

CAUSE NO. 2004-03964

IN RE	§	IN THE DISTRICT COURT OF
	§	
ASBESTOS LITIGATION	§	HARRIS COUNTY, TEXAS
	§	
	§	11 th JUDICIAL DISTRICT

THIRD AMENDED CASE MANAGEMENT ORDER

I. General Statements

A. Scope of the Order

This Order applies to all related asbestos-exposure cases transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Texas Rule of Judicial Administration 13. Consistent with this Court's authority, as set forth in Rule 13.6(b), this Order is intended to facilitate the pre-trial administration of those cases. All MDL cases are deemed Level 3. Nothing in this Order shall prevent the filing of any motion based on good cause.

B. Transfer to MDL 2004-03964

1. General

Only a party to an action, through its counsel of record, may transfer a case to the MDL. The filing of a notice of transfer by any party will be deemed a filing on behalf of all parties to the lawsuit. The filing of a notice of transfer shall not constitute a waiver of any Defendant's own challenge to jurisdiction and/or venue and/or special appearance. A notice of transfer filed by any party outside the time limits set out in this Order will be considered ineffective, absent a showing of good cause.

2. Cases filed before 9/1/2003

There is no deadline by which these cases must be transferred to the MDL. Upon filing a notice of transfer under § 90.010(b), Tex. Civ. Prac. & Rem. Code, the clerk of the transferor court shall hold the original case file until this Court orders its transfer.

3. Cases filed on or after 9/1/2003

Notices of transfer for these cases must be filed within thirty (30) days of the date that Defendant's answer is filed. Upon the filing of a transfer notice under Rule 13, Tex. R. Jud. Admin., with this Court and the transferor court, the clerk of the transferor court shall transfer the entire file to this Court.

II. Inactive Docket

A. Scope

All cases filed before 9/1/2005 and not certified for remand on or before February 24, 2006 are automatically transferred to the Inactive Docket. Any activity in a case on the Inactive Docket requires a motion for leave and a showing of good cause except:

1. Motions to Voluntarily Dismiss under § 90.008, Tex. Civ. Prac. & Rem. Code;
2. Notices of Non-suit or other settlement-related filings;
3. Service of a § 90.003 or § 90.010(f)(1) medical report;
4. Notification of Service of a Medical Report Complying with § 90.003 or § 90.010(f)(1);
5. Amended petitions to add heirs, estates and/or estate representatives of a deceased Plaintiff and/or new defendants; or
6. Original and Amended Answers (in response to an Amended Petition) filed on behalf of a Defendant.

B. Removal From Inactive Docket

In order to remove a Plaintiff from the Inactive Docket, the Plaintiff must serve on all counsel a medical report that complies with § 90.003 or § 90.010(f)(1) and file and serve on all counsel the Notification of Service of a Complying Medical Report (see attached form). The Plaintiff is automatically removed from the Inactive Docket upon service of both documents. If the Plaintiff is part of a multi-plaintiff case, the Plaintiff must immediately file a Motion to Sever.

C. Objections to Removal From Inactive Docket

A Defendant has thirty (30) days from service of both a complying medical report and the Notification of Service of a Complying Medical Report in which to file an objection that the medical report does not comply with the requirements of § 90.003 or § 90.010(f)(1). The objection must state the reasons why the report does not comply with the applicable statutory requirements. A hearing to determine whether a medical report complies with § 90.003 or § 90.010(f)(1) shall be set as soon as practicable after an objection is filed. All Defendants in that plaintiff's lawsuit shall be deemed to have joined in any such objection, unless a Defendant opts out. If the objection is sustained, the Plaintiff shall return to the Inactive Docket. Any objection to a medical report other than failure to comply with § 90.003 or § 90.010(f)(1) (such as *Robinson/Havner* challenges) may be made at any time before the case is remanded for trial as provided by this Order.

D. Suggestions of Death

Plaintiff's Counsel shall file a Suggestion of Death for a Plaintiff on the inactive docket within a reasonable time of Plaintiff's Counsel's actual knowledge of such death.

III. Initial Pleadings

A. Plaintiff's Petition

For cases filed on or after 9/1/05, each Plaintiff shall file individual petitions no later than thirty (30) days after transfer to the MDL that provide the information listed below. For cases filed before 9/1/05 that have been inactive in the MDL, each Plaintiff must file an individual petition that provides the information detailed below no later than thirty (30) days after serving a complying medical report and Notification of Service of a Complying Report.

1. Each Plaintiff shall state facts supporting the Plaintiffs claims regarding jurisdiction and venue in conformity with the Texas Rules of Civil Procedure.
2. Each Plaintiff shall
 - a. identify the claims that are being asserted against each Defendant, whether products or premises, or both, or some other theory of liability (including, but not limited to, manufacturing defect, marketing defect, design defect, strict liability, negligence, gross negligence, conspiracy, enterprise liability, and premises liability);
 - b. state the identity and location of each premise allegation;
 - c. state the alleged illness or injury of the Plaintiff; and
 - d. state any product claimed to be responsible for the alleged injury, to the extent known.
3. Any Plaintiff who is alleging secondary exposure shall clearly state such claim and answer 1-2 above providing information relative to the person or persons through whom such exposure is alleged.

B. Fast-Track Notice

Attorneys for a Plaintiff electing Fast-Track status shall file and serve a Notice of Fast-Track status on all parties. This Notice shall be in the form of a separate pleading. For Plaintiffs filed before 9/1/2005, this Notice may not be filed before service of a complying medical report and Notification of Service of a Complying Medical Report.

C. Cross-Claims

By appearing, each Defendant is deemed to have pleaded all issues of contribution as to all Defendants without the necessity of a separate cross-action. Defendants must separately plead any indemnity claims against co-Defendants.

Each Defendant is also deemed to generally deny the deemed cross-claim and any other cross-claim filed against it without further pleading.

Whenever a Defendant is non-suited, dismissed, or in any way released from an asbestos case by a Plaintiff, any cross-claim, counterclaim or other claim for contribution or indemnity brought by a co-Defendant against the Defendant being non-suited or dismissed is automatically deemed dismissed without further Order of the court unless a party files a

written objection to the dismissal of that cross-claim or counterclaim within thirty (30) days from the party's receipt of the dismissal or non-suit by the Plaintiff, or as soon as possible if within thirty (30) days of trial.

D. Motions to Dismiss

1. Motions to Dismiss for failure to serve a complying medical report where the medical report is served with the original petition must be filed no later than 30 days after Defendant's initial responsive pleading is due.
2. An Order Granting a Motion to Dismiss under § 90.007 shall be entered as to all Defendants in the case unless good cause is shown.

IV. DISCOVERY

A. Written Party Discovery

1. Defendants Written Discovery to Plaintiffs

- a. Fast Track Cases - Plaintiff shall respond to Master Discovery within forty- five (45) days from service of Notice of Fast-Track status and must serve complete answers before filing a Conditional Certification Requesting Remand and Trial Date. Notwithstanding any other provisions in this Order, objections and claims of privilege shall be timely if asserted when the original response to the question or request is made.
- b. Normal Track Cases - Plaintiff shall provide complete answers or objections to master discovery, including completed authorization forms within twelve (12) months of serving a complying medical report and Notification of Service of a Complying Medical Report for cases filed before 9/1/05, and within twelve (12) months of serving a complying medical report for cases filed after 9/1/05 or be subject to a Motion to Dismiss for Want of Prosecution. Plaintiff must serve complete answers before filing a Conditional Certification Requesting Remand and Trial Date. Objections and claims of privilege shall be timely if made at or before the time original answers to master discovery is served.
- c. Other Written Discovery - No other interrogatories, requests for production, or requests for disclosure shall be served, nor response required, without leave of court. Generally, after receipt of a Plaintiff's initial responses to Master Discovery, non-duplicative narrowly focused additional Interrogatories and Requests for Production applicable to a specific Plaintiff or Defendant will be allowed on a regular basis, upon request for leave of this Court to serve discovery of this nature.

2. Plaintiffs Written Discovery to Defendants

- a. Fast Track Cases - Defendant shall respond to master discovery within seventy-five (75) days from service of Notice of Fast Track status. If Notice of Fast Track Status was served before a Defendant's appearance day, that Defendant's deadline to respond to master discovery shall be 75 days from the date the Defendant files its initial responsive pleadings in the case. Objections and claims of privilege shall be timely if made at or before the time original answers to master discovery is served.
- b. Normal Track Cases - Master discovery shall be answered by each Defendant within 45 days after service of Plaintiff's original responses to master discovery. If Plaintiff's original responses to master discovery were served before a Defendant's appearance day, that Defendant's deadline to respond to master discovery shall be 45 days from the date the Defendant files its initial responsive pleadings in the case. Objections and claims of privilege shall be timely if made at or before the time original answers to master discovery is served.
- c. Other Written Discovery - No other interrogatories, requests for production, or requests for disclosure shall be served, nor response required, without leave of court. Generally, after receipt of a Defendant's initial responses to master discovery, non-duplicative narrowly focused additional Interrogatories and Requests for Production applicable to a specific Plaintiff or Defendant will be allowed on a regular basis, upon request for leave of this Court to serve discovery of this nature.

3. Written Discovery for All Parties

- a. Parties may file answers to Master Discovery in the *In Re Asbestos Litigation* matter (cause No. 2004-03964), at their election, with service on all parties. Such discovery shall be fully amended not merely supplemented as appropriate such that each version of the answers is a complete set of answers in one document. If answers are filed in the *In Re* file, the party must timely file a brief statement of adoption in each individual case in which the party wants the answers deemed filed and must serve the notice of adoption on all parties in the individual case(s).
- b. Requests for Admission shall not be served on any party prior to certification.

B. Plaintiff Specific Discovery

1. Depositions

a. Expedited Depositions

For good cause, a plaintiff's deposition may be taken on an expedited basis. The deposition shall be taken on the following terms:

- i. Plaintiff will provide at least seven (7) business days' notice of such deposition. The notice period shall begin to run on the date actually received. Facsimile, or Lexis Nexis File & Serve ("LNFS") service is preferred.
- ii. The notice signed by Plaintiff's counsel shall state the cause requiring the deposition to be expedited.
- iii. Plaintiffs will use "extreme diligence" in providing complete responses to the "Fast-Track" portions of Master Discovery Requests and Requests for Disclosure. Such responses shall provide as much information as is available in the exercise of "extreme diligence" and shall be served at least seven (7) business days before the deposition.
- iv. Any Defendant that does not believe good cause for the expedited deposition has been shown, or believes that the Plaintiff has failed to comply with the requirements of subparagraphs (i), (ii), and (iii) above, shall, within three (3) business days of receipt of the deposition notice, notify Plaintiff's counsel, in writing, of the objection and arrange a telephone hearing with the Court. The notice of objection shall include a notice of hearing stating the date and time of the hearing.
- v. The deposition may take place at (1) a location in close proximity to the Plaintiff's home, other than a private residence; (2) in the Plaintiff's home, if Plaintiff is physically unable to give a deposition in another location; or (3) any other location agreed upon by the parties.

b. Non-Expedited Depositions

- i. Each Plaintiff, including the estate representative, is to be presented for deposition within ninety (90) days from the date Plaintiff responds to Master Discovery, unless physically unable. The presumption is that Plaintiff's counsel will schedule Plaintiff's deposition by agreement. Notice shall only be served after reasonable attempts to schedule Plaintiff's deposition have failed.

- ii. The deposition of each Plaintiff is limited to six (6) hours of deposition time per side.
- iii. Before such deposition, each Plaintiff will provide complete responses to Master Discovery Requests and Requests for Disclosure at least fourteen (14) days before the deposition.

c. Deposition of Plaintiff Required

A Plaintiff must appear for an oral deposition. If Plaintiff is unable to appear for an oral deposition, Plaintiff will not be able to testify at trial.

2. Physical Examination of Plaintiff

a. Fast Track Cases

- i. A Plaintiff shall submit to a physical examination by a qualified physician in accordance with the procedures set forth in Texas Rules of Civil Procedure 204.2 and 204.3, if requested by a Defendant, before Plaintiffs' counsel files a Conditional Certification Requesting Remand and Trial Date. This section does not apply to living mesothelioma cases.
- ii. In the event of the death of a Plaintiff, Plaintiff's counsel shall notify Defendants, by letter or discovery response, whether an autopsy of any type, private or public, has been performed upon the deceased and, if so, provide the autopsy report to all parties within thirty (30) days of its receipt.

b. Normal Track Cases

- i. Unless physically unable, each Plaintiff shall submit to one physical examination by a qualified physician, in accordance with the procedures set forth in Texas Rules of Civil Procedure 204.2 and 204.3, upon written request by a Defendant. Efforts shall be made for this examination to take place in connection with the Plaintiff's deposition. The physical examination shall be in the county of the deposition, in the county where the suit is pending, or such other location as agreed upon by counsel. All doctors performing such an examination shall promptly produce a report of such examination. Reports relating to the examination shall be produced to Plaintiff's counsel within thirty (30) days of receipt by defense counsel. Within thirty (30) days of receipt of an itemized written request by plaintiffs' counsel, the defense counsel requesting the examination shall reimburse plaintiff for all reasonable costs incurred by plaintiffs in connection with such

examination. This section does not apply to living mesothelioma cases.

- ii. All pathological materials, Plaintiff-specific diagnosing medical reports, x-rays, and CT Scans that Plaintiffs have obtained shall be provided to Liaison Counsel thirty (30) days before filing a Conditional Certification Requesting Remand and Trial.
- iii. Defense counsel shall promptly notify Plaintiff's counsel, in writing, of all x-rays and CT Scans obtained by defense counsel and shall describe the x-rays and CT scans in sufficient detail to allow Plaintiff's counsel to determine whether he wants the materials for his expert to review. All such x-rays and CT scans shall be provided to Plaintiffs' counsel before trial upon written request.
- iv. All x-rays, CT Scans and pathology materials exchanged by counsel so provided shall be returned.

3. Plaintiff Fact Witnesses

a. Fast Track Cases

- i. Plaintiff shall, in response to master discovery and before filing a Conditional Certification Requesting Remand and Trial Date, provide Defendants the identity of all fact witnesses, including a concise summary of the testimony of each. If a fact witness is represented by Plaintiff's counsel, it shall be disclosed. Witnesses designated should be a complete list of witness expected to be called and should not include witnesses that, in good faith, will not be called. Witnesses not named will be allowed to testify only after heightened scrutiny as to the reason they were not previously named.
- ii. Generally, depositions of fact witnesses should be taken before those of expert witnesses. Exceptions to this rule are expected to exist on a regular basis.
- iii. The time period to take such depositions shall expire ninety (90) days after certification or thirty (30) days prior to the pre-trial hearing, whichever is later.

b. Normal Track Cases

- i. Each fact witness shall be identified by Plaintiff no later than thirty (30) days before filing a Conditional Certification Requesting Remand and Trial Date. Supplemental designations of fact witnesses within forty-five (45) days of the pre-trial hearing may

cause a delay in the trial of the case. If a fact witness is represented by plaintiffs' counsel, it shall be noted.

- ii. Each fact witness within control of Plaintiff or Plaintiff's counsel whom the Plaintiff intends to call to testify shall be presented for deposition, upon request by any Defendant, within a reasonable time, but no later than thirty (30) days before the pre-trial hearing, unless otherwise ordered by the Court.
- iii. Depositions of fact witnesses should be taken before those of expert witnesses, unless the parties agree otherwise.

4. Plaintiff Expert Witnesses

a. Fast Track Cases

- i. Plaintiff shall, in response to master discovery and before filing a Conditional Certification Requesting Remand and Trial Date, provide Defendants the identity of all expert witnesses, including a concise summary of the testimony of each. Witnesses designated should be a complete list of witness expected to be called and should not include witnesses that, in good faith, will not be called. Witnesses not named will be allowed to testify only after heightened scrutiny as to the reason they were not previously named.
- ii. Reports shall be provided for Plaintiff-specific medical causation experts, upon request. Reports shall be provided for other experts only upon motion and order.
- iii. Generally, depositions of Plaintiff's expert witnesses should be taken before those of Defendants' expert witnesses, within the same area of expertise. Exceptions to this are expected on a regular basis.
- iv. Experts shall be tendered for deposition within a reasonable time upon written request. The time period to take such depositions shall expire ninety (90) days after certification or thirty (30) days prior to the pre-trial hearing, whichever is later.

b. Normal Track Cases

- i. Each expert witness for a Plaintiff shall be identified no later than thirty (30) days before filing a Conditional Certification Requesting Remand and Trial. Supplemental designation of expert witnesses within sixty (60) days of the pre-trial hearing may cause delay in the trial of the case.

- ii. Each expert witness whom Plaintiff intends to call to testify at trial shall be presented for deposition, upon the written request of any Defendant, within a reasonable time but no later than thirty (30) days before the date of the pre-trial hearing.
- iii. Depositions of Plaintiff's expert witnesses shall be taken before defense expert witnesses, within the same area of expertise, unless the parties agree otherwise.

C. Defendant Specific Discovery

1. Fact Witnesses

a. Fast Track Cases

- i. Defendants shall designate their fact witnesses within thirty (30) days after certification. Supplemental designations may be made until ninety (90) days after certification or thirty (30) days prior to the pre-trial hearing whichever is later.
- ii. The time period to take such depositions shall expire 100 days after certification or twenty one (21) days prior to the pre-trial hearing, whichever is later.

b. Normal Track Cases

- i. The fact witnesses for each Defendant shall be designated no later than thirty (30) days after certification. Supplemental designations may be made until thirty (30) days before the assigned trial date. If a fact witness is represented by defendant's counsel, it shall be disclosed.
- ii. The fact witnesses within control of Defendant or defense counsel whom each Defendant intends to call to testify shall be presented for deposition within a reasonable time of the written request of another party, but no later than fourteen (14) days prior to the pre-trial hearing.

2. Expert Witnesses

a. Fast Track Cases

- i. Defendants shall designate their expert witnesses within thirty (30) days after certification. Supplemental designations may be made until forty five (45) days before the pre-trial hearing.

- ii. Experts shall be tendered for deposition within a reasonable time upon written request. The time period to take such depositions shall expire one hundred (100) days after certification or twenty-one (21) days prior to the pre-trial hearing, whichever is later.

b. Normal Track Cases

- i. The expert witnesses for each Defendant shall be identified no later than thirty (30) days after certification. Supplemental designations may be made until forty five (45) days before the pre-trial hearing.
- ii. The expert witnesses each Defendant intends to call to testify shall be presented for deposition, upon written request of the Plaintiff, within reasonable time, but no later than twenty one (21) days before the pre-trial hearing.

V. CERTIFICATION AND REMAND

All Plaintiffs with actions filed before 9/1/2003 must comply with one of the following sections for certification and remand for trial unless remanded due to the fact the plaintiff was ineligible for transfer under § 90.010(a)(2-3), Tex. Civ. Prac. & Rem. Code.

A. Conditional Certification Requesting Remand and Trial Date in Fast-Track Cases

- 1. Upon completion of the discovery obligations of Plaintiff as stated in § IV above, providing to Defendants the materials and documents requested in the "Fast Track" portions of the Master Discovery Requests, and identifying known exhibits Plaintiff may offer at trial or a showing of good cause as to why information or materials cannot be provided:
 - a. Plaintiff's counsel may file a Conditional Certification Requesting Remand and Trial Date. This conditional certification shall be faxed, e-mailed, or served through LNFS to all parties. If for any reason Plaintiff cannot, after the exercise of "extreme diligence", provide the information or materials required for Certification, Plaintiff's counsel shall detail in writing the good cause as to why such information or materials cannot be provided.
 - b. Within ten (10) days of receipt of a Conditional Certification Requesting Remand and Trial Date, any Defendant that does not believe that the requirements have been met shall file objections notifying Plaintiff's counsel, in writing, of the specific deficiencies it believes to exist. Any joinders to any objection must be filed two (2) business days after the filing of the objections and must specifically state which defendant's objections are being joined. The failure of a Defendant to request an IME should not constitute an objection to certification.

- c. In order for a case to be conditionally certified, Plaintiff shall arrange for a hearing with this Court on a date no sooner than fifteen (15) days after filing of the request for certification, at which hearing any timely filed objections and timely filed joinders therein will be considered.
 - d. If no objections or joinders to conditional certification are timely raised, or the objections to certification are overruled; the case is certified and certification is effective as of the hearing date.
 - e. Vacation letters not brought to the Court's attention before certification are deemed waived.
- 2. Before certification, the parties may conduct discovery pursuant to the Texas Rules of Civil Procedure.
 - 3. Within fourteen (14) days of receipt of Responses to Master Discovery from all parties, a presumption exists that adequate time for discovery has passed for purposes of no-evidence motions for summary judgment based on a lack of product identification or a lack of exposure evidence.
 - 4. Remand shall be 120 days after certification, unless otherwise ordered by this Court.
 - 5. This Court, in conjunction with the trial court, may set a transferred case for trial at such time and on such a date as will promote the convenience of the parties and witnesses and the just and efficient disposition of all related proceedings. This Court will confer with the trial court regarding potential trial settings or other matters regarding remand. The trial court must cooperate reasonably with this Court, and this Court must defer appropriately to the trial court's docket. The trial court must not continue or postpone a trial setting, without the concurrence of this Court. The parties shall receive at least forty-five (45) days notice of an initial trial setting.
 - 6. A written order setting the trial date shall be issued by this Court (see attached form). Plaintiff shall present a blank order to this Court at the certification hearing. The signed order with the designated trial date will then be posted on LNFS.
 - 7. Except as otherwise required by statute or the rules of civil procedure, all motions, other than motions in limine and motions for summary judgment must be filed no later than twenty-one (21) days prior to the pre-trial hearing. Any joinder filed by a defendant must be filed no later than seventeen (17) days before the pre-trial hearing and must identify which motion it is joining by listing the name of the defendant who filed the motion and the title of the motion.
 - 8. Motions to challenge the qualifications of experts, and/or the admissibility of expert testimony, shall be filed no later than twenty-one (21) days prior to the pre-trial hearing. Motions which are the subject of this provision must be heard at

least seven (7) days prior to the pre-trial hearing with notice to opposing counsel at least ten (10) days prior to the hearing.

Any joinders to any motions to challenge experts must be filed two (2) business days after the filing of the motion and must specifically state which motion is being joined.

9. Motions for summary judgment shall be heard prior to the pre-trial hearing absent exceptional circumstances.

B. Conditional Certification Requesting Remand and Trial Date in Normal-Track Cases

1. Upon completion of the discovery obligations of Plaintiff as stated in § IV above, or a showing of good cause as to why information or materials cannot be provided:
 - a. Plaintiff's counsel may file a Conditional Certification Requesting Remand and Trial Date. This conditional certification shall be faxed, e-mailed, or served through LNFS to all parties.
 - b. Within ten (10) days of receipt of a Conditional Certification Requesting Remand and Trial Date, any Defendant that does not believe that the requirements have been met shall file objections notifying Plaintiff's counsel, in writing, of the specific deficiencies it believes to exist. Any joinders to any objection must be filed no later than two (2) business days after the filing of the objections and must specifically state which defendant's objections are being joined. The failure of a Defendant to request an IME should not constitute an objection to certification.
 - c. In order for a case to be conditionally certified, Plaintiff shall arrange for a hearing with this Court on a date no sooner than fifteen (15) days after filing of the request for certification, at which hearing any timely filed objections and timely filed joinders therein will be considered.
 - d. If no objections or joinders therein to conditional certification are timely raised, or the objections to certification are overruled; the case is certified and certification is effective as of the hearing date.
 - e. Vacation letters not brought to the Court's attention before certification are deemed waived.
2. Within fourteen (14) days of receipt of Responses to Master Discovery from all parties, a presumption exists that adequate time for discovery has passed for purposes of No-Evidence Motions for Summary Judgment based on a lack of product identification or a lack of exposure evidence.
3. Remand shall be 180 days after certification unless otherwise ordered by the Court.

4. This Court, in conjunction with the trial court, may set a transferred case for trial at such time and on such a date as will promote the convenience of the parties and witnesses and the just and efficient disposition of all related proceedings. This Court will confer with the trial court regarding potential trial settings or other matters regarding remand. The trial court must cooperate reasonably with this Court, and this Court must defer appropriately to the trial court's docket. The trial court must not continue or postpone a trial setting, without the concurrence of this Court. The parties shall receive at least forty-five (45) days notice of an initial trial setting.
5. A written order setting the trial date shall be issued by this Court (see attached form). Plaintiff shall present a blank order to this Court at the certification hearing. The signed order with the designated trial date will then be posted on LNFS.
6. Except as otherwise required by statute or the rules of civil procedure, all motions, other than motions in limine and motions for summary judgment, must be filed no later than 21 days prior to the pre-trial hearing. Any joinder filed by a defendant must be filed no later than seventeen (17) days before pre-trial hearing and must identify which motion it is joining by listing the name of the defendant who filed the motion and the title of the motion defendant seeks to join.
7. Motions to challenge the qualifications of experts, and/or the admissibility of expert testimony, shall be filed no later than twenty-one (21) days prior to the pre-trial hearing. Motions which are the subject of this provision must be heard at least seven (7) days prior to the pre-trial hearing with notice to opposing counsel at least ten (10) days prior to the hearing.

Any joinders to any motions to challenge experts must be filed no later than two (2) business days after the filing of the motion and must specifically state which motion is being joined.
8. Motions for summary judgment shall be heard prior to the pre-trial hearing absent exceptional circumstances.

VI. Final Pre-Trial Hearing and Order of Remand

All pre-trial proceedings shall take place in the pre-trial court. There shall be a pre-trial hearing in each case. Seven (7) days before the pre-trial hearing, the parties shall exchange final exhibit and witness lists, deposition designations, and motions in limine. The parties shall confer on objections to such designations and motions before the pre-trial hearing, and provide counter designations.

VII. Bankrupt Defendants

Upon receiving notice of an automatic stay against a bankrupt defendant, this Court will, within fourteen (14) days, sever all known causes of action or claims brought by or against

such bankrupt defendant into Cause Number _____. When an automatic stay against a bankrupt defendant is lifted and that defendant has not received a discharge in bankruptcy, a party has ninety (90) days to advise this Court that such party wishes to proceed against the defendant. Failure of a party to advise this Court of that party's intent to proceed against such defendant within ninety (90) days after such party receives notice of such lifting of the automatic stay will result in an automatic dismissal for want of prosecution, but will not affect that defendant's designation as a responsible third party.

VIII. Court Administration

- A. Within thirty (30) days of service of a complying medical report, Notification of Service of a Complying Medical Report, and service of Plaintiff's answers to Master Discovery, Defendants shall confer and designate one counsel to serve as "Liaison Defense Counsel" for each case. Liaison Defense Counsel will promptly file and serve a notice notifying this Court and all parties of the designation. Unless otherwise specified in this Order, Liaison Defense Counsel shall coordinate among Defendants: (1) To schedule Plaintiff's deposition; (2) to schedule a medical examination of Plaintiff; and (3) to schedule pathology review. Should such Liaison Defense Counsel's client(s) resolve the case, a notice of withdrawal as Liaison Defense Counsel shall promptly be filed and the Defendants shall promptly appoint new Liaison Defense Counsel.
- B. The Defendants, through Liaison Defense Counsel, or other designee, shall work with Plaintiff's counsel to agree upon a third-party records ordering service(s) to share equally in the reasonable acquisition and copying costs of medical records, pathology, and x-rays provided to Defendants pursuant to this Order.
- C. The Clerk of this Court shall maintain a master service list of all counsel representing parties in any case to which this Order applies. All counsel for each party shall be listed once, and any party required to serve any notice in an asbestos case governed by this Order shall serve one copy of the notice document upon counsel for each party, as appearing on the master service list. If a party is represented by more than one law firm, each law firm shall be listed on the master service list. The list shall be updated periodically and posted by the Clerk on the Harris County District Court website at <http://www.justex.net>. Any counsel substituting into any case to which this order applies shall inform the Clerk of their appearance and request inclusion in the master service list rather than filing motions and orders to substitute in individual cases. Parties shall be responsible for updating the master service list as needed.
- D. The Clerk of this Court shall maintain a file entitled "In re: MDL Asbestos Litigation," which may be referred to as the "MDL Master Asbestos File." All motions, orders, and other instruments that apply to all asbestos cases shall only be filed in the MDL Master Asbestos File and shall be captioned "In Re: MDL Asbestos Litigation" (Cause No. 2004-03964) and bear the name of the motion. A motion, order, or other instrument filed in the MDL Master Asbestos File is deemed filed in each and every asbestos case to

which it may be applicable and is incorporated by reference into such case for all purposes. Any motion or other instrument not applicable to all asbestos-related cases shall be captioned with the individual case name and contain the individual cases' cause number.

- E. Counsel may file for admission pro hac vice in accordance with the Texas Government Code. Once a pro hac vice admission is granted for counsel, such counsel may participate in any MDL proceeding. Admission of an attorney pro hac vice in an In Re proceeding does not extend to the trial of any underlying action following remand. If a pro hac vice admission is granted in a specific case while it is in the MDL, the pro hac vice admission extends to the trial of that case following remand. Moreover, a pro hac vice motion is not mandatory for the use of out-of-state attorney who appear on behalf of a party at a deposition taking place in a state other than Texas.
- F. Telephone hearings are encouraged and may be scheduled with the Coordinator of this Court. The party requesting the hearing shall arrange for a dial-in telephone conference and provide notice and the dial-in number to all known parties.
- G. Counsel for movant shall promptly notify the Coordinator of this Court by email or telephone of the cancellation of any hearing. Service of a Notice canceling a hearing via LNFS is insufficient to notify the Court that a hearing has been passed or cancelled.
- H. Double captions are required. All documents filed or served in plaintiff-specific cases in the MDL must list both the plaintiff-specific MDL cause number and style and the original cause number and style.

I. LEXISNEXIS FILE & SERVE

In order to facilitate case management, document retrieval and case organization, the parties will utilize the services of LexisNexis File & Serve ("LNFS") and its litigation system (the "System") for providing electronic service, storage and delivery of court-filed and discovery-related documents through a secure website to facilitate expeditious, efficient and economical communication by and among counsel. The Court, at its option, may also use LNFS and its System for these purposes as well.

1. Service Only

The System shall apply only to the service of documents, and not to their filing. Original documents must still be filed in the traditional manner (i.e., filing the signed original document with the Harris County District Clerk), pursuant to the applicable Texas Rules of Civil Procedure and Local Rules of the Harris County District Courts. Documents will be considered to be served via facsimile for purposes of the calculation of deadlines under the Rules of Civil Procedure and the Case Management Order.

2. Attorney Registration

- a. Within 10 days of the entry of appearance for a new attorney of record, said attorney shall sign up for electronic service in this litigation by completing the application located at the website for LexisNexis File & Service Advanced located <http://www.lexisnexis.com/fileandserve>.
- b. The Court strongly encourages all counsel to participate in electronic service; however, counsel may opt out of service and be a non-subscriber. To opt out, written notice must be given to all parties involved.

3. List of cases and service lists: creation and maintenance

Plaintiffs' counsel shall provide LNFS with the service list of counsel of record for each case in this litigation ("service list"). The list of cases will specify each case transferred to Harris County, the Harris County case number, the county or origin, and the case number from the county of origin. The service list for each case shall list the name of counsel, firm name, address, telephone number, fax number, e-mail address for each participating attorney, the name of the party or parties represented by counsel, and the party type (i.e. plaintiff or defendant). If a new party is added to the litigation, it shall be the responsibility of the plaintiffs' counsel to notify the new party's counsel of this order and the means by which documents are served in this litigation. It shall be the responsibility of the party initiating transfer of the cases to notify the LNFS representative so that the case may be added to the list of cases subject to this order. During the course of the litigation, the parties agree to maintain and update the list of cases and the service lists for these cases in collaboration with LexisNexis File & Serve representatives whenever there are changes to the list of cases or the service lists. Changes to the service lists shall be effectuated on an ongoing basis using the built-in "Case Profile" functionality in the System, or by placing a telephone call to LexisNexis customer support representatives at (888) 529-7587.

4. Service of documents and website

Establishment and Use of the LNFS Website Generally

- a. When any counsel of record in this case wishes to serve a document, that counsel shall serve the document according to all the requirements and procedures of this Order. All references to "document" in this Order shall be interpreted to include any exhibits or attachments to the document and shall include both court-filed and discovery-related documents. Each attorney shall determine individually whether to utilize the System to serve by and amongst counsel of record the actual production of discovery documents in response to another party's request for production.
- b. LNFS shall establish and maintain an Internet website (the "Website") for this litigation. All documents served by the parties will be posted by LNFS to the Website as provided in this Order. LNFS will post

documents to the Website and shall serve each document as provided in this Order on the parties included on the service list provided to LNFS in accordance with the procedures herein.

- c. All documents to be served shall be sent to LNFS via electronic transfer of the document file to LNFS via the Internet (either as a word-processing file or a scanned image of the document). All registered users should title their documents to identify clearly the document and the party who is submitting such document. Unless another Order specifies a time of service, any document electronically served pursuant to this Order shall be deemed to have been served under the Texas Rules of Civil Procedure. All Proposed Orders shall be filed as a word-processing file, in Word or WordPerfect format (Judge Davidson's choice).
- d. After LNFS receives a document, LNFS shall convert it into Adobe Portable Document Format ("PDF") and post it to the Website within one (1) hour of receipt.
- e. Within one hour of the time a document is posted to the Website, LNFS shall send an email to all registered users notifying them that the document has been posted to the Website (unless such registered user has declined to receive emails). The email shall contain hypertext link(s) to the document location(s) on the System (or, if so designated by the recipient, the email shall have the filed document attached thereto). The "subject" line of the e-mail shall include the phrase "MDL Service" in all circumstances.
- f. In the event a document that is to be filed with the Court is rejected by the Court for filing after it has been posted on the Website by LNFS and the rejection was caused by an aspect of the caption of the document, and the party seeking to file the document successfully files it with the Court within two (2) business days of its rejection with revisions to the caption only, then the party filing the document shall promptly submit a notice of successful filing, including the date of the filing and the revised page(s) of the caption, to LNFS for posting on the Website. In all other circumstances in which a document to be filed with the Court is rejected for filing after it has been posted on the Website by LNFS, the party that caused the document to be posted shall promptly notify LNFS in writing that the document was rejected by the Court for filing. LNFS shall promptly notify all parties on whom that document was served of the fact of rejection, and shall cause a permanent notation to be placed on the website in conjunction with that document memorializing the fact of rejection.
- g. All documents posted on the System will be identified by:
 - i. the name of the filing law firm;
 - ii. the caption(s) of the case(s) to which the document belongs;
 - iii. the title of the document set forth on its caption; and

- iv. the identity of the party on whose behalf the document is being served.
- h. The System shall contain an index of all served documents for litigation that will be searchable and sortable according to methods that provide useful 24/7 access to the documents.
- i. Access to the System will be limited to registered users. Registered users will consist of authorized Court personnel, counsel of record and their designated staff members. LNFS will provide each registered user with a user name and password to access the System and the documents filed in the litigation. LNFS personnel will perform all administrative functions for the System, but all initial data, additions, deletions or changes to the service list must be approved by the parties.
- j. Every pleading, document and instrument served electronically shall bear a facsimile or typographical signature of at least one of the attorneys of record, along with the typed name, address, telephone number and State Bar of Texas number of such attorney. Typographical signatures shall be treated exactly as personal signatures for purposes of electronically served documents under the Texas Rules of Civil Procedure. The filer of any document requiring multiple signatures (e.g., stipulations, joint status reports) must list thereon all the names of other signatories by means of an "s/ _____" block for each. By submitting such a document, the filer certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filer has their actual authority to submit the document electronically. The filer must maintain any records evidencing this concurrence for subsequent production to the Court if so ordered or for inspection upon request by a party.
- k. Any document transmitted to the System shall certify in the Proof of Service that a true and correct copy was electronically served on counsel of record by transmission to LNFS.
- l. LNFS shall serve notice of all hearings in the MDL on all counsel of record for this litigation in the MDL, regardless of whether they are a party to the case in which the hearing is noticed.
- m. Until further notice, documents filed under seal ("sealed documents") shall not be served through the System. Instead, the service of sealed documents shall be made pursuant to the applicable Texas Rules of Civil Procedure.

IX. MISCELLANEOUS PROVISIONS

- A. This Court may permit alternative dispute resolution if the parties mutually agree to participate. The trial court will not order alternative dispute resolution without the consent of the pre-trial court.
- B. For weekly hearings and other matters, parties are encouraged to utilize teleconferencing to the extent such technology is available and will facilitate convenience.
- C. Should any hearing be canceled by agreement of the parties directly involved in the hearing, the movants, parties joining the motion to be heard and the respondent shall not be required to seek agreement from all parties to a particular case to cancel the hearing.
- D. Unless specifically addressed in this Case Management Order, the Texas Rules of Civil Procedure will govern all deadlines.
- E. Except for the trial date and pre-trial date, any other deadline may be amended by agreement.
- F. The prevailing party in any contested matter shall prepare a written order for the Court's signature submitted for approval to opposing counsel and shall serve all parties with a copy of the signed order.
- G. All unopposed or agreed matters along with a proposed order may be presented to the Court for ruling by submission with appropriate notice.
- H. The Provisions herein shall apply absent good cause found to extend, shorten or otherwise modify designated time frames.

X. Termination of Transfer

The purposes of transfer of individual cases shall be deemed fulfilled when either (1) this Court has rendered a final and appealable judgment, or (2) this Court determines that pre-trial proceedings have been completed to such a degree that the purposes of the transfer have been fulfilled or no longer apply and remands the case for trial.

SIGNED on the 5th day of April, 2007.



THE HONORABLE MARK DAVIDSON

MDL CAUSE NO. _____

PLAINTIFF	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
DEFENDANT, ET AL	§	11 th JUDICIAL DISTRICT

Transferred from

ORIGINAL CAUSE NO. _____

PLAINTIFF	§	IN THE DISTRICT COURT OF
	§	
v.	§	ORIGINAL COUNTY, TEXAS
	§	
DEFENDANT, ET AL	§	ORIGINAL JUDICIAL DISTRICT

**NOTIFICATION OF SERVICE OF A MEDICAL REPORT
COMPLYING WITH § 90.003 OR § 90.010(f)(1)**

TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on (date), Plaintiff served a report complying with

☐ § 90.003 ☐ § 90.010(f)(1)

via ☐ facsimile ☐ LexisNexis File & Serve ☐ CM/RRR ☐ hand delivery.

Such report was from (Doctor's name) and was dated (Date of report).

Respectfully submitted,

Plaintiff's counsel signature block

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Notification of Service of a Medical Report Complying with § 90.003 or § 90.010(f)(1) was served on all counsel of record via (type of service) on (date of service).

MDL CAUSE NO. _____

PLAINTIFF	§	IN THE DISTRICT COURT OF
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
DEFENDANT, ET AL	§	11 th JUDICIAL DISTRICT

Transferred from

ORIGINAL CAUSE NO. _____

PLAINTIFF	§	IN THE DISTRICT COURT OF
	§	
v.	§	ORIGINAL COUNTY, TEXAS
	§	
DEFENDANT, ET AL	§	ORIGINAL JUDICIAL DISTRICT

ORDER SETTING TRIAL DATE

The Court, finding that the prerequisites for Certification for Remand and Trial

Date have been met, certifies this case as of _____, as a

_____ Normal track case

_____ Fast track case.

This case is set for pre-trial hearing before this Court on _____.

This case is set for trial before _____ on _____.

Signed this ____ day of _____, 200__.

The Honorable Mark Davidson