaintiffs' counsel's submissions pursuant to Paragraph C.1.(d) to the Defendants' counsel, any objecting Defendant may file with Plaintiff's counsel and the Clerk of the Court a submission which states in no more than one page per claimant, any objections Defendant has concerning whether each Claimant alleged by Plaintiff's counsel to be eligible for removal from the Registry meets the criteria established herein for removal. The Court will decide any disagreements on the papers thus submitted, and will issue an order determining which claims are removed from the Registry. Hearings will be conducted only if the Court, in the exercise of its discretion, grants any party's request for a hearing. All other claims filed on or after December 1, 2003 and prior to entry of this Order will remain on the Registry but are subject to removal in the future if the other criteria established in this order are satisfied.

3. All non-malignant claims filed on or after December 1, 2003 and prior to entry of this Order that remain upon the Registry after the proceedings described in Paragraphs C.1 and C.2 above shall be considered "inactive" upon the conditions and with the reservations of rights contained in Paragraph D of this Order. All applicable statutes of limitations as to such cases shall be considered tolled as of the original date of

filing to the extent of the alleged asbestos-related claims alleged in the pleadings up to that time, and as to the Defendants named up to that time.

D. Placement of Future Claims on Registry

1. *Procedure*

(a) All asbestos-related claims shall begin with a complaint properly filed and duly served on all defendants, including all defendants added after the filing of the original complaint. All filing fees and all other fees associated with the filing of a complaint shall be paid at the time of the filing of the complaint.

(b) All claims involving non-malignancy shall be placed upon the Registry, and shall remain on the Registry unless and until removed in accordance with the procedure established herein.

(c) A plaintiff may file a Request for Removal at the time of filing of the complaint or anytime thereafter.

(d) No answers are due or defaults permitted until such time as the case is removed from the Registry pursuant to Paragraph E below. Defendants shall not have to appear until a case is removed. Defendants shall have thirty (30) days from receiving notice of the removal to appear and file a responsive pleading.

(e) Claims on the Registry are exempt from discovery provisions of the Illinois Supreme Court Rules, the Illinois Rules of Civil Procedure and the Rules of the Third Judicial Circuit, Madison County, Illinois and they shall not "age" for any purpose.

E. Removal of Claims From Registry

1. Procedure: Claims may be removed from the Registry in only the following ways:

(a) A Claimant may be voluntarily dismissed from the Registry upon the filing of a Motion by the Claimant's attorney which states that the Claimant is dismissing his/her claims.

(b) A Claimant may file a Request for Removal in conjunction with a lawsuit alleging one of the diseases meeting minimum criteria for removal from the Registry. The Request shall be in the form attached hereto as Exhibit B along with all medical reports, B-Read reports, and pulmonary function test reports (as set forth in Paragraph E.4) which support the Claimant's Request for Removal. The Request shall be filed in accordance with the Service provisions in Paragraph B.3 of this Order, and shall be served upon other parties at the time suit is filed. No additional fees will be assessed upon a Claimant's exit from the Registry.

(c) Upon motion of a Claimant and notice to all Defendants, the Court may, in special circumstances and for good cause shown, permit a Claimant who meets the criteria for removal from the Registry to remain on the Registry.

2. Within thirty (30) days of a Claimant's filing of a Request for Removal, any objecting Defendant may file with Claimant's counsel and the Clerk of the Court a submission which states in no more than one page per Claimant, any objections Defendant has concerning whether each Claimant alleged by Claimant's counsel to be eligible for removal from the Registry meets the criteria established herein for removal. The Court will decide disagreements on the papers thus submitted, and will issue an order determining

which claims are removed from the Registry. Hearings will be conducted only if the Court, in the exercise of its discretion, grants any party's request for a hearing.

3. Definitions:

(a) "Board-certified pulmonologist" means a physician currently actively licensed to practice medicine in one or more of the States of the United States who is currently actively certified by the American Board of Internal Medicine in the Subspecialty of Pulmonary Medicine.

(b) "Currently certified B-reader" means an individual who has successfully completed the National Institute for Occupational Safety and Health ("NIOSH") – sponsored x-ray interpretation course and whose NIOSH-certification is up-to-date.

(c) "ILO grade" shall refer to the radiological ratings of the International Labor Office set forth in "Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconiosis" (1980).

(d) "Chest x-rays" means chest films taken in four view (PA, Lateral, Left and Right Oblique) that are graded quality 1 for reading according to the ILO criteria.

(e) "Pulmonary Function Testing" shall refer to spirometry, lung volume testing and diffusing capacity testing which conform to quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which meets ATS standards for technical quality and calibration, all as set for the in 20 C.F.R. 718.103 and Appendix B thereto or in the ATS' guidelines in 144 American Review of Respiratory Disease 1202-18 (1991). Each subject must be tested with and without inhaled bronchodilators, with best values taken. Predicted values for

spirometry and lung volumes shall be those published by Morris, Clinical Pulmonary Function Testing, 2d Edition, Intermountain Thoracic Society (1984). Predicted values shall be corrected for race or ethnic origin as appropriate.

4. Criteria: The minimum criteria for exiting the Registry pursuant to Paragraph E.1.(b) are as follows:

- (a) An Asbestos-Related Malignancy; or
- (b) Satisfaction of the ABA Standard For Non-Malignant Asbestos-Related Disease Claims (2003) as evidenced by a detailed narrative Medical Report and Diagnosis signed by the diagnosing doctor, which verifies all of the following:

- (i) That the doctor or a medical professional employed by and under the direct supervision and control of the diagnosing doctor has taken:

- 1) A detailed occupational and exposure history from the person ("claimant") whose alleged injury forms the basis for the action or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis for the action. The history shall include all of the principal employments and exposures of the claimant involving exposures to airborne contaminants. It should indicate whether each employment involved exposure to airborne contaminants (including, but not limited to, asbestos fibers, and other disease causing dusts) that can cause pulmonary impairment and the nature, duration, and level of any such exposure; and

2) A detailed medical and smoking history that includes a thorough review of claimant's past and present medical problems, and their most probable cause.

(ii) That at least 15 years have elapsed between the claimant's first exposure to asbestos and the time of diagnosis.

(iii) That the claimant has:

1) A quality 1 chest x-ray taken in accordance with all applicable state and federal regulatory standards (in a death case where no pathology is available, the necessary radiological findings may be made with a quality 2 film if a quality 1 film is not available), and that the x-ray has been read by a certified B-reader according to the ILO system of classification as showing bilateral small irregular opacities (s, t, or u) graded 1/0 or higher or bilateral diffuse pleural thickening graded b2 or higher including blunting of the costophrenic angle; or

2) Pathological asbestosis graded 1(B) or higher under the criteria published in the *Asbestos-Associated Diseases*, Special Issue of the Archives of Pathology and Laboratory Medicine, Volume 106, Number 11, Appendix 3 (October 8, 1982).

(iv) That the claimant has asbestos-related pulmonary impairment as demonstrated by Pulmonary Function Testing, performed using equipment, methods of calibration and technique that meet the criteria incorporated in the AMA Guides to the Evaluation of Permanent Impairment (5th Ed.) and reported as set forth in 20 CFR 404, Subpt.P, App 1, Part (A)

§3.00 (E) and (F), and the interpretative standards set forth in the Official Statement of the American Thoracic Society entitled "Lung Function Testing: Selection of Reference Values and Interpretative Strategies" as published in Am. Rev. Resp. Dis. 1991:144:1202-1218 that shows:

1) Forced Vital Capacity below the lower limit of normal and FEV1/FVC ratio (using actual values) at or above the lower limit of normal; or

2) Total Lung Capacity, by plethysmography or timed gas dilution, below the lower limit of normal.

3) Where the Pulmonary Function Test results do not meet the requirements set forth in Paragraph E.3.(b)(iv)1 or E.3.(b)(iv)2, a claimant may submit an additional report, by a board certified pulmonologist, internist or occupational physician that states:

a) That the doctor has a doctor/patient relationship with the claimant; and

b) That the claimant has a quality 1 chest x-ray taken in accordance with all applicable state and federal regulatory standards (in a death case where no pathology is available, the necessary radiological findings may be made with a quality 2 film if a quality 1 film is not available), and that the x-ray has been read by a certified B-reader according to the ILO system of classification as showing bilateral small irregular opacities (s, t, or u) graded 2/1 or higher; and

c) That the claimant has restrictive impairment from asbestosis and set forth in detail the specific pulmonary function test findings that the doctor relies upon to establish that the claimant has restrictive impairment; and

d) That the physician shall submit the reports and readouts from all pulmonary function, lung volume, diffusing capacity or other testing relied upon for the report's conclusions. Such tests must comply with the equipment, quality and reporting standards set forth herein.

(v) That the doctor has concluded that the claimant's medical findings and impairment were not more probably the result of other causes revealed by claimant's employment and medical history.

F. Miscellaneous Provisions

1. This Order is intended to apply to claims for which the Third Judicial Circuit, Madison County, Illinois is likely to be the most convenient forum for ultimate adjudication of any civil action.

(a) *No Waiver*: No waiver of forum non conveniens defenses shall arise from the non-assertion of the doctrine against a claim on the Registry before its conversion to a civil action. The pendency of claim on the Registry shall not constitute a factor in favor of Madison County as a forum in the resolution of any forum non conveniens motion.

(b) *Orders granting forum non conveniens motions*: The Court retains its discretion as to conditions, if any, that will be imposed in an order granting a forum non conveniens motion as to a claim on the Registry. Orders granting forum

non conveniens motions will, however, usually be conditioned on the Defendants' agreement to waive any statute of limitations defense which argues that statutes of limitation were not tolled while the claim was on the Registry.

2. The terms "impaired," "impairment," and "asbestos-related" are used herein solely as a means of separating claims and ordering them for disposition. The use of these terms in the context of this Order shall not be deemed to be a finding or admission that any physical conditions or changes are, or are not, asbestos-related in a legal or factual sense, and shall not constitute a basis for finding of liability against any person.

3. The use and adoption by the Court of any standard measurement for testing, or the reporting of test results, shall not be deemed a final and conclusive adoption or endorsement of that particular standard by the court or any counsel, nor the rejection of any competing or alternative standard, but reflects only the selection of a reasonable and consistent system to help ensure that uniform standards are maintained as between individual claims.

4. The fact that a Claimant satisfies the removal criteria for non-malignant lung disease shall not be construed to be an admission that he has asbestosis, nor shall the removal criteria be cited, referred to or otherwise use in the trial of any case as diagnostic criteria for the determination of whether a Plaintiff, in fact, has asbestosis. Such criteria are established only to determine when a Claimant may convert a Registry claim into an active lawsuit.

5. Neither the filing by any Defendant of any papers regarding an objection to a Claimant's request to be removed from the Registry, nor the appearance by any Defendant at a hearing in connection with such a request, shall be deemed an "appearance" submitting to the Court's jurisdiction in the event the claim is placed on the active docket.

6. Acting pursuant to this Order shall not be considered a Defendant's admission of liability nor a Claimant's admission that he or she is not suffering any injury or disability from an asbestos-related condition.

7. The existence of the Registry, and the fact that a claim was placed on the Registry, shall not be admissible in any subsequent case, except for the limited purpose of a judge determining whether the provisions of the Registry Order were complied within that particular case, or for considering whether a claim is time-barred.

8. Failure to give proper notice to any Defendant of placement of a claim on the Registry shall not toll the statutes of limitations or repose as to that defendant. A Defendant who has received proper notice of placement of a claim on the Registry may assert any objections it may have had to removal from the Registry after the complaint has been filed and served.

9. The existence of the Registry and the fact that a claim was placed on the Registry or is eligible to be placed on the Registry shall not serve as a basis to allow any Plaintiff or any Defendant to void or withdraw from any settlement of any present claim which was reached or agreed to on or before the Date of entry of the Order.

10. This Order shall be severable and if any portions of this Order are stricken or modified on appeal, it shall not diminish the effectiveness of this Order.

11. Any amendments to this Order shall be prospective only.

12. The terms of this Order may not be modified except by a stipulation signed by all parties and entered by the Court, or by the Court following notice to all parties of record.

13. This Order shall be published and its provisions shall be incorporated into and made a part of the rules of the Third Judicial Circuit, Madison County, Illinois and the

unless the Court finds, in the interest of justice, that such amendments shall have retroactive application
MJ

Madison County Standing Order. Notice of any proposed amendments to this Order shall also be published. In the event the Court orders that personal notice of any amendments, late court orders or other matters to any claimant is required, service by the Clerk by U.S. Mail to Claimant's attorney, or if no attorney is listed, to the last known address of the Claimant as stated on the Registry form, shall constitute sufficient service. Copies of this order and any amendments shall be available in the Clerk's office and the office of the judge presiding over the asbestos-related personal injury cases.

14. Plaintiff may at any time dismiss without prejudice his or her action or any part thereof as to any defendant.

15. A claimant may amend the Complaint after the claim is placed on the Registry.

SO ORDERED:

January 23, 2004
DATE

Nicholas M. Byron
JUDGE

THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Claimant,)
)
)
v.) Cause No. _____
) ASBESTOS DEFERRED REGISTRY
)
Defendants.)

CLAIMANT REGISTRY FORM — PRESENT CLAIM

1. Claimant's Name: _____
2. Case Number: _____
3. Claimant's Date of Birth: _____
4. Claimant's Social Security Number: _____
5. Claimant's Current Address: _____
6. Claimant's Statement of Exposure: I believe that I was occupationally exposed to asbestos-containing materials during the years ____ to ____ in the course of my employment as a _____ during which years I worked as a (trade or occupation) member of Local # _____ of the _____ (Union)
7. Claimant's Statement of Injury: On _____, ____, I was informed by Dr. _____ that I have the following medical evidence of non-malignant, physical changes due to asbestos exposure. Chest x-ray dated ____/____/____ revealed:
 - a. Pleural plaques Yes No
Pleural thickening Yes No
Parenchymal abnormalities Yes No
Profusion rating ____/____
 - b. If profusion 1/0 or greater, or B2 or greater, list pulmonary function test results:
Test Date: ____/____
TLC ____ DLCO ____ FEV-1 ____ FVC ____ FEV-1/FVC ____

Date

Registrant's/Attorney's Signature

Exhibit A

THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Claimant,)
v.) Cause No. _____
Defendants.) ASBESTOS DEFERRED REGISTRY

Request for Removal from Asbestos Registry

1. Claimant's Name: _____
Last First Middle
2. Date original Claimant Registry Form was filed (if applicable):

3. I hereby request removal of the above-captioned claim from the Registry.
4. The specific asbestos-related condition(s) claimed is/are:

5. The reasons for this request are as follows (here state the specific reasons for removal, specifying which criteria have been satisfied):

6. The following documentation required by the Registry Order is attached hereto in support of this request:

dated _____

dated _____

dated _____

dated _____

Date

Registrant's/Attorney's Signature

Attorney ID No.
Attorney's Name
Address