

DOCKETED
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JAN 13 2004

J. STEWART

**THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA**

IN RE: BERYLLIUM LITIGATION

: NOVEMBER TERM 2003

:
: No. 0002

:
: **BERYLLIUM CASE**

: **MANAGEMENT ORDER NO. 1 -**

: **General Provisions and Pleadings**

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JAN 13 2004

First Judicial District of Pa.
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EXHIBITS

I. PREAMBLE

It is the goal of this Court to secure the just, efficient and economical resolution of each beryllium case now pending or hereafter filed in the Court of Common Pleas for Philadelphia County, Pennsylvania, and to facilitate discovery, eliminate duplication of effort, prevent unnecessary paperwork and promote judicial economy in the management of such cases.

II. GENERAL PROVISIONS

A. Cases to Which This Order Applies.

This Beryllium Case Management Order No. 1 shall govern general administrative matters, pleadings, motions, dismissal and sanctions matters for all beryllium cases currently pending or to be filed in this Court from the date of this Order until further order of this Court. This Beryllium Case Management Order No. 1. supersedes and renders null and void any previously-entered case management order or schedules for any beryllium case filed in this Court.

The implementation or effect of any Orders previously issued by another Court with respect to any case to which this Case Management Order now applies, prior to the transfer of such case to this Beryllium Program, shall be held in abeyance pending further consideration by this Court.

B. Docket and Form of Papers.

A master beryllium docket is established at November Term, 2003, No. 0002. All filings relating to beryllium cases shall state in the heading "Beryllium." Individual case numbers shall be assigned to each plaintiff's case. All future master filings relating to beryllium cases pending in the Court of Common Pleas of Philadelphia County, Pennsylvania, shall be filed under the master docket, November Term, 2003.

C. Attendance at Monthly Court Conferences and Hearings.

Attendance of at least one attorney for each party at monthly conferences scheduled by the Court is mandatory. However, no party shall waive any rights by failing to attend other hearings

unless the attendance of the party has been ordered by the Court. The designation of an attorney to act as spokesperson for a group of plaintiffs or defendants shall not preclude other counsel from participating to the extent necessary to represent the individual interests of their clients, so long as such participation does not involve duplication or unnecessary delay. Case specific issues will not be discussed at monthly Court conferences.

D. Liaison Counsel.

Defendants' counsel and plaintiffs' counsel shall designate "Liaison Counsel" with whom the Court may communicate. All Liaison Counsel shall be licensed Pennsylvania counsel. The Court may communicate with Liaison Counsel orally or in writing for the purpose of the prompt dissemination of information to the parties regarding administrative and scheduling matters only.

As of the date of entry of this Beryllium Case Management Order No. 1, the following individuals are designated as Liaison Counsel: Ruben Honik for the Plaintiffs; Thomas C. DeLorenzo for the Defendants.

Liaison Counsel shall establish a system for the prompt dissemination of information to

all other counsel. The Court shall serve all orders and other written communications upon ^{LIAISON COUNSEL} ~~all counsel~~ of

who will have the responsibility to NOTIFY all Counsel of
record for all parties. Liaison Counsel are not authorized to, nor shall they, accept service of pleadings

on behalf of parties other than those he represents, nor shall Liaison Counsel be required to serve any

other than those set forth above
pleadings or other papers on behalf of plaintiffs or other parties. Defense Liaison Counsel are not

authorized to speak for or on behalf of other parties without receiving express authorization to do so.

E. Cooperation Among Counsel Shall Not Constitute a Waiver of Privileges.

No party waives the attorney-client privilege or work-product privilege by virtue of actions taken in cooperation among parties or their counsel pursuant to this or any other Order of this Court in these cases, nor by action taken by the party in pursuit of the just and efficient resolution of these cases. Because cooperation among one or more defendants and among one or more plaintiffs will

expedite the handling of this litigation and aid judicial economy, counsel working jointly for the purpose of coordinating discovery or trial efforts, in the sharing of counsel, and for other purposes designed to minimize expenses shall not constitute evidence of conspiracy, concert of action, or any other wrongful conduct, and shall not be admissible as evidence for any purpose. However nothing in this paragraph is intended to or shall create a privilege or protection as to documents or communications that would, but for this paragraph, not be privileged or protected.

III. PLEADINGS

A. *Plaintiffs' Master Long-Form Complaint.*

Within 10 days from the date of entry of this Beryllium Case Management Order No. 1, plaintiffs' counsel shall file a Master Long-Form Complaint. All future actions filed with the Court shall adopt the Master Long-Form Complaint. The Master Long-Form Complaint may be amended by consent of all parties or with leave of Court. The Master Long-Form Complaint must be properly served on each defendant and on all newly joined defendants. The date of service of the Master Long-Form Complaint shall not constitute original process for any beryllium action filed prior to the date of this Beryllium Case Management Order No. 1, and the earlier date of filing and service shall constitute the date of original process for those actions. The filing of the Master Long-Form Complaint does not toll any applicable statutes of limitations as to any individual plaintiff. The Master Long-Form Complaint will substitute and supersede the allegations in each beryllium complaint previously filed in the Philadelphia County Court of Common Pleas before December 2003, except that the earlier filing and service dates of each previously-filed beryllium complaint shall, in addition, apply to any defenses based on the statute of limitations, improper service or other defenses which existed at the time of the initial filing. When complete, the Master Long-Form Complaint shall be attached to this Beryllium Case Management Order No. 1 as Exhibit "A".

B. Plaintiffs' Short-Form Complaints.

1. Each short-form complaint shall include the information set forth in paragraph 2 below. Each short-form complaint shall also be verified by the plaintiff in accordance with Pa. R. Civ. P. 1024. Specific defendants against whom the claims for each plaintiff are alleged shall be specifically identified in the short-form complaint for that plaintiff. Previously-filed individual beryllium complaints shall constitute the required short-form complaint for that case.

2. With respect to short-form complaints filed after the effective date of this Case Management Order, each short-form complaint shall state the following information for each plaintiff or, if applicable, plaintiff's decedent named therein:

- a. Whether the individual plaintiff's claim is for medical monitoring or for personal injury related to a specific beryllium-related health effect; and if for personal injury related to a beryllium-related health effect, the name of the beryllium-related health effect in question;
- b. Plaintiff's name and address;
- c. Plaintiff's date of birth;
- d. Plaintiff's decedent's date of death (if applicable);
- e. Plaintiff's social security number;
- f. The names and addresses of any physician who has diagnosed plaintiff as having a beryllium-related health effect;
- g. The date(s) of diagnosis of the beryllium-related health effect;
- h. A list of plaintiff's residences from birth to the present, including the address and dates of residence at each location and the distance of each residence from the Reading Plant;
- i. Whether the plaintiff was employed at the Reading Plant, and if so, the dates of plaintiff's employment at the Plant, the positions in which plaintiff was employed at the Plant, and the dates that the plaintiff was employed in each job position; and
- j. For employment other than at the Reading Plant, a list of plaintiff's employers from birth to present, including the full name of each employer, the address where plaintiff worked for each such

employer, plaintiff's occupation at the work site and the dates of plaintiff's employment at each site.

3. With respect to the previously-filed beryllium complaints, the information delineated in paragraph 2, subsections a-j shall be supplied as to each plaintiff in a Plaintiff's Fact Sheet.

4. A sample Short-Form Complaint shall be attached to this Beryllium Case Management Order No. 1 as Exhibit "B".

C. *Plaintiffs' Fact Sheets*

1. For all presently pending cases which are a part of this program, a Fact Sheet must be filed by January 30, 2004. For all cases filed after the effective date of this Order, a Fact Sheet must be filed within 45 days after the date the short-form complaint is filed. Each Fact Sheet shall be verified by the plaintiff in accordance with Pa. R. Civ. P. 1024. However, for good cause, plaintiff shall have a right to petition the court for a reasonable extension of time to supply a Fact Sheet in a particular case.

2. The parties will discuss the scope and form of the Fact Sheet, and a sample Fact Sheet shall be supplied to the Court by December 29, 2003.

3. To the extent that a filed Fact Sheet does not contain the required information or the content of the information is deficient, defendants may file a motion to dismiss the short-form complaint.

4. A sample Fact Sheet shall be attached to this Beryllium Case Management Order No. 1 as Exhibit "C".

5. Nothing herein shall preclude defendants from serving further discovery on plaintiffs pursuant to the Pennsylvania Rules of Civil Procedure or from moving to compel discovery pursuant to the Pennsylvania Rules of Civil Procedure and the Revised Mass Tort Motion Procedures.

D. Preliminary Objections.

1. Within 30 days after the entry of this Case Management Order, defendants may jointly file Master Preliminary Objections objecting to the plaintiffs' Master Long-Form Complaint on any grounds permitted under Pennsylvania law. If plaintiffs do not voluntarily amend the Master Long-Form Complaint within 10 days of the filing of the Master Preliminary Objections, as permitted by the Pennsylvania Rules of Civil Procedure, defendants shall file their briefs in support of their Master Preliminary Objections within 30 days of the filing of the Master Preliminary Objections.

2. Groups or individual defendants with specific Preliminary Objections not otherwise addressed in defendants' joint Master Preliminary Objections may separately file those specific Preliminary Objections within 30 days after the entry of this Case Management Order. If plaintiffs do not voluntarily amend the Master Long-Form Complaint within 10 days of the filing of the specific Preliminary Objections by groups or individual defendants, as permitted by the Pennsylvania Rules of Civil Procedure, defendants shall file their briefs in support of their specific Preliminary Objections within 30 days of the filing of the specific Preliminary Objections to the Master Long-Form Complaint.

3. For all previously-filed individual beryllium complaints, within 30 days after the entry of this Case Management Order, defendants may file individual Preliminary Objections objecting to the previously-filed individual beryllium complaints on any grounds permitted under Pennsylvania law. If a plaintiff does not voluntarily amend his/her previously-filed individual complaint within 10 days of the filing of the Preliminary Objections by individual defendants as permitted by the

8. If Preliminary Objections are granted, sustained as to one or more counts or to any portion of the Master Long-Form Complaint, the previously-filed individual complaints or short-form complaints, and if the Court does not dismiss the Complaint or complaints but directs the plaintiffs to re-plead, then plaintiffs shall file an Amended Master Long-Form Complaint, individual complaints or short-form complaints in accordance with any Court Order. If the plaintiff(s) fails to file an Amended Master Long-Form Complaint, individual complaint or short-form complaint, the individual case(s) to which such applies shall be dismissed by the Court with prejudice.

9. Subsequently added defendants shall have the right to file Preliminary Objections to the Master Long-Form Complaint, previously-filed individual complaints or short-form complaints within 30 days of service of such complaints. Added defendants shall have 30 days from the date of the filing of the Preliminary Objections to file their briefs in Support of the Preliminary Objections. Plaintiffs may file answers or briefs in opposition to such Preliminary Objections within 30 days after service of the added defendants' briefs in support of Preliminary Objections. Subsequently added defendants shall have 14 days to file a reply brief to any plaintiff's answer or brief in opposition to Preliminary Objections. The Court shall schedule argument on the Preliminary Objections filed by added defendants to the Master Long-Form Complaint, previously-filed individual complaints or to the short-form complaints. The Court's ruling on Preliminary Objections to the Master Long-Form Complaint shall be binding and shall apply to all beryllium cases pending or hereinafter filed in Philadelphia County as of the date of the Court's Order.

10. Until such time as all Preliminary Objections to the Master Long-Form Complaint, previously-filed individual complaints or plaintiff's short form complaints, if any, are resolved by the Court, no party is required to file any responsive pleading to the Master Long-Form Complaint, previously-filed individual complaint or plaintiff's short form complaint and no default

judgment shall be entered against any party for failing to individually answer or otherwise respond to any complaint within the time provided by the Pennsylvania Rules of Civil Procedure.

E. Answers and Entry of Appearance.

1. In the event the Court denies defendants' Preliminary Objections, or in the event the Court orders plaintiffs to file any Amended Complaint and no Preliminary Objections are filed by the defendants with respect to the Amended Master Long-Form Complaint, defendants shall file a Master Long-Form Answer to plaintiffs' Master Long-Form Complaint within ~~30~~²⁰ days from the date the Court resolves the Preliminary Objections or the date of service of any Amended Master Long-Form Complaint.

2. With respect to all previously-filed individual beryllium complaints, within 30 days after entry of this Case Management Order, individual defendants shall separately file entries of appearance identifying by plaintiff name and case number each case in which the defendant is named. With respect to all short-form complaints filed after entry this Case Management Order, within 30 days after service on the defendant of a short-form complaint, the individual defendant shall separately file the aforesaid type of entry of appearance. The entries of appearance shall include counsel's e-mail address. The filing of an entry of appearance on behalf of any defendant at such time does not constitute a waiver of any objections to service or jurisdiction over the defendant that could be raised by such defendant.

3. If no Preliminary Objections are filed by a defendant to a previously-filed individual complaint or plaintiff's short-form complaint, within the time period set forth in Section III, D, 3 herein, or if Preliminary Objections have been overruled, all averments of fact in a previously-filed individual complaint or in the plaintiff's short-form complaint shall be deemed denied, all affirmative defenses shall be deemed asserted, and all affirmative defenses shall be deemed denied. Any defendant who wishes to assert crossclaims for indemnification and/or contribution against any other defendants

must set forth such crossclaims in a pleading so titled; all such crossclaims so filed shall be deemed denied.

4. Any entries of appearance filed by defendants prior to entry of this Beryllium Case Management Order No. 1 shall not bar or waive the rights of those defendants to file and/or join Preliminary Objections. Any defendant who previously filed entries of appearance is not required to re-file its entries of appearance, and any previously-filed entries of appearance shall be deemed to incorporate the terms set forth in Section III, E, 2 above.

F. Amended Complaints.

1. Any defendant which is named as a party in an original complaint need not serve or file a responsive pleading to any amended complaint. If an amended complaint raises additional claims or sets forth new, substantive allegations, a defendant may serve and file preliminary objections within 30 days of service of the amended complaint. If preliminary objections are filed, the procedures set forth in Section III, D shall control the procedure for adjudicating the preliminary objections. If a defendant chooses not to file preliminary objections to an amended complaint, all factual averments of the amended complaint will be deemed denied, all affirmative defenses will be deemed asserted and all affirmative defenses will be deemed denied.

IV. MOTIONS

A. Motions.

1. Unless the Court orders otherwise, motions and responses thereto shall be submitted to the Court in accordance with the Revised Mass Tort Motion Procedures attached as Exhibit "D" to this Beryllium Case Management Order No. 1, or in accordance with any subsequent revisions to those procedures adopted by the Court.

2. Each defendant shall be deemed to have joined in any other defendant's motion where the granting of the motion would benefit it or all defendants generally. Motions solely adopting

the reasoning of the filing defendant's motion shall not be filed. A defendant may, but is not required to, file a supplemental motion setting forth arguments directly related to or expanding upon that defendant's position. Should the defendant originally filing such motion be dismissed from the case(s) in which such motion was filed prior to ruling, the motion shall remain viable as to all remaining defendants in the case.

V. SANCTIONS

A. *Party's Failure to Comply.*

1. If a party fails to comply with the terms of this Beryllium Case Management Order or any subsequent Beryllium Case Management Order or schedule, a Notice of Failure to Comply shall be served upon counsel for the non-compliant party by any party affected by such failure. Service of such notice shall be made upon all counsel of record. The non-compliant party shall have twenty (20) working days after service of the Notice of Failure to Comply within which to cure the identified failure. Should the non-compliant party fail to cure the failure, any party may file a motion in accordance with the Revised Mass Tort Motion Procedures attached as Exhibit "D" to this Beryllium Case Management Order No. 1 to compel compliance with the order or schedule. If the non-compliant party fails to comply with the requirements set forth in this Beryllium Case Management Order No. 1 or any other order or schedule, the Court may impose the full range of sanctions permitted under Pennsylvania Rules of Civil Procedure and Pennsylvania law, including the imposition of costs and attorneys' fees, non pros, default judgment and/or preclusion.

IT IS SO ORDERED.

By: 
ACCA 704 J.

Date: 11/7/04