

defendant may *not*, however, cross-examine a particular plaintiff's expert witness with statements made by some *other Welding Fume* plaintiff's *case-specific* witness."²

To apply these rules, the parties must know whether each of the many *Welding Fume* plaintiffs' experts qualify as a "core expert" or a "case-specific expert." In most instances, the identity is clear. The parties' briefs in this case, however, point out some confusion regarding a few of plaintiffs' experts.³ This Order resolves that confusion.⁴

First, it is clear that any of the experts whom plaintiffs specifically designated as core experts, in documents filed on the master docket, are and remain core experts.⁵

Second, an expert is a core expert if he: (1) submitted two or more reports; (2) referred to one of those reports as a "general report" or "core report;" and (3) referred to another report as a "case-specific report." Thus, Industrial Hygienist Steven Paskal qualifies as a plaintiff's core expert.

Third, an expert is a core expert if: (1) he replied affirmatively, when asked explicitly in deposition, whether he was a core expert; (2) that affirmation was seconded by plaintiff's counsel; and (3) there is no

² *Id.* at 53-54 (footnote omitted). The Court further explained: "Stated differently: defendants may cross-examine plaintiff A's experts with contradictory statements made by plaintiff A's other case-specific experts and also any of plaintiffs' core experts, but not with statements made by plaintiff B's case-specific experts. The latter statements do not qualify as admissions by plaintiff A or his agents, while the other statements do." *Id.* at 54 n.87. The contradictory statements referred to must be made under oath, whether in an MDL bellwether trial or elsewhere.

³ See plaintiff's objections to deposition designations (*Cooley* docket no. 196), and defendants' response thereto (*Cooley* docket no. 200).

⁴ See *Cooley* pretrial hearing at 356-58 (Sept. 4, 2009) (reserving judgment on this issue and also ruling on a related issue – that is, that the parties generally do not have to designate this specie of expert testimony before using it to impeach an expert appearing live at trial).

⁵ The parties filed documents designating their core experts at the following master docket numbers: plaintiffs – 419, 741, 742, 863, 1177, & 1229; defendants – 622, 623, 628, 633, 800, 843, 1230, & 1236. The Court created a chart listing these core experts as exhibit A to *In re Welding Fume Prods. Liab. Litig.*, 2005 WL 1868046 (N.D. Ohio Aug. 8, 2005) (master docket no. 1353).

basis to believe that seconding counsel was acting outside of his authority. Thus, Dr. Edward Baker qualifies as a plaintiff's core expert.

And fourth, the fact that a given individual has been hired as an expert by multiple *Welding Fume* plaintiffs does not, without more, qualify him as a core expert. This is true even if that individual offers general opinions, in addition to his or her case-specific opinions. Thus, neither Dr. Richard Lemen nor Dr. Michael Swash qualify as core experts.

IT IS SO ORDERED.

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

DATED: September 14, 2009