

IN RE

ASBESTOS LITIGATION

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

11TH JUDICIAL DISTRICT

**SPECIAL CASE MANAGEMENT ORDER REGARDING
DISMISSAL PROCEDURES UNDER SECTION 90.010**

H.B. No. 1325, signed by the Texas Governor on May 24, 2013, amends certain provisions of Chapter 90 of the Texas Civil Practice & Remedies Code concerning the dismissal of asbestos-related claims. Specifically, Section 90.010 of the Texas Civil Practice and Remedies Code was amended by amending Subsection (d) and adding Subsections (d-1), (l), (m), (n), and (o). These sections read as follows:

(d) In an action that was pending on August 31, 2005, that was transferred to and remains pending in an MDL pretrial court, the MDL pretrial court shall not remand such action for trial unless:

(1) the claimant serves a report complying with Section 90.003 or 90.004; or

(2)(A) the claimant does not serve a report that complies with Section 90.003 or 90.004;

(B) the claimant serves a report complying with Subsection (f)(1);
And

(C) the court, on motion and hearing, makes the findings required by Subsection (f)(2).

(d-1) Beginning on September 1, 2014, the MDL pretrial court shall dismiss each action for an asbestos-related injury or a silica-related injury that was pending on August 31, 2005, unless a report was served on or after September 1, 2013, that complies with Section 90.003, Section 90.004, or Subsection (f). The MDL pretrial court shall provide for the dismissal of such actions in a case management order entered for that purpose. All such actions shall be dismissed on or before August 31, 2015.

(l) A dismissal under Subsection (d-1) is without prejudice to the claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury or a silica-related injury.

FILED

Chris Daniel
District Clerk

DEC 20 2013

9:21 AM

Harris County, Texas

Deputy

Time:

By

(m) This chapter and Section 16.0031 apply to a subsequent action for an asbestos-related injury or a silica-related injury filed by a claimant whose action was dismissed under Subsection (d-1) or by a claimant in an action described by Subsection (d) who voluntarily dismissed the action under Section 90.008.

(n) If a claimant subsequently refiles an action for an asbestos-related injury or a silica-related injury that was dismissed under Subsection (d-1), the refiled action is treated for purposes of determining the applicable law as if that claimant's action had never been dismissed but, instead, had remained pending until the claimant served a report that complied with Section 90.003, Section 90.004, or Subsection (f).

(o) A claimant whose action was dismissed under Subsection (d-1) may serve the petition and citation for any subsequently filed action for an asbestos-related or silica-related injury by certified mail, return receipt requested, or other method approved by the MDL pretrial court that is likely to accomplish service in a cost-effective manner, on a person who was a defendant in the dismissed action.

These statutory provisions took effect on September 1, 2013.

Section 90.010 (d-1) directs this Court to adopt a case management order for the purpose of dismissing asbestos-related claims in accordance with the statute.

After considering the proposals of the Plaintiffs and Defendants and after hearing the arguments of counsel, the Court enters the following ORDER for the purpose of dismissing asbestos-related claims under Section 90.010 of the Texas Civil Practice & Remedies Code.

IT IS ORDERED THAT:

1. Beginning on September 1, 2014, this Court will begin dismissing actions for asbestos-related injuries that were pending on August 31, 2005, unless a report was served on or after September 1, 2013, that complies with Section 90.003, Section 90.004, or Subsection (f).

2. To assist the Court in dismissing claims under Section 90.010(d-1), Defendants through the defense steering committee shall provide the Court and claimants' counsel a spreadsheet in Microsoft Excel format containing the following information, when reasonably available:

(a) the name of the claimant and the last four numbers of claimant's social

- security number and, if applicable, the name of the claimant's representative;
- (b) the name of claimant's current counsel, if any;
- (c) the date the claimant's action was originally filed, including the original case style, court, and cause number; and
- (d) the MDL cause number, including the date the action was transferred to the MDL pretrial court and its status as of August 31, 2005.

Claimants' counsel shall have 60 days from receipt of this spreadsheet to (1) confirm the accuracy of the information contained therein and make all additions or connections, and (2) notify the defense steering committee via email that the spreadsheet was accurate or provide a corrected spreadsheet. After review by counsel for claimants and defendants, the final spreadsheet with a proposed list of claims to be dismissed shall be submitted to the Court. The Court will rely on the final list to identify claims to be administratively dismissed pursuant to 90.010 (d-1).

3. Orders of dismissal will be entered at regular Friday docket hearings in the Asbestos MDL. Prior to dismissing a claim under Section 90.010 (d-1), the Court will (1) provide notice by posting on Lexis/Nexis in the In Re (Cause No. 2004-03964) a list of claims intended to be dismissed at least sixty (60) days before the dismissal hearing; and (2) by sending by certified and regular mail, to the last known address of each *pro se* plaintiff, written notice that his/her claim is set for dismissal at a specified hearing (with date, time and location). Such notice will be sent no less than sixty (60) days before the scheduled hearing. The forms of notice for (1) and (2) are attached as Exhibits A and B to this order.

4. After receipt of notice of intent to dismiss under Section 90.010 (d-1), a plaintiff may request a continuance of the dismissal for 45 days. Such requests shall be liberally granted. If an inactive claimant has not activated her or his case by December 1, 2014, the Court will not grant an extension to provide a compliant report past the sixty (60) days notice except by a showing of good cause.

5. An order of dismissal shall be entered by this Court if the requirements of Section 90.010 (d-1) are established to the Court's satisfaction. The form of the Order of Dismissal is attached hereto as Exhibit C to this order.

6. Claimants intending to "activate" claims that were inactive shall file motions to sever so that only single-plaintiff claims (and associated consortium claims) are eligible to be activated. Once severed, the filing of a Chapter 90 report along with the "Notification of Service of a Complying Report" as required by the Third Amended CMO, will be required to "activate" any inactive claims.

7. Service of a re-filed action may be by certified mail return receipt requested or other method approved by the MDL pretrial court that is likely to accomplish service in a cost-effective manner on a person who was a defendant in the dismissed action. The MDL pretrial court approves email service and defendants are encouraged to accept service via email. Failure to respond to email service will not be grounds for a default judgment. A default judgment will not be taken based on email notification only.

8. If a Claimant subsequently re-files an action for an asbestos-related injury that was dismissed under Section 90.010 (d-1), the action shall be treated for purposes of determining the applicable law as if Claimant's action had never been dismissed but, instead, had remained pending until Claimant served a report that complied with Section 90.003 or Section 90.010(f).

9. The Harris County District Clerk will notify the District Clerk of the originating court of the dismissal of the action.

10. The Court envisions the potential need for entering an In Re Order to complete the closing of the inactive docket on or before September 1, 2015. The form of this order will be

determined by the court at a later date.

11. All parties will work together to comply with the provisions of this order as reasonably practicable to execute the intent of the legislative action for the dismissal of the inactive cases subject to Texas Civil Practice & Remedies Code 90.010 (d).

SIGNED this 20th day of December, 2013.

A handwritten signature in black ink, appearing to read 'Mark Davidson', is written over a horizontal line.

Honorable Mark Davidson
MDL Pretrial Judge

EXHIBIT "A"

MDL Cause No. _____

§ In the District Court of
§
§ Harris County, Texas
§
§ 11th Judicial District
§

Transferred from

Cause No. _____

§ In the District Court of
§
§ _____ County, Texas
§
§ _____ Judicial District
§

***NOTICE OF INTENT TO DISMISS
UNDER SECTION 90.010 (d-1), TEX.CIV.PRAC & REM.CODE***

Please be advised that on _____, this court intends to issue an order of dismissal pursuant to Section 90.010 (d-1). In the following matters:

_____; _____; _____
Injured party Case name/style Counsel of Record

The Court finds that Claimant's lawsuit for asbestos-related claims was pending on August 31, 2005 and is now before the MDL pre-trial court. The Court further finds that no report was served on or after September 1, 2013, that complies with Section 90.003, or Subsection 90.010(f). The Court further finds that the requirements for administrative dismissal under Section 90.010(d-1), of the Texas Civil Practice & Remedies Code, have been satisfied.

Date

Honorable Mark Davidson,
Asbestos MDL Judge

EXHIBIT "B"

MDL Cause No. _____

§ In the District Court of
§
§ Harris County, Texas
§
§ 11th Judicial District
§

Transferred from

Cause No. _____

§ In the District Court of
§
§ _____ County, Texas
§
§ _____ Judicial District
§

***NOTICE OF INTENT TO DISMISS
UNDER SECTION 90.010 (d-1), TEX.CIV.PRAC & REM.CODE***

Please be advised that on _____, at 9:30 a.m. in the
MDL Court located in the Harris County Courts Building, 201 Caroline, Houston, Texas, 8th
Floor; the Honorable Mark Davidson, MDL Asbestos judge, intends to dismiss the claims of
_____ filed in an action styled
_____.

The Court has been advised that this claimant is not represented by counsel. This notice of dismissal is being given as the Court finds that Claimant's lawsuit for asbestos-related claims was pending on August 31, 2005 and is now before the MDL pre-trial court. The Court further finds that no report was served on or after September 1, 2013, that complies with Section 90.003, or Subsection 90.010(f). The Court further finds that the requirements for administrative dismissal under Section 90.010(d-1), of the Texas Civil Practice & Remedies Code, have been satisfied.

You have been given notice of the intent to dismiss this action on the above referenced
date.

Date

Honorable Mark Davidson,
Asbestos MDL Judge

EXHIBIT "C"

MDL Cause No. _____

§ In the District Court of
§
§ Harris County, Texas
§
§ 11th Judicial District
§

Transferred from

Cause No. _____

§ In the District Court of
§
§ _____ County, Texas
§
§ ____ Judicial District
§

ORDER OF DISMISSAL
UNDER SECTION 90.010 (d-1), TEX.CIV.PRAC & REM.CODE

This Order applies to:

Injured party: _____

Date claim was originally filed: _____

The Court finds that Claimant's lawsuit for asbestos-related claims was pending in the on August 31, 2005 and is now before the MDL pre-trial court. The Court further finds that no report was served on or after September 1, 2013, that complies with Section 90.003, or Subsection 90.010(f). The Court further finds that the requirements for administrative dismissal under Section 90.010(d-1), of the Texas Civil Practice & Remedies Code, as amended by act of the Legislature _____ 2011, have been satisfied.

It is therefore ORDERED that:

1. Claimant's asbestos-related claims brought in the above-referenced lawsuit are hereby dismissed without prejudice to Claimant's right to file a subsequent action seeking damages arising from an asbestos-related injury.

2. Defendants to this lawsuit are hereby, in all things, dismissed without prejudice.

3. If Claimant subsequently refiles an action for an asbestos-related injury that was dismissed under Section 90.010 (d-1), the refiled action shall be treated for purposes of determining the applicable law as if Claimant's action had never been dismissed but, instead, had remained pending until Claimant served a report that complied with Section 90.003 or Section 90.010(f).

4. A claimant who refiles an action dismissed under Subsection (d-1) may serve the petition and citation for any subsequently filed action for an asbestos-related injury by certified mail, return receipt requested, or other method approved by the MDL pretrial court that is likely to accomplish service in a cost-effective manner, on a person who was a defendant in the dismissed action.

SIGNED this the _____ day of _____, 20____.

Honorable Mark Davidson,
Asbestos MDL Judge