

IN RE: ALL ASBESTOS-RELATED § IN THE CIVIL DISTRICT COURTS
PERSONAL INJURY OR DEATH CASES § AND COUNTY COURTS AT LAW
FILED OR TO BE FILED IN DALLAS §
COUNTY, TEXAS § OF DALLAS COUNTY, TEXAS

SECOND AMENDED MASTER ASBESTOS CASE MANAGEMENT ORDER - 2003

All asbestos-related personal injury or death cases filed or to be filed in a Civil District Court or a County Court at Law in Dallas County, Texas ("asbestos cases") are subject to the provision of this order (with the exception of asbestos cases filed in County Court at Law No. 4).¹

I. COMMON ISSUES

All pre-trial matters which raise common issues of law and/or fact will be heard and determined by the Asbestos Common Issues Judge ("Asbestos Judge"). The Asbestos Judge will enter an order with respect to each of his or her decisions and this order will be deemed entered in all cases in which the issue determined has been raised. This order will have the same force and effect in the case as if determined by the Judge of the court in which the asbestos case is pending. A motion or other pleading which raises an issue which is unique to a particular case will be determined by the Judge of the court in which the case is pending.²

ASBESTOS MOTION DOCKET PROCEDURE

All motions concerning asbestos cases will be styled in the same manner as this order and will be considered on a monthly asbestos motion docket, which will be held on the third (3rd) Monday afternoon of each month in the court designated by the Asbestos Judge in accordance with a docketed agenda unless ordered to the contrary.

¹ February 19, 1990 Order establishing IN RE: asbestos case procedure. Judge Bruce Woody has opted County Court at Law No. 4 out from any decision by an Asbestos Judge in setting trials and determining common issues.

² February 19, 1990 Order.

Attorneys wishing to set a motion on the agenda of a monthly asbestos docket must file a Certificate of Filing, which shall briefly describe the motion requested to be heard, on or before the first (1st) Monday of the desired month with the Court Administrator for the Asbestos Judge (“Asbestos Court Administrator”). The attorney for the movant shall deliver such Certificate of Filing, together with the motion and all supporting documents and briefs, to the law offices of the opposing attorneys on the same day such Certificate of Filing is filed. Such motions and documents shall be deemed filed on the date and time that the Certificate of Filing is file-stamped. Attorneys wishing to respond to a motion shall deliver all written responses, documents and briefs to the law offices of the attorney for the movant by Thursday of the following week. Motions, responses, documents and briefs will not be considered filed by the Asbestos Judge unless:

- i. the Certificates of Filing, motions, and responses are filed and delivered in accordance with the above schedule, and
- ii. the motions and responses, together with all supporting documents and briefs to such motions and responses are delivered to the Asbestos Judge at the time of the hearing.

Motions for summary judgment will be filed and responded to in accordance with Texas Rule of Civil Procedure 166a.

The agenda for the monthly asbestos motion docket will be posted on the bulletin board outside the office of the Asbestos Court Administrator. Copies of the agenda will be available in the Asbestos Court Administrator's office.³

³ February 16, 1998 Pretrial Order Regarding In Re: Pretrial Hearings.

All pleadings, motions, orders and other papers, including exhibits attached thereto, when offered for filing with the Court Administrator, shall have three holes prepunched on the left side of the pages to accommodate a three-hole binder.

II. TRIAL SCHEDULE

The Asbestos Judge will coordinate the Civil District Court and County Court at Law dockets and establish a uniform trial schedule for asbestos cases. The Asbestos Judge will set the asbestos cases for trial on specially designated weeks and advise each court of such settings. These dates will be for asbestos cases only and are special settings. The order in which the cases are called for trial will be determined by the Judge of the court in which the case is pending.⁴

(See pages 16-17 of this order for Court trial settings for the years 2003 - 2004)

III. MASTER ASBESTOS FILE

The Master Asbestos File styled **IN RE: ALL ASBESTOS-RELATED PERSONAL INJURY OR DEATH CASES IN DALLAS COUNTY, TEXAS** will be maintained by the Asbestos Court Administrator. The Master Asbestos File is divided into the following:

- A. Master Service List;
- B. Master Orders File;
- C. Master Discovery File;
- D. Master Pleadings File;
- E. Master Bankruptcy File.

A. MASTER SERVICE LIST

A Master Service List will be created and maintained by the Asbestos Court Administrator. Each party shall designate one attorney from each law firm that represents it for

⁴ February 19, 1990 Order establishing the asbestos docket.

service under TEX. R. CIV. P. 21a. Such designations shall be filed in the Master Asbestos File and noted on the Master Service List.

Unless otherwise set forth in this Order or a case specific scheduling order, parties may be served by regular mail or through an electronic mail (“e-mail”) provider, who has been agreed upon by the attorneys for the plaintiffs and defendants. Any party not wishing to use the electronic mail provider may object in writing at any time by filing an objection with the Asbestos Court Administrator and serving such objection on all parties.

Any new counsel appearing in an asbestos case in Dallas County shall inform the court clerk of his or her appearance in any asbestos case which may be pending in such clerk’s court and shall request the Asbestos Court Administrator for inclusion on the Master Service List. Counsel are responsible for informing the Asbestos Court Administrator and the clerks of the court of any changes in their addresses, telephone numbers or telecopy numbers. The Master Service List will be used by the clerks and court administrators in providing notice of hearings, rulings, etc. in the asbestos cases. The Master Service List does not apply to service of process in new lawsuits.

B. MASTER ORDERS FILE

Each order signed by an Asbestos Judge is filed and maintained in the Master Orders File. Because of the large number of asbestos cases pending in Dallas County, it is impractical and unnecessary to have each order signed by the Asbestos Judge to be entered of record in each and every Dallas County asbestos case.

C. MASTER DISCOVERY FILE

Written discovery requests and responses are virtually identical in many of the asbestos cases. In order to minimize duplication and unnecessary efforts, attorneys shall file all discovery

requests and responses which are not specific to an individual asbestos case in the Master Discovery File. Discovery that identifies general liability witnesses and documents, general medical witnesses and documents, and general state of the art witnesses and documents shall be filed in the Master Discovery file and not in each specific case.⁵

D. MASTER PLEADINGS FILE

All pleadings, motions in limine and other motions relating to issues common to all asbestos cases or to all to which a particular defendant is a party will be filed in the Master Pleadings File and not in each case. All parties shall file all motions relating to general voir dire issues, general liability issues, general medical testimony issues and general state of the art evidence in the Master Pleadings File.

E. MASTER BANKRUPTCY FILE

A Master Bankruptcy File has been set up as Cause Number 99-1814-C in the court used by the Asbestos Judge and will be maintained by the clerk of such court.⁶ A party in asbestos case that is automatically stayed against a bankrupt asbestos defendant may proceed as to any co-defendants after all causes of actions and claims brought by or against the bankrupt defendant in that case have been severed and transferred to the Master Bankruptcy File.

⁵ July 25, 1990 Order Creating Master Discovery File. Copies of defendant's master interrogatories to plaintiff previously approved by the then Asbestos Judge Bill Rhea and plaintiffs' master interrogatories to the asbestos product defendants previously approved by the then Asbestos Judge Mark Whittington are filed in the Master Discovery File.

⁶ March 15, 1999 Pre-trial Procedure Order. See also *Wedgeworth v. Fibreboard Corp.*, 706 F. 2d 541 (1983) and *In re Related Asbestos Cases*, 23 B.R.523 (Bkrcty. N.D. Cal. 1982)

IV. LIMITATIONS

A. PARTIES

No petition may be filed with more than ten (10) injured plaintiffs/decedents as parties in that case. Any attorney, who files an asbestos case on behalf of more than ten (10) injured plaintiffs/decedents, is subject to sanctions that may be imposed by the Judge of the court in which such case is pending.

B. PENDING CASES

No Plaintiff may file or be a party in an asbestos-related case involving the same injuries in more than one court.⁷ Any asbestos-related case pending in Dallas County, Texas that involves the same injuries claimed in another pending case may be dismissed upon proper notice.

C. PRO HAC VICE

A non-resident attorney is not eligible to participate pro hac vice in an asbestos-related case in Dallas County, Texas if that attorney has participated in more than ten (10) asbestos-cases in Texas during the preceding 12 month period.⁸

V. PRETRIAL PROCEDURES

A. DISCOVERY CONTROL PLAN

Discovery in asbestos cases filed prior to January 1, 1999 shall be conducted in accordance with this order. In cases filed after January 1, 1999, discovery shall be conducted under Discovery Control Plan - Level 3 and in accordance with this order (*See trial settings on pages 16-17*).

⁷ Applies only to cases filed after November 27, 2001. Does not include contract collection cases.

⁸ Such participation is hereby deemed as appearing in courts in Texas on a frequent basis. See TEX. R. GOVERN. BAR ADM'N XIX.

B. FILING OF DOCUMENTS

Discovery materials, cover letters, master exhibit lists and master witness lists shall be filed with the Asbestos Court Administrator only. Motions in limine shall be filed with the trial court on the day of trial.

C. PLEADINGS

1. Short Form Pleadings

Short form pleadings may be used in Dallas County asbestos cases. After any party files one or more versions of their standard petitions, answers, and all supplements or amendments thereto, in the Master Pleading File, that party may use a short form pleading in individual cases which clearly identifies the parties to the lawsuit and the case in which it is filed. The short form pleading shall reference and incorporate a specific pleading filed in the Master Pleadings File. Any short form pleading which specifically references a form pleading filed in the Master Pleadings File, by title and date of filing, shall be deemed to fully and completely incorporate all statements and allegations contained in the form pleading referenced.⁹

2. Answers

Every defendant appearing in an asbestos case may file an answer in the usual manner. By appearing, each defendant is deemed to have pleaded all issues of contribution and indemnity as to all of the defendants without the necessity of a separate cross action. Each defendant is also deemed to generally deny any cross claim filed against it without further pleading.¹⁰

⁹ August 12, 1995 Pretrial Order Regarding Paperwork Reduction

¹⁰ May 6, 1994 Second Amended Case Management Order

3. Cross-claims and Counterclaims

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 relief 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 dismissal or non-suit by the plaintiff,¹¹ or as soon as possible if within thirty (30) days of trial.

D. UNCONTESTED MOTIONS AND ORDERS IN MULTIPLE COURTS

In order to consolidate as many parties and asbestos cases as practicable into one motion and one order whenever the subject matter is uncontested or agreed, all parties in asbestos cases will file with the clerk of the court of the Asbestos Judge (68th District Court) a unified motion and a proposed unified order. This procedure applies to such matters as a motion to substitute attorneys, motions to dismiss, non-suit or sever, etc. and bankruptcy matters. The form of each Unified Motion and Order will be styled in the same manner as this order and in substantially the same as the pre-approved forms attached to this order so that each court and asbestos case will be listed chronologically and the parties affected by the order are properly identified. (*See pages 13-15 for forms*)

The District Clerk is hereby ordered to file such motions in the Master Asbestos File and enter all orders in the minutes of the 68th District Court. The entry of an order by the District Clerk in the minutes of the court of the Asbestos Judge will serve as an entry of an order in the minutes of the affected court identified in the order and may be used in the appellate record as

¹¹ May 6, 1994 Second Amended Case Management Order

though entered in each court. The Asbestos Court Administrator will forward copies of such orders to the appropriate courts for notation by the clerks of such courts.

E. MASTER DISCOVERY DOCUMENTS

Master discovery responses, if applicable, will be prepared and filed in the Master Discovery File within 30 days after the filing of master discovery requests. For cases filed after this order is signed, plaintiffs will serve answers on opposing counsel (or if necessary file objections) in each such case within 90 days of the filing of the petition.

Plaintiff will serve a copy of the master discovery request on any defendant which has not been served or appeared in an asbestos case. After receipt of the discovery request, the defendant will have 60 days to respond.

F. PRODUCT IDENTIFICATION WITNESSES

All product identification witnesses shall be designated by name, address, telephone number, products to be identified, and (so far as known to counsel) all relevant job sites concerning which such witness will testify, at least sixty (60) days before trial. If a product identification witness is not designated sixty (60) days before trial, and plaintiff's counsel is unwilling to proceed without the late designated witness, that plaintiff's case will be continued to the next asbestos trial docket in that court. If other plaintiffs included in the same cause number are ready for trial, a severance will be appropriate.¹²

¹² November 4, 1994 Case Management Order No. 3.

G. REQUESTS FOR ADMISSION

If either party serves on any other party requests for admission on the issue of product identification, answers to such requests shall be due either sixty (60) days after such requests are served or thirty (30) days after that party's answers to the master set of discovery are due, whichever is later in time. If such requests for admission on the issue of product identification are filed within sixty (60) days of trial, the responding party is obligated to answer them within thirty (30) days as set forth by the Texas Rules of Civil Procedure, unless otherwise agreed between counsel.¹³

H. DEPOSITIONS

Each plaintiff shall be tendered for deposition at least sixty (60) days before trial. If a plaintiff is not deposed sixty (60) days before trial, and if that plaintiff is later deposed and identifies additional products of defendants and/or job sites, not previously identified in discovery, that plaintiff's case will be continued to the next asbestos trial docket in that court or the plaintiff will be excluded from offering any testimony or evidence regarding the additional products or job sites. If other plaintiffs included in the same cause number are ready for trial, a severance will be appropriate.¹⁴

I. NOTICE

When a motion or other document is filed in the Master Asbestos File, the counsel for the party filing such motion or other document shall serve notice of its filing on the counsel of record for each plaintiff or defendant appearing in any asbestos case. If counsel represents more than one party, only one notice to that counsel needs to be given. A copy of the transmittal letter

¹³ January 23, 1992 Order.

¹⁴ November 4, 1994 Case Management Order No. 3.

to the Asbestos Court Administrator will serve as sufficient notice to counsel, provided that the transmittal letter clearly identifies the document being filed. Copies of the actual motion or other document being filed must be provided to the directly affected parties. Any party may request a copy of the document filed and the filing counsel shall promptly provide a copy to the requesting party without charge.¹⁵

J. BANKRUPTCY

In order for a party to proceed in asbestos cases after receiving notice of an automatic stay against a bankrupt defendant, the party shall file a unified Motion for Severance in the Asbestos Court to sever all known causes of action or claims brought by or against such bankrupt defendant from all asbestos cases and transfer such causes of actions and claims into Cause Number 99-1814-C. After all causes of action or claims brought by or against such bankrupt defendant have been severed and transferred into Cause Number 99-1814-C, such party may proceed against the remaining defendants.

Upon the release or discharge of the debtor/defendant from bankruptcy, an asbestos party has ninety (90) days to advise the Asbestos Court that such party wishes to proceed against such debtor/defendant in the court from which the defendant was initially transferred. Failure of a party to advise the Asbestos Judge of that party's intent to proceed against such defendant within ninety (90) days after such party receives notice of such release or discharge will result in an automatic dismissal for want of prosecution of such party's causes of action and claims against such defendant.¹⁶

¹⁵ May 6, 1994 Second Amended Case Management Order.

¹⁶ March 15, 1999 Pre-trial Procedure Order

VI. MISCELLANEOUS

A. CUSTODIAL CARE OF FILINGS AND DOCUMENTS

In order to secure the integrity of the asbestos court filings, the District Clerk is hereby ordered to maintain a duplicate file, separate from the files of the asbestos cases, which file will be: (a) styled in the same manner as is this order; (b) assigned no specific cause number; and (c) entitled "Master Orders File." As documents are filed with the Asbestos Court Administrator and orders are signed by the Asbestos Judge and provided to the District Clerk, the District Clerk is ORDERED to enter and index each such order in the Master Asbestos File, without the necessity of filing such orders in the file jackets of the asbestos cases. It is further ORDERED that the entry of such order in the Master Asbestos File will have the same effect as to the trial and appellate record as though each such order had been actually entered of record in each of the asbestos cases.¹⁷

B. JUDGE'S POWER TO MODIFY MANAGEMENT ORDER

The provisions of this Master Asbestos Case Management Order may be modified or waived in particular cases by the Judge of the court where the case is pending upon specific motion.¹⁸

C. CONFLICT WITH OTHER ORDERS

To the extent this order is in direct conflict with any previous order entered by any Asbestos Judge, this order will supersede that order. Matters previously ruled upon by an Asbestos Judge and not addressed in this order will not be superseded.¹⁹

¹⁷ June 25, 1990 Order Creating Master Orders File.

¹⁸ November 4, 1994 Case Management Order No. 3.

¹⁹ November 4, 1994 Case Management Order No. 3. Pre-trial orders relating to any Premise Liability Defendant, who was not a party to an asbestos case at the time of a ruling, are not binding on such Premise Liability Defendant.

SIGNED this 21st day of July, 2003.

HONORABLE GARY HALL

IN RE: ALL ASBESTOS-RELATED § IN THE CIVIL DISTRICT COURTS
 PERSONAL INJURY OR DEATH CASES § AND COUNTY COURTS AT LAW
 FILED OR TO BE FILED IN DALLAS §
 COUNTY, TEXAS § OF DALLAS COUNTY, TEXAS

UNIFIED AGREED ORDER OF DISMISSAL

On this day came on to be heard an agreed motion to dismiss filed by the Plaintiffs listed below and the Defendant, _____

_____ ,
 and the Asbestos Court after considering such motion is of the opinion that it should be granted in the following numbered cause(s). It is therefore,

ORDERED, ADJUDGED AND DECREED by the Court that all causes of action of the Plaintiffs listed below in the designated courts and numbered causes are hereby dismissed with prejudice as to the refiling of same against the above Defendant only.

Court No.	Cause Number	Plaintiff
44th		
68th		
95th		
101st		
116th		
134th		
160th		

162nd		
191st		
192nd		
193rd		
298th		

The clerks in the courts where the above numbered causes are filed are hereby requested to make the necessary notations in the cases affected by this order. Costs are to be taxed against the (above Defendant) (Party by whom incurred).

Signed this _____ Day of January, 1999.

Asbestos Judge

IN RE: ALL ASBESTOS-RELATED § IN THE CIVIL DISTRICT COURTS
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UNIFIED ORDER SUBSTITUTING ATTORNEY

On this day came on to be heard an agreed motion to substitute attorney filed by the attorneys for the Defendant,

_____ /

and the Asbestos Court after considering such motion is of the opinion that it should be granted in the following entitled and numbered cause(s). It is therefore,

ORDERED, ADJUDGED AND DECREED by the Court that _____

_____ be substituted for _____

as lead attorney for the above Defendant in the designated courts and numbered causes listed below:

Court Number	Cause Number

The clerks in the courts where the above numbered causes are filed are hereby requested to make the necessary notations in the cases affected by this order.

Signed this _____ day of January, 1999.

 Asbestos Judge

DALLAS COUNTY
ASBESTOS JURY TRIAL DOCKET

2003

January 6, 2003	298 th District Court
February 3, 2003	95 th District Court
February 17, 2003	14 th District Court
March 3, 2003	101 st District Court
April 7, 2003	193 rd District Court
May 5, 2003	162 nd District Court
May 26, 2003	County Court #2
June 16, 2003	134 th District Court
July 14, 2003	116 th District Court
August 4, 2003	44 th District Court
August 18, 2003	County Court # 5
September 2, 2003	192 nd District Court
September 22, 2003	County Court #3
October 6, 2003	160 th District Court
October 20, 2003	County Court #1
November 3, 2003	191 st District Court
December 1, 2003	68 th District Court

**DALLAS COUNTY
ASBESTOS JURY TRIAL DOCKET**

2004

January 5, 2004	298 th District Court
February 2, 2004	95 th District Court
February 16, 2004	14 th District Court
March 1, 2004	101 st District Court
April 5, 2004	193 rd District Court
May 3, 2004	162 nd District Court
May 24, 2004	County Court #2
June 14, 2004	134 th District Court
July 12, 2004	116 th District Court
August 2, 2004	44 th District Court
August 16, 2004	County Court #5
September 7, 2004	192 nd District Court
September 27, 2004	County Court #3
October 4, 2004	160 th District Court
October 18, 2004	County Court #1
November 1, 2004	191 st District Court
December 6, 2004	68 th District Court