

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY
DEPARTMENT, LAW DIVISON

)	IN RE: ASBESTOS CASES NO.
)	98 L 00000
Claimant,)	
)	
v.)	Claim No. __
)	Judge Clare E. McWilliams
Notice Defendants.)	
MASTER FILE)	
(ASBESTOS DEFERRED REGISTRY),)	

FOURTH AMENDED ORDER GOVERNING
ASBESTOS DEFERRED REGISTRY

Findings of Facts and Conclusions of Law

1. Consistent with the Illinois Supreme Court's January 22, 2016 order, effective January 1, 2018, all civil cases in the Circuit Court of Cook County shall be mandated through the centralized EFM (eFile IL) in 87 counties not exempted by the Courts order. Commensurate with the Illinois Supreme Court Order governing e-filing and in the interest of judicial efficiency, this court promulgates the fourth amended order governing the asbestos deferred registry.
2. This Court has the inherent power to control cases on its docket and to order the trial or disposition of these cases in a manner consistent with an economical allocation of judicial resources and the parties' interests.
3. This Court has heretofore conducted hearings and taken evidence on the cause, development and consequences of latent diseases that occur due to exposure to asbestos.
4. A substantial number of asbestos personal injury cases filed in Cook County involve plaintiffs who claim significant exposure to asbestos, but who are not now physically impaired. In some of these cases there will be a future progression of an asbestos-related condition resulting in disability to the plaintiff. In other cases, the disease process will progress no further.
5. The registration of a deferred claim in the Court-supervised Registry, and notice (as defined herein to such persons or entities who may be subject to suit later constitutes public notice to such persons that is sufficient to satisfy the "commencement: requirements embodied in the statutes of limitations, e.g. 735 ILCS 5/13-202 (1992), 735 ILCS 5/13-203 (1997 Supp.), and 735 ILCS 5/13-209 (1992), and the product liability statute of repose, 735 ILCS 5/13-213 (1992).

6. The registration of a deferred claim on the Registry is not a “case in controversy,” because the Claimant does not seek monetary damages or other judicial relief. Accordingly, the Clerk of the Court shall not require the payment of a filing fee by a Claimant, and the Claimant is not required to serve summons pursuant to Illinois Supreme Court Rule 101 (1997 Supp.)

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

IT IS HEREBY ORDERED that the “Asbestos Deferred Registry” (“Registry”) was established on March 26, 1991 as a repository for certain claims for asbestos-related personal injury that are deferred until such time, if ever, that Claimants develop evidence of impairment consistent with the terms and conditions provided herein.

IT IS FURTHER ORDERED that the Asbestos Deferred Registry is intended as a device to administer and direct the handling of claims for unimpaired nonmalignant diseases allegedly caused by exposure to asbestos. This Registry shall not affect the way claims for asbestos-related malignancies, or asbestosis with impairment, are filed and prosecuted. When the term asbestosis is referred to herein, it shall be deemed to include any and all non-malignant, unimpaired asbestos related conditions.

IT IS FURTHER ORDERED that this Registry shall be administered by the Judges and Clerk of the Circuit Court of Cook County pursuant to such terms and provisions as follow.

I. Filings on Registry

A. Caption: All Asbestos Deferred Registry motions, filings and orders shall be designated by the following:

Master File (Asbestos Deferred Registry)
No. 98 L 00000

The Caption shall also include the claimant name and a claim number.

All claims filed on or moved to the Registry shall include electronic notice to all entities, which would be named as defendants in the event a lawsuit is filed (“Notice Defendants”).

The Master File Case Number shall be used for all notices, motions, and orders pertaining to claims on the Registry.

B. Designation of Notice Defendant’s Counsel: Upon the entry of this order all notice to each Notice Defendant who is presently a party in any present claim shall be by electronic means, pursuant to the Circuit Court of Cook County E-filing mandate. Notice of any changes of counsel shall promptly be given to the Clerk and to all counsel.

C. Service: Whenever the provisions of this Order require that counsel make service of the specified material, counsel shall electronically file the original document with the Clerk of the

Court, and shall include with such filing a Certificate of Service which shows the names, addresses and dates of service upon all other persons.

If the document is filed by a [Notice Defendant] counsel shall electronically file the original document with the Clerk of the Court and electronically serve the complete document filed upon the Claimant (or Claimant's counsel).

D. Dissolved Corporations: Notices regarding the expiration of the five-year statute of limitations for dissolved corporations pursuant to the Business Corporations Act of 1983, 805 ILCS 5/12.80, as amended, or the dissolution statutes of other jurisdictions, may be filed under the Registry Master File Number. Proper filing of such notice constitutes notice to all Claimants' counsel participating in the Registry that said corporation is no longer a viable Notice Defendant, and may not be named in any claims added to, or current claims removed from the Registry.

E. Effect of Signature: Illinois Supreme Court Rule 137 shall apply to all papers filed by counsel or parties about the Registry.

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

II. Placement of Claims on Registry

A. Procedure

1. Persons Who Shall File a Claim: All persons who claim a history of asbestos exposure, and who can demonstrate an objective asbestos-related physical finding (such as pleural plaques), but do not meet the minimum criteria for impairment defined herein (See Par. III. B), or who have not manifested an asbestos-related cancer shall be placed upon the Registry, and shall remain on the Registry unless and until removed in accordance with the procedures established herein.
2. Persons Who May Not File a Claim: All claims in which asbestosis with impairment, asbestos-related cancer or mesothelioma are alleged shall be filed directly on the active asbestos docket.
3. Requirements for Filing: To file a Registry claim, each Claimant's attorney must file an Asbestos Registry Form (ARF) with the Clerk of the Court. Pursuant to The Circuit Court of Cook County E-filing mandate, Service shall be made in accordance with Paragraph I.C *supra*, for each entity who would be named as a defendant in the event a lawsuit were filed ("Notice Defendants"). The ARF form to be used for filing is attached as Form A to this Order.

No filing fee shall be assessed or paid with respect to the filing of an ARF, but the standard filing fee shall be paid in the event the claim is removed from the Registry and placed on the active docket.

4. Clerk's Office: Upon proper filing of the papers required in Paragraph II.A.3, the Clerk of the Court will enter on the Court's computer the claimant's name, claim number and date of placement on the Registry.

B. Tolling Effect

1. Statutes Tolloed: Subject to other provisions of this Order, the proper filing of a claim shall toll all applicable statutes of limitations and repose as of the date of filing of the Registry form.
2. Limitations of Parties Claims Tolloed: The statutes of limitations and repose tollod in Paragraph II. B.1, *supra*, shall be tollod for any claim of the claimant and claimant's spouse, children and their estates, as well as any claims, cross claims, third-party claims and/or contribution claims of the Notice Defendants. Such claims on behalf of the claimant, claimant's spouse, children and their estates are only tollod, however, as to the Notice Defendants.
3. Claims Not tollod: For persons otherwise properly placed on the Registry, placement of a claim on the Registry tolls statutes of limitation only for non malignant disease claims. All tolling ceases the day that a person dies. Ancillary loss of consortium claims are tollod only as long as the underlying action is tollod. Statutes of limitation are not tollod for: (a) non-malignant disease claims after the date of death of a person, (b) claims for malignancies, (c) claims for wrongful death and/or (d) survival claims.
4. Discovery Tolloed: So long as claims remain on the Registry, they are exempt from discovery provisions of the Illinois and Circuit Court of Cook County Rules, and they shall not "age" for any purpose.

III. Removal of Claims from Registry

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

1. A Claimant may be voluntarily removed from the Registry upon the filing of a Notice of Withdrawal by the Claimant's attorney which states that the Claimant is withdrawing his/her claims and understands that all tolling of limitations will cease upon the filing of the Certificate. The Notice shall be filed in accordance with the Service provisions in Paragraph I.C of this Order.
2. A Claimant may file a Notice of Removal in conjunction with a lawsuit alleging one of the diseases meeting minimum criteria for removal from the Registry.

3. Upon motion of a Claimant and notice to all Notice Defendants, the Court may, in special circumstances and for good cause shown, permit a Claimant who meets the criteria for exiting the Registry to remain on the Registry.

B. Criteria: The minimum criteria for exiting the Registry pursuant to Paragraph are as follows:

1. An Asbestos-Related Malignancy; or
2. A chest x-ray with IL rating of 1/0 or greater, as read by a certified B-reader, and a pulmonary function test performed under the supervision of and interpreted by a board-certified pulmonologist which demonstrates either:
 - a. Total Lung Capacity below 80%,
or
 - b. A diffusing capacity for oxygen of less than 70% of normal and an FEV/FEC ratio of 75% of predicted or greater;
3. Alternatively, a chest x-ray with an ILO rating of 1/1 or greater as read by a certified B-reader and a pulmonary function test performed under the supervision of and interpreted by a board-certified pulmonologist which demonstrates a Diffusing Capacity below 80%;
4. Upon exceptional circumstances and for good cause shown and upon notice to all Notice Defendants, a Claimant may, by petition to the Court, demonstrate actual impairment equal to or greater than that set forth above. Examples of the type of such evidence contemplated hereunder would include:
 - a. Evidence of asbestosis determined pathologically,
or
 - b. Evidence that impairment due to interstitial fibrosis or pleural encasement is so severe that pulmonary function testing cannot be completed

C. Effect of Removal

1. Renumbering of Cases: When a claim is removed from the Registry and placed on the active docket, the Clerk shall assign a new case number.
2. Claimant's Fees: For all claims originally filed as cases on the active docket prior to their placement on the Registry, no additional fees (including filing fees, appearance fees or jury demand fees) will be assessed upon a Claimant's exit from the Registry, provided that the standard fees were paid at the time the original case was filed.

For all claims that were filed directly on the Registry, the Claimant must pay the standard fees (including filing fees, appearance fees or jury demand fees upon exit from the Registry).

3. Service of Process: This Order shall not affect or modify the rules regarding service of process once a claim is removed from the Registry and a complaint is filed on the active docket.

IV. Miscellaneous Provisions

- A. The Order is intended to apply to claims for which the Circuit Court of Cook County is likely to be the most convenient forum for ultimate adjudication of any civil action.
 1. No Waiver: No waiver of forum non conveniens defense shall arise from the non-assertion of the doctrine against a claim on the Registry before its conversion to a civil action. The pendency of a claim on the Registry shall not constitute a factor in favor of Cook County as a forum in the resolution of any forum non conveniens motion.
- B. The use and adoption by the Court of any standard measurement for testing, or the reporting of test results, shall not be deemed a final and conclusive adoption or endorsement of that standard by the court or any counsel, nor the rejection of any competing or alternative standard, but reflects only the selection of a reasonable and consistent system to help ensure that uniform standards are maintained as between individual claims.
- C. The fact that a Claimant satisfies the exit criteria for non-malignant lung disease shall not be construed to be an admission that he has asbestosis, nor shall the exit criteria be cited, referred to or otherwise used in the trial of any case as diagnostic criteria for the determination of whether a plaintiff, in fact, has asbestosis. Such criteria are established only to determine when a Claimant may convert a Registry claim into a lawsuit. The terms "impaired," "impairment," and "asbestos-related" are used herein solely as a means of separating claims and ordering them for disposition. The use of these terms in the context of this Order shall not be deemed to be a finding or admission that any physical conditions or changes are, or are not, asbestos-related in a legal or factual sense, and shall not constitute a basis for a finding of liability against any person.
- D. Neither the filing by any Notice Defendant of any papers regarding an objection to a Claimant's request to exit the Registry, nor the appearance by any Notice Defendant at a hearing relating to such a request, shall be deemed an "appearance" submitting to the Court's jurisdiction in the event the claim is placed on the active docket and a lawsuit is commenced.
- E. Acting pursuant to this Order shall not be considered a Notice Defendant's admission of liability nor a Claimant's admission that he or she is not suffering any injury or disability from an asbestos-related condition.

- F. The existence of the Registry, and the fact that a claim was placed on the Registry, shall not be admissible in any subsequent case, except for the limited purpose of a judge determining whether the provisions of the Registry Order were complied with in that particular case, or for considering whether a claim is time-barred.
- G. Failure to give proper notice to any Notice Defendant of placement of a claim on the Registry shall not toll the statutes of limitations or repose as to that defendant. A Notice Defendant who has received proper notice of placement of a claim on the Registry may assert any objections it may have had to removal from the Registry after the complaint has been filed and served.
- H. This Order shall be severable and if any portions of this Order are stricken or modified on appeal, it shall not diminish the effectiveness of this Order.
- I. Any amendments to this Order shall be prospective only.
- J. The terms of this Order may not be modified except by Order of the Court following notice to all parties of record.
- K. This Order shall be published in The Chicago Daily Law Bulletin and its provisions shall be incorporated into and made a part of the rules of the Circuit Court of Cook County. Notice of any proposed amendments to this Order shall be published in The Chicago Daily Law Bulletin. In the event the Court orders that personal notice of any amendments, late court orders or other matters to any claimant is required, electronic notice by the Clerk to Claimant's attorney shall constitute sufficient service. Copies of this order and any amendments shall be available in the Clerk's office and the office of the judge presiding over the asbestos related personal injury cases.
- L. All Objections to the Fourth Amended Order Governing Asbestos Deferred Registry shall be filed with the Clerk of Court, Chambers 2310, 50 W. Washington Street, Chicago, IL 60602, no later than Wednesday, November 22, 2017.

It is so ordered.

ENTER: JUDGE CLARE E. McWILLIAMS

OCT 25 2017

Circuit Court - 1889

JUDGE

FORM A
Asbestos Registry Form

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY
DEPARTMENT, LAW DIVISION

Claimant,

IN RE: ASBESTOS CASES No. 98 L 00000

v.

All Notice Defendants.

MASTER FILE
(ASBESTOS DEFERRED REGISTRY)

Claim No.

ASBESTOS REGISTRY FORM

1. Claimant's Name:
2. Date of Birth (year):
3. Claimant's Description of Exposure:

Claimant was exposed to asbestos-containing materials (ACMs) during the years ___ to ___,
including ACM exposure in the State of Illinois.

4. Date of discovery of medical evidence of exposure ____ - ____ - ____

Pursuant to Illinois Supreme Court Rule 137, Claimant avers he/she meets the medical and exposure criteria, see par. IIIB, of *In re Asbestos* Fourth Amended Order Governing the Asbestos Deferred Registry required for placement on the Registry.

Date

Registrant's/Attorney's Signature

Attorney ID No.

Attorney's Name

Address