

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

PLAINTIFF(S), Plaintiff(s),	
DEFENDANTS, et al., Defendants,	

Case No. RG
CASE MANAGEMENT ORDER RE:
DESIGNATED DEFENSE COUNSEL

ASSIGNED FOR ALL PRE-TRIAL
PURPOSES TO: DEPARTMENT 30

THE COURT HAS ORDERED THE FOLLOWING:

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 shall be governed pursuant to CRC 3.501 et. seq. and 3.750 providing for the coordination and management of complex cases. Pursuant to CRC Rule 3.750, the Court finds that the appointment of a “Designated Defense Counsel” to coordinate certain discovery by and between the multiple parties involved in this complex litigation is necessary to curtail and prevent unnecessary, repetitious and/or burdensome discovery and motion practice, and will assist parties to reasonably prepare for trial in the most efficient, rational and least oppressive manner.

WHEREFORE, it is hereby ordered:

1. The law firm of Berry & Berry, Oakland, CA is PROVISIONALLY designated by the Court as Designated Defense Counsel to coordinate defense medical and employment records discovery in this action and is authorized to immediately initiate necessary medical and/or employment records discovery on behalf of all defendants.
2. Plaintiff shall meet and confer with Berry & Berry to provide all necessary information and execute and provide all necessary authorizations, stipulations, subpoenas for procurement of relevant medical and employment records and other medical evidence (specimens, photographs, radiographs, etc.).

All records produced pursuant to authorizations and stipulations obtained by Designated Defense Counsel are presumed to be authenticated and to satisfy the business records exception to the hearsay rule under Cal. Evid. Code sections 1270 - 1272 unless the party objecting establishes the contrary by a preponderance of the evidence. This order does not deem any record admitted or precludes any party

from objecting to the admission of any records or part of said records on other grounds, including that the record contains inadmissible hearsay.

3. Any party moving for rescission of this order, appointment of an alternative Designated Defense Counsel, or alternative defense coordination procedure and/or any other relief in connection with this provisional designation of Berry & Berry as Designated Defense Counsel shall serve said motion on all parties and upon Berry & Berry. Moving party shall meet and confer with other defendants concerning the alternative designation and/or relief requested and present the results of that meet and confer in any affidavit accompanying any motion for alternative designation. If Plaintiffs and all defendants stipulate, the Court will sign an order setting aside the orders for Designated Defense Counsel.

4. Until further or other order is issued by the Court, Designated Defense Counsel shall coordinate the procurement, exchange and scheduling of certain joint pre-trial discovery, as specified below:

(a) Coordinate the procurement and scheduling of certain pretrial discovery activities described herein and to report progress of said coordinated discovery activities to the Court as required. Designated Defense Counsel shall not be deemed an attorney for any defendant solely as a result of such activities. Designated Defense Counsel's activities under this Order do not include, among other things, case evaluation or medical evaluation; calendaring or preparation of motions; and/or appearing at or taking of depositions.

(b) Nothing done by Designated Defense Counsel under this Order shall be deemed to be a waiver by participating defendants of the attorney-client privilege and/or disclosure of confidential attorney work product, including but not limited to receiving, generating, and/or disseminating notes of conversations with medical expert witnesses.

(c) This order does not preclude Designated Defense Counsel from providing, performing or contracting with any defendant or defense counsel for services beyond those authorized in this Order in connection with this action, so long as there is no conflict of interest or other impropriety that does or may result from said activities or representation and conflict(s) have been waived by all interested and affected parties. Any such additional services shall be charged only to defendants requesting and contracting for said additional services.

(d) Upon written notification, with service upon Plaintiff's counsel and the Court, that all defendants remaining in this action no longer elect to utilize the services of the Designated Defense Counsel and/or no longer elect to schedule or coordinate with the Designated Defense Counsel, the Court shall promptly make a determination whether to set aside this Order, or any parts thereof, and/or whether to replace this Order with any other order that will achieve and/or maintain cost-effective, efficient and reasonable case management of this action. Upon said notification Designated Defense Counsel shall have no further responsibility to perform the functions authorized under this Order until

and unless further ordered by the Court to resume said duties. However Designated Defense Counsel shall be paid for the reasonable costs and fees incurred by participating defendants up to the time this order is or has been withdrawn, or modified.

5. SERVICE OF PLEADINGS AND OTHER CORRESPONDENCE. All counsel shall serve the Designated Defense Counsel with copies of all pleadings and correspondence concerning discovery in this action. Designated Defense Counsel shall appear on the service list of pleadings filed pursuant to this Order as “Designated Defense Counsel.”

Designated Defense Counsel’s performance of the functions listed below shall not constitute a general appearance in this matter.

6. DEFENSE STEERING COMMITTEE. A Defense Steering Committee should be established composed of and open to any interested defense counsel to work with the Designated Defense Counsel in the coordination of defense discovery and for the purpose of resolving any dispute which may arise among defendants regarding discovery. Designated Defense Counsel shall meet with the Defense Steering Committee, if such a committee is established by defendants, on a regular basis in the execution of its duties and responsibilities under this Order. Absent the existence of a Defense Steering Committee, Designated Defense Counsel shall meet and confer with all defendants on a regular basis in the execution of its duties and responsibilities under this Order. Any dispute that cannot be resolved among and between defendants, or among and between defendants and Designated Defense Counsel, after reasonable meet and confer, shall be referred to the Court upon noticed motion.

7. DOCUMENT DEPOSITORY AND COPYING SERVICE. Designated Defense Counsel shall be responsible for the identification and selection of a document depository for all documents, materials and records procured and maintained by the Designated Defense Counsel pursuant to this order. Upon request of the Designated Defense Counsel a party shall allow Designated Defense Counsel to copy any records obtained by a party, without the assistance of Designated Defense Counsel. All parties shall have access to documents, materials and records maintained in the document depository for inspection or copying upon reasonable notice to Designated Defense Counsel and as otherwise provided in this order. Designated Defense Counsel may arrange for a copying service in carrying out the functions set forth in this order. Any defendant requesting copies of records from Designated Defense Counsel shall pay for the reasonable costs and fees for said copies as further detailed below.

8. OPT-OUT PROVISIONS. Any defendant may opt not to participate in all or part of certain discovery functions under this Order by providing timely, written notice to Designated Defense Counsel as further provided herein.

Notwithstanding the foregoing, all defendants shall be required to share the Designated Defense Counsel’s reasonable fees and costs for certain functions required of

Designated Defense Counsel under this Order which the Court deems benefit all defendants equally. Said “non-optional” functions are delineated and identified below.

9. DESIGNATED DEFENSE COUNSEL FUNCTIONS. Designated Defense Counsel shall perform the following functions:

A. STANDARD INTERROGATORIES

(1) Plaintiff (s) Responses to Standard Interrogatories to Plaintiff(s) shall be served upon the office of the Designated Defense Counsel who shall maintain the original of said responses. Copies of the Plaintiff(s) responses to Standard Interrogatories shall be served by Plaintiff(s) on all defendants through their counsel.

(2) Requests for extension of time to respond to standard interrogatories shall be addressed to Designated Defense Counsel. No extension shall be for more than two (30) day extensions without court order and with notice to all parties. No extensions will be granted, absent court order, where settlement conferences, motions to advance, motions for preference, trial setting conferences, or trials have been set. Notice of all extensions shall be provided by plaintiff’s counsel to all defendants. Defendants shall notify Designated Defense Counsel of any motion being made to the court respecting responses to Standard Interrogatories, prior to filing said motion(s), as part of the statutory “meet and confer” required prior to filing discovery motions.

B. PLAINTIFF(S) DEPOSITIONS

(1) Designated Defense Counsel shall meet and confer with the Defense Steering Committee and any other interested defense counsel respecting the scheduling, timing, priority and protocol for the taking of Plaintiff(s) deposition(s). Designated Defense Counsel will disseminate a proposed deposition schedule to all defense counsel (in its monthly report or otherwise) and specify the deadline for any defendant to opt out from attending or participating in any scheduled deposition(s). Upon expiration of the time specified for defendants to communicate with Designated Defense Counsel the election not to participate, Designated Defense Counsel shall schedule, notice and coordinate the deposition(s).

(2) Designated Defense Counsel will meet and confer with plaintiff counsel to schedule and coordinate the depositions of plaintiff(s). No defendant shall notice, schedule, cancel or withdraw notice of any plaintiff(s) deposition without prior coordination with and approval of the Designated Defense Counsel, absent court order.

C. DEFENSE MEDICAL EXAMINATIONS/JOINT DEFENSE REVIEWS.

(1) The Defense Steering Committee and any other interested defense counsel shall meet and confer with Designated Defense Counsel to identify and discuss coordination of and protocols for joint defense medical examinations and/or joint medical reviews. The results of any agreements reached following this meet and confer shall be provided by Designated Defense Counsel to all defense counsel. Upon expiration of the time specified for defendants to opt out of participating in any said medical examination, test,

screening or review, Designated Defense Counsel shall schedule, notice, and coordinate these procedures.

(2) All reports resulting from such medical examination, assessment, or reviews shall be obtained by Designated Defense Counsel and disseminated to those defendants who have agreed to participate in and pay for this function.

D. RECORD PROCUREMENT

(1) Designated Defense Counsel shall be responsible for initiating the procedures necessary to obtain plaintiff(s) medical and employment records and related medical evidence (e.g. radiographs, x-rays, photographs, pathology specimens) and advise all defendants, in its monthly report or otherwise, that initial procurement has commenced in this case. Upon expiration of the time specified for defendants to communicate to Designated Defense Counsel the election not to participate in this function, the Designated Defense Counsel shall initiate and obtain stipulations, authorizations, subpoenas and waivers as necessary to procure and shall procure the identified relevant medical and employment records and related medical evidence.

(2) No other defendant shall initiate procedures to obtain the records and evidence herein described, absent court order.

(3) Any request by a defendant for inspection or copying of records described herein made to Designated Defense Counsel shall constitute an election by said defendant to participate in this function of the Designated Defense Counsel and said defendant shall pay its per capita share of the costs of obtaining said records or evidence.

(4) Designated Defense Counsel shall be the sole repository of radiographs, pathology materials, and other related medical evidence for the defendants. Designated Defense Counsel shall be responsible for arranging for the orderly inspection of and/or access to said medical evidence among and between the parties. Plaintiff(s) and those defendants participating in this function shall have reasonable and timely access to said materials. Any request for inspection or access to medical materials deposited with Designated Defense Counsel shall constitute an election by said defendant to participate in this function.

E. DEPOSITION OF PLAINTIFF(S)' MEDICAL WITNESSES

(1) The term "medical witnesses" shall include plaintiff(s)' treating doctors and other medical providers, medical consultants, and/or medical experts retained by parties.

(2) The Defense Steering Committee and any interested defendant shall meet and confer with Designated Defense Counsel to compile a list of jointly requested depositions of Plaintiff(s) medical witnesses and, if appropriate, agree upon the protocol among defendants for taking said depositions. Designated Defense Counsel shall disseminate the results of this meet and confer to all defense counsel (through a monthly report or otherwise). Individual defendants may also submit a request for the deposition of specified plaintiff's medical experts or providers directly to Designated Defense Counsel.

(3) Designated Defense Counsel shall coordinate the date, time, place and protocol if applicable, for the depositions of plaintiff-designated medical witnesses, after meeting and conferring with the Defense Steering Committee and/or individual defendants, and plaintiff's counsel. Designated Defense Counsel shall thereafter timely serve notice of the scheduled depositions of plaintiff-designated medical witnesses upon all parties.

(4) No defendant shall schedule or notice any deposition of a plaintiff's medical expert without coordination with and approval of the Designated Defense Counsel, absent court order.

(5) Defendants may elect not to participate in one or more depositions scheduled by Designated Defense Counsel by written notice to Designated Defense Counsel at least one full business day before the start of the deposition. Attendance at any portion of the deposition is an election to participate. The procurement or use by any defendant or defense counsel of any transcript or videotape of the deposition proceeding, or parts thereof, scheduled and taken pursuant to these provisions, from any other source (other than through court pleadings) shall be deemed an election to participate in said deposition, and said defendant shall share in the costs and fees associated with said deposition (as further delineated below), unless otherwise ordered by the Court.

F. DESIGNATION OF JOINT DEFENSE MEDICAL EXPERTS

(1) Designated Defense Counsel shall prepare and distribute to defense counsel a preliminary list of defense medical experts on common issues for review and consideration. On behalf of those defendants who so authorize, the Designated Defense Counsel shall timely serve the agreed upon "Joint Defense Medical Expert Disclosure" in compliance with C.C.P. section 2034 and said disclosure shall identify all authorizing defendants on whose behalf the disclosure is made. Service of this disclosure shall not constitute a general appearance by Designated Defense Counsel. This joint defense medical expert disclosure shall not constitute the "pared down" expert witness list, if any, ordered by the court and all defendants shall be responsible for service of their own "pared down" witness list. Any defendant not identified on the joint disclosure shall be responsible for timely serving its own expert disclosure pursuant to C.C.P. section 2034 and may not rely on or incorporate by reference the Joint Defense Medical Expert Disclosure in fulfilling its obligations under C.C.P. section 2034. No defendant shall be precluded from serving its own expert disclosure, including any supplemental expert disclosure, permitted by statute or rule of court.

(2) Designated Defense Counsel shall serve a written notice to all parties of either the withdrawal in whole of the joint defense disclosure of medical experts or withdrawal of any expert witness from said joint disclosure. Any party may re-designate an expert within five (45) days after service of the withdrawal, and in no event not later than five (5) days before the date set for trial. Any defendant re-designating a medical expert shall make such expert available for deposition.

(3) Plaintiff(s) counsel shall serve Designated Defense Counsel with any notice or request for the deposition of any medical witness identified on the Joint Defense Medical Expert Disclosure.

(4) Designated Defense Counsel shall meet and confer with counsel for Plaintiff(s) and counsel for authorizing defendants to coordinate and schedule the dates, times, places, and protocol if applicable, for requested joint defense medical expert witness depositions.

(5) No defendant shall schedule or notice any deposition of a jointly designated defense medical expert without coordination with and approval of the Designated Defense Counsel, absent court order.

G. REPORTS TO THE COURT AND ATTENDANCE AT COURT PROCEEDINGS.

(1) Unless otherwise ordered by the Court, at least five (5) court days before any Case Management Conference scheduled in this action, Designated Defense Counsel shall serve and file a written report to the Court summarizing the status of medical and employment discovery prescribed herein and shall bring to the Court's attention any discovery issues or disputes within the purview of this case management order. Unless otherwise ordered, no defendant shall be required to file individual Case Management Conference Statements with the Court but any defendant may do so (individually or jointly with other defendants) if there is an issue that defendant wishes to bring to the Court's attention.

(2) Unless otherwise ordered by the Court, Designated Defense Counsel shall appear at each Case Management Conference to provide an oral report to the Court and/or answer questions by the Court concerning the discovery covered by this Order.

(3) As required and requested by the Court, Designated Defense Counsel shall provide additional reports and/or information or data to the Court concerning any issue arising under this Order and/or appear at court proceedings in connection with any matter concerning functions or duties provided in this Order.

H. PERIODIC REPORTS TO DEFENDANTS. Designated Defense Counsel shall provide periodic reports to all defense counsel, on a monthly basis or more often as the case may warrant, updating defense counsel as to the status of discovery functions covered in this order and shall include a summary of Designated Defense Counsel's actions and activity, the status or progress of scheduled procedures and depositions and other developments of common interest and concern relating to the medical and employment discovery functions covered by this order.

10. DESIGNATED DEFENSE COUNSEL FEES AND COSTS.

A. NON OPTIONAL FUNCTIONS. Unless otherwise ordered by the Court, Designated Defense Counsel costs and reasonable fees shall be shared equally among all defendants appearing in this action and allocated on a per capita basis (one defendant

equals one share of the costs and fees) for the following functions provided to all defendants in compliance with this Order:

(1) Services rendered in connection with the Standard Interrogatory function described in paragraph 6A, above.

(2) Providing reports, memoranda or updates to the Court, or responding to Court inquiries as described in paragraph 6G above.

(3) Attending court-ordered case management conferences or other court proceedings as described in paragraph 6G, above.

(4) Providing notice to all defendants required by this Order or by statute, including but not limited to, serving parties notice of scheduled depositions and deposition schedules, joint defense medical examinations, tests, or other procedures as described in paragraph 6.

(5) Preparation for and participation in conferences or meetings of the Defense Steering Committee in connection with all functions covered by this Order.

(6) Reasonable costs and expenses to prepare and disseminate to all defendants any reports providing the status of discovery and discovery issues as required under this Order and described in paragraph 6 above.

(7) Miscellaneous expenses reasonably incurred in the administration of the scheduling and coordinating activities, in connection with functions covered in paragraph 6 above.

B. OPTIONAL FUNCTIONS. The following are “optional” functions which, by the terms of this Order, any defendant may elect not to participate in by providing timely written notice of said election to Designated Defense Counsel. Designated Defense Counsel’s reasonable fees and costs incurred in executing the following specified optional functions shall be shared by all “participating defendants” (i.e. defendants who have not timely communicated to Designated Defense Counsel an election not to participate in a given optional function or function activity). Designating Defense Counsel shall allocate per capita its reasonable fees and costs incurred in connection with optional functions only among the “participating defendants” in the following optional functions:

(1) Noticing, scheduling and coordination of Plaintiff(s)’ depositions, including cost of the court reporter and original transcript, videoconferencing and/or videotaping of said deposition(s), and plaintiff(s)’ reasonable travel expenses when plaintiff(s) deposition takes place at a more distant location as provided in C.C.P. section 2025.250, in connection with the function set forth in paragraph 6B, above.

(2) Noticing, scheduling and coordination of joint defense medical examinations and reviews, dissemination of resulting reports, and joint medical expert fees or costs incurred in connection with functions set forth in paragraph 6C, above.

(3) Coordination, compilation, creation and service of the Joint Defense Medical Expert Disclosure including experts' fees and costs associated with this function, as set forth in paragraph 6F, above.

(4) Procurement, processing, inventorying, storage, retrieval, maintenance and return of medical and employment records or medical evidence (radiographs, pathology specimens, etc.) in connection with functions set forth in paragraph 6D above, including costs of a copy service, costs associated with electronic storage or preservation, or payments and costs to obtain the original and one copy of records.

(5) Noticing and scheduling of depositions of plaintiff(s) medical expert and/or defendants' joint medical experts, including the cost of the court reporter and original transcript, videotaping or teleconferencing costs, expert witness fees and costs, and other related fees and costs in connection with the functions set forth in paragraph 6E above.

(6) Miscellaneous expenses reasonably incurred in the administration of optional scheduling and coordinating activities.

(7) Any defendant who has timely elected not to participate in any optional function or activity ("opted out" function or activity) is deemed to have waived statutory notice requirements applicable to any such procedure and shall not be billed any share of the costs and fees incurred in connection with said "opted out" function or activity. A defendant may also elect not to receive notice of any future optional procedures by providing notification to Designated Defense Counsel and specifying the case name and docket number.

(8) When a defendant appears at a deposition, requests or orders the results of any medical examination or review, joins in or incorporates by reference experts disclosed in the Joint Defense Medical Expert Disclosure, requests or obtains deposition transcripts of defense depositions coordinated and scheduled by Designating Defense Counsel, or otherwise participates in a specified optional function or activity, said Defendant shall be considered a "participating defendant" for purposes of cost sharing and billing for services as to that function, notwithstanding said Defendant's prior election to opt out of the specified function or activity.

(9) Any defendant who requests a procedure which relies upon earlier-performed procedure(s) in which said defendant did not participate or requests work product from a procedure which said Defendant had previously elected not to participate shall also be deemed a "participating defendant" for purposes of per capita share of the fees and/or costs associated with that function or activity, including initial costs associated with acquiring the records or materials plus any actual costs and fees of processing what is deemed to be a later request to participate. The amounts billed to the late requesting defendant, minus any billing for processing the late request, shall be credited per capita to each defendant who previously paid or was billed for said functions.

C. BILLING.

(1) A defendant who is no longer an active party to a case shall provide written advisement to Designated Defense Counsel and within one (1) working day of receipt of said written communication, Designated Defense Counsel shall cease billing that Defendant for any function(s) pursuant to this Order.

(2) Designated Defense Counsel shall submit monthly statements to Defendants of its costs and reasonable fees. Said statements shall include the case name, category/job title of persons performing the work, time charged, total charged, function(s) performed, allocation among defendants, and credits to defendants. Designated Defense Counsel billings may provide for reasonable payment terms, consistent with the industry norm, including payment due dates, late fees and/or interest

(3) Defendants and defense counsel are obligated to provide Designated Defense Counsel with current contact information during the pendency of this action and failure to do so may subject any credits due to said defendant or defense counsel to forfeiture, upon application to the Court by Designated Defense Counsel.

SO ORDERED.

NOTICES

Counsel for Plaintiff must serve a copy of this order on all counsel of record and self-represented parties forthwith. The clerk is directed to serve filed endorsed copy of this order upon counsel for Plaintiff.

Dated: _____

Jo-Lynne Q. Lee
Judge of the Superior Court