



20908683

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

FEB 22 2019

CLERK OF THE SUPERIOR COURT

By  Deputy

Plaintiff
Defendants

Case No. _____

INITIAL CASE MANAGEMENT
ORDER ASBESTOS

ASSIGNED FOR ALL PURPOSES TO:
JUDGE BRAD SELIGMAN,
DEPARTMENT 23 ¹

Pursuant to California Rules of Court (CRC) 3.400 and 3.403(b), the Court hereby determines that the above captioned asbestos litigation is a complex case and pursuant to CRC 3.750 will hold an Initial Case Management Conference to consider necessary orders for the appropriate coordination and management of this action. Parties shall familiarize themselves with Alameda County Superior Court Local Rules of Court (LRC), Rule 3.250 et seq. governing asbestos cases including service requirements and the conduct and timing of case management conferences and certain discovery.

The following order shall apply to all parties in this action:

1. CASE MANAGEMENT CONFERENCES

At Case Management Conferences the Court will address discovery issues, schedules, and other subjects pursuant to CRC 3.750. Counsel thoroughly familiar with the case shall attend the Case Management Conferences. See LRC, Rule 3.290.

The court prefers (but does not require) parties file Case Management Conference Statement(s) on pleading paper, in lieu of the Judicial Council Form CM-110, summarizing the status of pleadings, discovery, trial readiness and other subjects for consideration, and propose further dates. Parties may file a JOINT Case Management Statement in lieu of separate Statements from each party pursuant to CRC 3.725(b). If a Designated Defense Counsel has been appointed by the Court, individual Defendants may, but are not required to file a Case Management Conference Statement; rather, the

¹ Cases may be assigned for trial or for all purposes to other departments during the course of this litigation.

Designated Defense Counsel shall be responsible for filing a Case Management Conference Statement respecting the status of discovery and other related case management issues on behalf of all defendants. The Case Management Statement(s) shall be filed and served no later than seven (7) court days prior to the scheduled conference.

Parties are advised to check the court's register of action before appearing at any case management conference, including the Initial Case Management, at least one day before any scheduled appearance to determine if the court has issued a tentative case management order. If published, this tentative case management order will become the order of the Court unless counsel or self represented party notifies the Court and opposing counsel/self-represented party by email not less than one court day prior to the CMC that s/he intends to appear in person at the CMC to discuss some aspect of the order, and specifies the nature of the party's concern. (Please note that the Tentative Rulings posted on the website are for tentative rulings on law and motion matters and will not display tentative Case Management Orders. The tentative Case Management Orders are found in the Register of Action). Department 23 may be reached at Dept.23@alameda.courts.ca.gov.

2. NOTICE OF FEE CHANGES - JURY TRIAL FEE

Effective July 2, 2012, the advance jury fee is fixed at \$150.00, and is no longer refundable. With certain exceptions, the jury trial fee is due on or before the date scheduled for the initial case management conference. See, C.C.P. 631(b).

3. COMPLIANCE WITH LOCAL RULE OF COURT 3.285.

Local Rule of Court (LRC) 3.285 governing use and service of "standard interrogatories" in asbestos cases shall apply in this case. Pursuant to LRC 3.285(a) "standard interrogatories" to plaintiff(s) are DEEMED SERVED on Plaintiff(s) as of the date of the filing of the Complaint. The reference in Local Rule of Court 3.285(a) and this order to "standard interrogatories to plaintiff" are "Defendants' Standard Interrogatories to Plaintiff" published on the Spanos Przetak website (<http://www.berryandberry.com/main/default.aspx?PageID=4>) and also published on the Alameda County Superior Court - Dept. 23 website in the "documents" folder.

Plaintiff(s) shall serve verified responses to said interrogatories upon defendant(s)

within 60 days of the filing of the Complaint and, after the 60-day deadline has elapsed, Plaintiff(s) shall serve its responses with service of the Complaint. However, if Plaintiff(s) intend to file a motion for preferential trial setting within four (4) months of filing of the Complaint, the time to file responses to Standard Interrogatories is modified, as follows: Plaintiff(s) shall serve plaintiff(s) verified responses to Standard Interrogatories upon defendant(s) within 30 days of the filing of the Complaint and, after the 30-day deadline has elapsed, Plaintiff(s) shall serve its responses with service of the Complaint. If Designated Defense Counsel has been appointed, Plaintiff(s) shall serve one original upon Designated Defense Counsel.

Pursuant to LRC 3.285(b) “standard interrogatories” to defendants and cross-defendants will be DEEMED SERVED with the Complaint or Cross-Complaint and responses. The reference in Local Rule of Court 3.285(b) and this Order to “standard interrogatories to defendants and cross-defendants” are the “Plaintiff’s First Set of Interrogatories to Defendant” published on the Spanos Przetak website (<http://www.berryandberry.com/main/default.aspx?PageID=4>) and also published on the Alameda County Superior Court - Dept. 23 website in the “documents” folder.

4. MOTION FOR TRIAL PREFERENCE

As soon as a party is aware of facts sufficient to petition the Court for a trial preference, the party shall immediately reserve a hearing date from Dept. 23. Because the Court recognizes the need for expedited discovery of plaintiff’s relevant medical and employment records are critical in these cases when a trial preference is granted, unless good cause is shown, parties shall comply with the following orders in cases where a motion for trial preference is contemplated within four (4) months of the filing of the complaint and/or when the motion is filed:

(a) Contemporaneous with the filing of any motion for preference, Plaintiff(s) shall serve verified responses to Standard Interrogatories to Plaintiff(s) per paragraph 3, above (if said responses have not previously been served upon defendants).

(b) If a party contemplates filing a motion for preferential trial setting within four (4) months of the filing of the Complaint, Plaintiff(s) shall execute and deliver the following to Designated Defense Counsel (or comparable coordinating defense counsel or document depository) within thirty (30) days of the filing of the Complaint, or

contemporaneous with the filing of said motion if the 30 days has not yet elapsed: (1) authorizations and stipulations for all relevant medical and employment records and (2) a copy of all medical and employment records in plaintiff(s)' possession. If a Designated Defense Counsel or comparable coordinating defense counsel and/or document depository is not yet in place at the time the motion is made, the Court will expect defense counsel to meet and confer to work out an orderly, expedited and efficient process for obtaining, receiving, copying, sharing and providing access to these materials among and between all the parties, pending hearing and convey to plaintiff's counsel where documents and authorizations/stipulations are to be delivered. Defense counsel shall submit a proposed Order for the court's signature that should, at the minimum, address the need for a single depository/entity to act on behalf of all defendants to obtain, receive, maintain and copy plaintiff's records and materials as ordered herein and provide access to defendants. Further, the order should identify at a minimum a single entity/defense counsel to obtain records or materials on behalf of all defendants pursuant to the executed stipulations/authorizations ordered herein and coordinate with Plaintiff's counsel with regard to said records and materials. The Court will order that defendants share equally for the costs associated with obtaining, receiving, maintaining, and providing access to records and materials ordered herein (unless otherwise stipulated by defendants counsel). Costs of copying will be borne by individual parties requesting copies. If this matter cannot be resolved between parties, any party shall promptly contact Dept. 23 to have a case management conference advanced for this purpose.

Pending hearing on the motion for preference and until further court order is signed, Plaintiff(s) shall not be required to respond to individual document requests for the same materials or records ordered herein, make the documents or materials ordered herein available for inspection or copying, or to deliver the executed authorizations/stipulations to any individual requesting defendant but shall only be required to deposit the ordered documents and materials, authorizations and stipulations with the identified single designated defense counsel/ coordinating defense counsel and/or document depository. This order is not meant to preclude document or other discovery, not covered by this order, to be conducted by any party pending hearing on the motion for preference.

(c) A motion for preference shall be accompanied by an affidavit in compliance with C.C.P. § 36 and § 36.5 and shall delineate with specificity the status of pleadings and discovery, including whether relevant, non-privileged medical and employment reports and materials have been made available to the defense and whether plaintiff(s) deposition and/or medical examinations (if applicable) have been taken or are scheduled. Failure to provide this information in compliance with this order may result in delay or continuance of the hearing on the motion for trial preference.

5. E-SERVICE.

Unless undue hardship is claimed or other good cause, the Court will execute an order mandating the use of e-service in this complex case. Parties and Designated Defense Counsel shall meet and confer and shall submit a proposed stipulated order directly to Dept. 23 for court approval, including any time before the scheduled date of the Initial Case Management Conference.

6. DISCOVERY

Discovery Conference: **Revised Local Rule 3.31 (effective January 1, 2019) applies to all discovery requests, except a discovery conference may also be requested in a Case Management Conference Statement.** Motions related to discovery (i.e. motions to compel, protective orders etc.) may not be filed without leave of the court after an informal discovery conference. The discovery conference is not a pro forma step before a motion. Requests for a discovery conference may be made, after meaningful meet and confer (which requires in person or telephonic discussion or good faith attempt to do so), by sending an email to the department clerk, copied to all counsel. The court will provide proposed dates. Parties are to meet and confer as to availability for the proposed dates. If one or more parties are not available on the proposed date(s), additional dates may be requested. Upon request, the court will consider telephonic appearances as well as calls from depositions in progress.

Plaintiff's Deposition: Plaintiff's deposition may be noticed by either designated defense counsel or plaintiff pursuant to Code Civ. Pro. §2025.210. Prior to noticing plaintiff deposition, counsel for plaintiff and designated defense counsel shall meet and confer as to date and location of the deposition. In non-preference cases, the plaintiff's deposition normally should not be set prior to plaintiff's verified response to initial

standard interrogatories. There is no set time limit for plaintiff's deposition but the court expects defense counsel to meet and confer prior to commencing the deposition to facilitate efficient examination, and, after plaintiff's direct examination (if any), or ten (10) hours of testimony if no direct examination, the parties shall meet and confer as to how much additional time is necessary to complete the deposition. If plaintiff has sought or has notified defense counsel that he or she will seek preferential trial setting, there is a presumptive twenty (20) hours for defense examination, subject to adjustment up or down based on the number of defendants, job sites, and alleged exposures.

7. EMAILS TO COURT

Emails to the court are not part of the court record in this case and may be deleted without notice. Email is not a substitute for required filings. Any emails should be copied to all counsel. The Department 23 email may only be used for the following purposes: to seek a reservation to schedule a proceeding on the court's calendar, to give notice that a hearing has been dropped or a settlement reached, to request a discovery conference, emergency scheduling issues (i.e. running late to a hearing), to give notice that a litigant intends to appear to contest a tentative ruling, to reply to an inquiry from the clerk or research attorney of Department 23, to communicate with the courtroom clerk regarding department 23 procedures, or other matters that the court has expressly authorized in this case.

8. Pro Hac Vice Process

Applications for Pro Hac Vice must be submitted by noticed motion on regular time, or, if it is a time sensitive matter, a request for an order shortening time must be submitted.

Applications will not be considered on an ex parte basis. CRC 9.40.

9. NOTICE

Upon appearing in this matter, Defendants shall immediately notify Designated Defense Counsel of said appearance.

Parties are advised that CASE MANAGEMENT ORDERS, including trial setting orders, and FINAL RULINGS ON LAW AND MOTION that are issued by Dept. 23 will be published in the Court's website in the Register of Action for this case. The clerk of the court WILL NOT serve each party a copy of future orders. Instead, unless otherwise

ordered, counsel shall obtain copies of all future orders from the Register of Action in this case.

Plaintiff(s)' counsel shall serve a copy of this INITIAL CASE MANAGEMENT ORDER upon all parties SERVED with the Complaint and file a proof of service with the Court. The clerk is directed to serve a copy of this CASE MANAGEMENT ORDER upon counsel for Plaintiff(s).

DATED: February 22, 2019



BRAD SELIGMAN, JUDGE