

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: WELDING FUME PRODUCTS	:	
LIABILITY LITIGATION	:	Case No. 1:03-CV-17000
	:	(MDL Docket No. 1535)
	:	
	:	JUDGE O'MALLEY
	:	
	:	<u>DISCOVERY ORDER</u>

This Order confirms an oral discovery ruling made by the Court on March 29, 2006 (hearing tr. at 20-25).

In various interrogatories and requests for production of documents, plaintiffs have asked those defendants who are current or past manufacturers of welding rods (“the Manufacturing Defendants”) to reveal their knowledge of any claims made by any persons related to neurological or other health effects caused by welding fumes.¹ At a discovery conference on October 17, 2005, the Special Master discussed the scope of the relevant discovery requests.² The Court is concerned that, despite the Special Master’s rulings, certain Manufacturing Defendants have not undertaken

¹ See, e.g., ESAB Interrogatory no. 56 (“Did you . . . ever have any claims for neurological or other health effects, whether directly or indirectly attributed to their exposure in the manufacture or use of your welding rods? If the answer is ‘yes’, give the name of such claimants and attach copies of such claims and copies of all documents relating to the disposition and handling of such claims.”); ESAB Request for Production no. 38 (“Documentation showing any and all health complaints concerning inhalation of fumes from welding consumables distributed and/or sold by your company that you have investigated since 1932.”).

² See hearing tr. at 109-19 (Oct. 17, 2005) (discussing and construing ESAB Interrogatory no. 56); see also *id.* at 148 (noting that, while the Court’s rulings technically applied only to ESAB, it was commonly understood that the rulings would also apply to identical discovery requests to other manufacturers).

a sufficient search for relevant documents.

Accordingly, the Court now confirms and clarifies the Manufacturing Defendants' obligations regarding production of discovery related to their knowledge of any claims made by any persons, which are related to alleged neurological effects caused by welding fumes.

Any Manufacturing Defendant who is now or was earlier engaged in the manufacture of welding consumables shall undertake a thorough search for, and shall produce to and identify for plaintiffs, any and all documents related to "claims" by any individual that the use of welding consumables caused any type of neurological injury. The term "claims," as used above, includes, without limitation, and regardless of final outcome: (1) claims for benefits submitted to health insurance plans, or disability insurance plans, or retirement plans; (2) claims made to state or federal workers' compensation plans; (3) disability claims presented to social security; (4) formal or informal complaints to supervisors, or to internal health or medical staff; and (5) actual or threatened lawsuits.

With regard to actual or threatened lawsuits, the Court limits the Manufacturing Defendants' obligations to documents created at any time before January 1, 2002. With regard to the other categories listed above, there is no time limitation.

The Court understands that, especially with regard to actual or threatened lawsuits, there may be documents that fall into the above categories that are protected from discovery by a privilege. The Court directs the Manufacturing Defendants to produce those documents not privileged, to submit a privilege log, and to provide copies of the privileged documents to the Special Master for review, in accord with past practice.

The Court also understands there likely will be certain privacy concerns connected with

many documents that fall into the above categories. If any responsive documents contain private health information, and the individual involved has not waived his right to keep that information private, then the Court directs the Manufacturing Defendants to produce those documents only after first redacting any identifying information (e.g., name, address, social security number). If plaintiffs later show good cause for obtaining the redacted information, the Court may require Manufacturing Defendants to seek a privacy waiver from a given individual.

Finally, the Court orders the production of those documents described above that are already in existence to occur fully on or before May 1, 2006; and the Manufacturing Defendants shall remain under a continuing obligation to produce timely any such documents that come into existence in the future.

IT IS SO ORDERED.

/s/ Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

DATED: April 10, 2006