

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

In re WELDING ROD PRODUCTS)	
LIABILITY LITIGATION)	Case No. 1:03-CV-17000
-----)	MDL Docket No. 1535
THIS DOCUMENT RELATES TO)	
ALL ACTIONS)	JUDGE O'MALLEY
)	

CASE MANAGEMENT ORDER

IT IS HEREBY ORDERED that the following Case Management Order shall govern all proceedings in this matter:

I. PRETRIAL CONSOLIDATION AND COORDINATION

A. Consolidated Cases

1. By order of the Judicial Panel on Multidistrict Litigation (“MDL Panel”), a number of individual personal injury cases have been transferred to this forum for coordinated pretrial proceedings. In addition, a number of individual personal injury cases that were originally filed in this District have been made a part of this proceeding. These cases and any cases asserting claims solely on behalf of individual named plaintiffs that are subsequently transferred to or filed in this District are referenced below as the “Individual Cases.” A list of the Individual Cases currently pending in this MDL, to best of the Court’s knowledge, is attached as Exhibit A.

2. By order of the MDL Panel, a number of purported class actions have been transferred to this forum for coordinated pretrial proceedings. These cases and any purported class actions that are subsequently transferred to or filed in this District are referenced below as the “Class

Action Cases.” A list of the Class Action Cases currently pending in this MDL, to best of the Court's knowledge, is attached as Exhibit B.

3. This Order is without prejudice to the right of any party to argue for or against consolidation for purposes of trial, and shall not make any entity a party to any action in which he/she has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

B. Applicability of Order

The terms of this Order shall apply automatically to the actions that are currently a part of this proceeding and to all other cases that become a part of this proceeding by virtue of being instituted in, removed to, or transferred to this Court (including cases transferred pursuant to (a) Local Rules, (b) 28 U.S.C. § 1404(a), or (c) 28 U.S.C. § 1407). This Order also vacates any prior scheduling order issued by a federal court prior to transfer of a case to MDL 1535. The local rules of a federal transferor court will not be binding on the parties once a case has been transferred to MDL-1535, so long as the case remains before this transferee court.

C. Dissemination of Order

1. Plaintiffs' Liaison Counsel (as designated below) shall within five (5) days of the date of this Order send (by overnight delivery, or electronic mail when available) a copy of this Order to all plaintiffs' counsel in all actions that are a part of this proceeding. Defendants' Liaison Counsel (as designated below) shall within five (5) days of the date of this Order send (by overnight delivery, or electronic mail when available) a copy of this Order to all defendants' counsel in all actions that are a part of this proceeding.

2. When an action that related to this proceeding is hereinafter filed before this Court or transferred to this Court from another forum, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall promptly send (by overnight delivery or electronic mail when available) a copy of this Order to plaintiffs' and defendants' counsel, respectively, in that action (to the extent that those attorneys are not already counsel of record in this proceeding).

II. CASE IDENTIFICATION

A. Master Docket and Record

For the convenience of the parties and the Court, the Clerk of this Court will maintain a master docket with a single docket number and master record under the style: “*In re Welding Rod Products Liability Litigation*,” Master Case No. 1:03-CV-17000, MDL Docket No. 1535. When an order, pleading or other document is filed and docketed in the master docket, it shall be deemed filed and docketed in each individual case to the extent applicable and will not ordinarily be separately docketed or physically filed in any individual cases. However, the caption may also contain a notation indicating whether the document relates to all cases or only to specified cases, as described below.

B. Captions

All orders, pleadings, motions, and other documents filed in this proceeding shall bear a caption in the following format:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re WELDING ROD)	
PRODUCTS LIABILITY LITIGATION)	
_____)	Case No. 1:03-CV-17000
THIS DOCUMENT RELATES TO)	MDL Docket No. 1535
[ACTIONS])	
_____)	JUDGE O’MALLEY

C. Master Filing

If a document that is filed in this proceeding is generally applicable to all coordinated actions, the caption shall include the notation that it relates to “ALL ACTIONS,” and the Clerk will file and docket the document only in the master docket. Likewise, if a document that is filed in this proceeding is generally applicable to a category of cases (*e.g.*, the Individual Cases, the Class Action

Cases), the caption shall so indicate, and the Clerk will file and docket the document only in the master docket.

D. Separate Filing

If a document is intended to apply only to a particular case or cases, the caption shall indicate the case number of the case(s) to which it applies, and the document shall be filed electronically in each specified case.

E. Electronic Filing

The Court has ordered this matter onto the Electronic Case Filing System. (*See* docket no. 7, Order dated Aug. 13, 2003.) All parties are required to register for ECF participation. The parties are expected to follow the Northern District of Ohio's policies and procedures on Electronic Case Filing. For further information on this topic, see the "NOTICE" included in the Court's "PRACTICE & PROCEDURE ORDER" (dated August 13, 2003).

F. Form of Submission

The parties shall not make any *ex parte* submissions to the Court, but rather shall serve all filings in accordance with this Order. Notices of motions shall not be filed. The Court prefers that motions and memoranda in support be integrated into a single document. Any and all letters or other submissions made directly to chambers shall be submitted **only** by Plaintiffs' Lead Co-Counsel or Plaintiffs' or Defendants' Liaison Counsel (see Section III, below), or state that they have been authorized by those persons.

III. ORGANIZATION OF COUNSEL

A. Plaintiffs' Lead Co-Counsel

1. Pursuant to the Court's September 17, 2003 Order, plaintiffs' Lead Co-Counsel are Don Barrett and Richard Scruggs. Plaintiffs Lead Co-Counsel shall discharge the following duties:

- (a) To be lead spokespersons before the Court for plaintiffs;

(b) To coordinate, determine, and present (in briefs, oral argument or such other fashion as may be appropriate) the positions of the plaintiffs on all matters arising during all pretrial proceedings;

(c) To coordinate for plaintiffs the initiation and conduct of discovery consistent with the requirements of Fed. R. Civ. P. 26(b)(1) and (2) and (g), including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;

(d) To direct and coordinate the work of all plaintiffs' counsel, including the Plaintiffs' Executive Committee, and to make assignments of work to be performed in the prosecution of the case in a manner to assure that pretrial preparation is conducted effectively, efficiently and economically;

(e) To monitor the activities of plaintiffs' counsel to assure that schedules are met and that unnecessary expenditures of time and expenses are avoided;

(f) To enter into stipulations with opposing counsel necessary for the conduct of the litigation;

(g) To communicate with all plaintiffs' counsel information concerning the status of any developments in this proceeding;

(h) To call meetings of other plaintiffs' counsel to effectuate these provisions;

(i) To prepare and distribute to the parties and to the counsel in coordinated State Court Cases periodic status reports;

(j) To receive orders and notices from the Judicial Panel on Multidistrict Litigation on behalf of plaintiffs, and to prepare and transmit copies of orders and notices to plaintiffs; and

(k) To perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial and trial activities or authorized by further order of the Court;

2. Defendants' counsel may rely upon all agreements made with Plaintiffs' Lead Co-Counsel, including agreements as to discovery scheduling, and such agreements shall be binding on all plaintiffs whose cases are subject to the jurisdiction of this Court.

B. Plaintiffs' Liaison Counsel

1. As set forth in the Court's September 17, 2003 Order, John R. Climaco has been designated as Plaintiffs' Liaison Counsel.

2. Plaintiffs' Liaison Counsel shall discharge the following duties:

(a) To maintain and distribute to plaintiffs' counsel and to Defendants' Liaison Counsel an up-to-date service list as to plaintiffs;

(b) To file and serve on behalf of the plaintiffs those filings relative to the master docket of the litigation;

(c) To maintain complete files, with copies of all documents served upon them, and to make those files available to plaintiffs;

(d) To perform such other duties as may be incidental to the proper coordination of administrative activities with the Court (such as ECF, file maintenance, distribution and such other activities as the Court from time to time directs); and

(e) To perform such other duties as necessary.

C. Plaintiffs' Executive Committee

1. As set forth in the Court's September 17, 2003 Order, the following attorneys have been appointed to the Plaintiffs' Executive Committee: Drew Ranier, Joseph Rice, Walter Umphrey, Daniel Becnel, Jr., J. Michael Papantonio, John E. Williams, Jr., and Richard Heimann.

2. The Plaintiffs' Executive Committee shall organize itself and agree on a plan for conducting the litigation. The Plaintiffs' Executive Committee may, as requested by the Plaintiffs' Lead Co-Counsel, brief and argue motions, and conduct pre-trial proceedings with Plaintiffs' Lead Co-Counsel.

D. Term of Appointment

1. The persons who accept the appointment to serve as Plaintiffs' Lead Co-Counsel, Plaintiffs' Liaison Counsel, or on the Plaintiffs' Executive Committee agree to serve for the duration of the litigation or until such time as the Court determines that a change in the duration of service or other terms of service shall be made. The Court may decide from time to time to enlarge or reduce the size of the Plaintiffs' Executive Committee, or to change the membership of the Plaintiffs' Executive Committee or Plaintiffs' Lead Co-Counsel, depending upon such need brought on by the litigation.

2. The Court has appointed the named persons as members of the Plaintiffs' Executive Committee and as Plaintiffs' Lead Co-Counsel and Plaintiffs' Liaison Counsel because of the expectation of their personal commitment and contribution to the work of the Plaintiffs' Executive Committee and to the successful management of the MDL proceeding. For this reason, the Court will look to individual members to satisfy the goals that the Court expects the Plaintiffs' Executive Committee to achieve, including successful coordination of the MDL proceedings with any proceedings in related state court cases. The Court will likewise consider the contribution of each member of the Plaintiffs' Executive Committee if and when the Court is called upon to determine appropriate compensation for services rendered by the Plaintiffs' Executive Committee. While the Court contemplates that each of the Plaintiffs' Executive Committee members will require the assistance of colleagues, paralegals, support staff, and others in the fulfillment of their committee assignments, the Court expects the individual members to be responsible for the ultimate outcome of the activities performed by the Plaintiffs' Executive Committee.

E. Defendants' Liaison Counsel

1. John H. Beisner of O'Melveny & Myers LLP, Washington, D.C., shall serve as Defendants' Liaison Counsel. Counsel for each defendant in this proceeding shall note their appearances with the Court. The Defendants' Liaison Counsel shall discharge the following duties:

(a) To maintain and distribute to defendants' counsel and to Plaintiffs' Lead Co-Counsel and Plaintiffs' Liaison Counsel an up-to-date service list as to defendants;

(b) To maintain complete files, with copies of all documents served upon them, and to make those files available to defendants;

(c) To receive orders and notices from the Judicial Panel on Multidistrict Litigation on behalf of defendants, and to prepare and transmit copies of orders and notices to defendants' counsel;

(d) To serve as a coordinator and facilitator among the defendants' counsel for the formulation and presentation of defendants' common positions on all matters arising during all pretrial proceedings;

(e) To call meetings of other defendants' counsel as appropriate; and

(f) To perform other such duties as necessary.

2. Although Defendants' Liaison Counsel shall serve as the primary point of contact for the Court and the plaintiffs in addressing substantive and procedural issues in this litigation, the following additional defense counsel will serve leadership roles in addressing, as necessary, the distinct interests of certain groups of defendants in this proceeding: Rebecca Womeldorf (Spriggs & Hollingsworth, Washington, D.C.) and George D. Ruttinger (Crowell & Moring LLP, Washington, D.C.) (consumer defendants); Wm. Bruce McKinley (Copeland Cook Taylor & Bush, Ridgeland, Mississippi); David Ott (Bryan Nelson Randolph P.A., Hattiesburg, Mississippi) (distributor defendants); and U. Gwyn Williams (Goodwin Procter LLP, Boston) (small manufacturer defendants). Defendants' Liaison Counsel or the Court may call upon the above-noted counsel or other defense counsel, as appropriate, to participate in conferences held by the Court with Lead and Liaison Counsel.

3. The Court expects that the Defendants' Liaison Counsel will work closely with counsel representing other defendants to develop coordinated positions to the extent possible. Counsel for individual defendants who disagree with actions taken by Defendants' Liaison Counsel on behalf of

defendants, or who have individual or divergent positions, may present separate written or oral arguments, with prior approval of the Court. Defendants' Liaison Counsel shall not be deemed to be in an attorney-client relationship with any defendant with which he does not have a separate retainer agreement, but his communications with defendants – and all communications among individual defense counsel – shall be subject to a joint defense privilege.

4. Plaintiffs' counsel may rely upon all agreements made with Defendants' Liaison Counsel, including agreements as to discovery scheduling, and such agreements shall be binding on all defendants whose cases are subject to the jurisdiction of the Court, to the extent that the agreements are made on their behalf.

F. Admissions to Practice

Each attorney acting as counsel for any party herein who is a member in good standing of the bar of the Supreme Court of any state or of any United States District Court shall be deemed admitted *pro hac vice* before the Court, without further action, in connection with these proceedings. However, the Court reserves the right to revoke admission *pro hac vice* if appropriate.

G. Designation of Another Attorney

Whenever a provision in this order refers to liaison counsel or lead counsel, it also includes their designees.

IV. COMPUTATION OF TIME

All references to “days” in this Order mean calendar days. If a deadline falls on a weekend or holiday, then the deadline is the next business day.

V. STATUS HEARINGS

The Court intends to hold periodic status conferences at approximately sixty (60)-day intervals, at dates set by the Court.

VI. COORDINATION WITH STATE COURT PROCEEDINGS

A. Intention to Coordinate With State Court Proceedings

This Court is aware that there are numerous cases pending in the state courts of multiple jurisdictions that fall within the subject matter definition of this MDL proceeding and that presumably would have been transferred to this Court pursuant to 28 U.S.C. § 1407, but for the fact that they are not subject to federal jurisdiction. In order to achieve the full benefits of this MDL proceeding, this Court intends actively to urge the State Courts presiding over those cases (the “State Court Cases”) to enter into informal discovery coordination arrangements that will allow the parties in those cases to fully utilize the fruits of any discovery developed in this proceeding, and will minimize the waste and inconvenience that would result if parallel discovery proceeded unabated in all cases. In addition, the Court expects that counsel for parties in the MDL proceeding will actively assist in insuring that these goals are achieved.

B. Identification of State Court Cases

To facilitate this effort to achieve informal coordination among this proceeding and the various State Court Cases, Plaintiffs’ Liaison Counsel and Defendants’ Liaison Counsel shall provide this Court within ten (10) days after the issuance of this Order a list of all State Court cases of which they are aware that qualify as State Court Cases, and to supplement the list as appropriate. Plaintiffs’ Liaison Counsel and Defendants’ Liaison Counsel shall further jointly provide monthly updates of the State Court case list.

C. Pledge of Cooperation

This Court pledges its full cooperation with any State Court that is interested in informally coordinating discovery activities and urges all counsel in this MDL proceeding to work with counsel in the State Court Cases to facilitate such coordination.

VII. SERVICE OF DOCUMENTS

A. Orders

The Clerk shall serve each Order that applies to all cases in the MDL proceeding electronically to all counsel who have registered for Electronic Service, and shall serve each Order that

applies only to particular cases electronically to all counsel in those cases and to Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel.

B. Pleadings, Motions, and Other Documents

Service upon the parties' respective Liaison Counsel through the Electronic Case Filing System shall be deemed proper service on all plaintiffs' counsel of record in this proceeding and all defense counsel in this proceeding.

C. Discovery Requests and Responses

Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the Court, except when specifically ordered by the Court or to the extent they are presented in connection with a motion.

VIII. PLEADING ISSUES

A. Responsive Pleadings – Pending Cases

On or before December 22, 2003, (or within twenty (20) days after a defendant is served, if later than the Order date), the defendants shall file answers to the complaints in the Individual Cases and Class Action Cases which have not previously been answered and which are not the subject of motions to remand. If a motion for remand is pending in the case, then the answer shall be filed within twenty (20) days of the Court's ruling on the motion. The defendants shall file such answers even if there is currently pending in the case a motion to dismiss.

Within twenty (20) days of the filing of an answer by a defendant pursuant to this subparagraph, the defendant may file a motion pursuant to Fed. R. Civ. P. 12 raising any defense asserted in the answer. If a defendant has previously filed an answer, then the defendant may file a motion pursuant to Fed. R. Civ. P. 12 raising any defense asserted in the answer on or before December 22, 2003, or, if a remand motion is pending, within twenty (20) days after an order of the Court denying the remand motion. To the extent that a defendant files such a motion that is applicable to multiple cases, the motion shall be filed as a consolidated motion in each such case. In addition, to the extent that particular arguments apply to more than one defendant, defendants shall attempt to file a joint motion.

Plaintiffs' brief in opposition to any such motion shall be filed twenty (20) days thereafter and defendants' reply brief shall be filed ten (10) days after the filing of plaintiffs' opposition brief.

If, prior to the date of this Order, a defendant has filed a motion to dismiss a complaint in an Individual Case or Class Action Case which is not the subject of a motion to remand, that pending motion need not be refiled after the filing of an answer pursuant to this subparagraph, and may be joined by other defendants.

B. Responsive Pleadings – Future Cases

In any case subsequently added to this proceeding in which an answer has not previously been filed and in which a remand motion is not pending, the defendants shall answer the complaint within twenty (20) days after the case is transferred to this proceeding or filed in this Court (or within twenty (20) days after a defendant is served, if later than the transfer or filing date). If a motion for remand is pending in the case, then the answer shall be filed within twenty (20) days of the Court's ruling on the motion. Following the filing of an answer by a defendant pursuant to this subparagraph, the defendant may file a motion pursuant to Fed. R. Civ. P. 12 raising any defense asserted in the answer as set forth above in subparagraph A. If a defendant has previously filed an answer, then the defendant may file a motion pursuant to Fed. R. Civ. P. 12 raising any defense asserted in the answer within twenty (20) days of the transfer of the case to or the filing of the case in this Court, or, if a remand motion is pending, within twenty (20) days after an order of the Court denying the remand motion. If, prior to the transfer of the case to this Court, a defendant has filed a motion to dismiss a complaint in an Individual Case or Class Action Case which is not the subject of a motion to remand, that pending motion need not be refiled after the filing of an answer pursuant to this subparagraph, and may be joined by other defendants.

C. Additional Parties

Except with leave of Court or as otherwise authorized by this Order, no additional parties may be added after the filing of all answers to a complaint.

IX. CLASS ACTION MATTERS

A. Plaintiffs' Initial Statement

On or before February 2, 2004, Plaintiffs' Lead Co-Counsel shall file on behalf of all named plaintiffs and counsel in the Class Action Cases an Initial Statement (a) identifying any class(es) for which plaintiffs in those cases intend to seek class certification and (b) identifying the named plaintiffs who will serve as class representatives for each proposed class. Following the filing of the Initial Statement, no amendments may be made to the Initial Statement, class definitions or class action complaints (including the addition of any party as a plaintiff, defendant, or third-party defendant) without leave of Court until after the Court rules on any motions for class certification.

B. Class Certification Discovery

In the initial phases of this litigation, counsel in the Class Action Cases should be mindful of the need to conduct discovery designed to create an evidentiary record upon which plaintiffs' class certification motion(s) can be briefed and decided consistent with the briefing schedule set forth below. Counsel will be expected to conduct and complete that discovery on a schedule consistent with the schedule for briefing class certification issues in this matter, as set forth below. Plaintiffs in the Class Action Cases may take discovery from defendants consistent with the provisions of this CMO, but will prioritize their discovery to take account of the class certification schedule set forth below.

Beginning on February 12, 2004, defendants may jointly serve a single set of interrogatories and a single set of requests for admission related to class certification issues on each of the named plaintiffs listed in the Class Action Cases. The named plaintiffs served with such sets of interrogatories and requests for admission shall answer and/or object in the manner described in Rules 33 and 36, respectively, of the Federal Rules of Civil Procedure.

Beginning on February 12, 2004, defendants may jointly serve on each of the named plaintiffs listed in the Class Action Cases a single set of requests pursuant to Fed. R. Civ. P. 34 related to class certification issues. Any limitations on the number of Rule 34 requests that may be served on a

party shall not apply to that set of requests. The party served shall respond and/or object in the manner described in Rule 34.

Depositions of any named plaintiffs in the Class Action Cases on class certification issues may be taken in this proceeding at any time, consistent with the need to complete such depositions before defendants' briefing on class certification issues is due to be submitted in accordance with the schedule established below.

Discovery taken pursuant to this subparagraph shall not limit the defendants' ability to take additional non-duplicative discovery as part of their defense of the merits of any named plaintiff's claim.

C. Plaintiffs' Class Certification Motion(s)

On or before May 17, 2004, Plaintiffs' Lead Co-Counsel shall file on behalf of all named plaintiffs and counsel in the Class Action Cases their motion(s) to certify proposed classes under Fed. R. Civ. P. 23 (if any) and as to each such motion, a memorandum setting forth their arguments in support of said motion and the evidentiary basis therefor. At the same time, Plaintiffs' Lead Co-Counsel shall identify all experts and witnesses upon whom plaintiffs rely in support of any motion (including the information contemplated by Fed. R. Civ. P. 26(a)(2)(B) as to experts) and file any expert reports or affidavits upon which they rely in support of their class certification motion. Plaintiffs shall be precluded, without leave of Court, from relying on any experts or expert opinions in support of class certification, other than rebuttal experts or reports, that are not identified at that time. Following the filing of this motion, priority shall be given to the taking of the depositions of any experts and witnesses upon whom plaintiffs rely in support of their motion.

D. Defendants' Class Certification Motion Opposition

Defendants shall file briefing setting forth their arguments in opposition to plaintiffs' class certification motion(s), and the evidentiary basis thereof on or before July 27, 2004. At the same time, defendants shall identify all experts and witnesses upon whom they will rely in opposing plaintiffs' class certification motion (including the information contemplated in Fed. R. Civ. P. 26(a)(2)(B) as to

experts), and file any expert reports or affidavits upon which they rely in opposing plaintiffs' class certification motion. Defendants shall be precluded from relying on any experts or expert opinions in opposition to class certification that are not identified at this time. To the extent possible, defendants are encouraged to file joint briefing and otherwise to coordinate to avoid filing repetitious briefing with the Court. Following the filing of defendants' briefing, priority should be given to taking the depositions of any experts or witnesses upon whom defendants rely in support of their opposition to class certification.

E. Plaintiffs' Reply Memorandum

Plaintiffs may file a reply memorandum in support of their class certification motion(s) on or before August 27, 2004. The reply memorandum, including any rebuttal expert reports in support thereof, shall be confined to responding to arguments and expert opinions presented in defendants' opposition briefing.

F. Class Certification Argument

After the filing of all briefing concerning plaintiffs' class certification motion(s), the Court may, at its discretion, schedule an oral argument on such motions.

G. Local Rules

The foregoing provisions on class certification motion scheduling shall apply in lieu of Rule 23.1 of the Local Rules of this Court.

X. GENERAL DISCOVERY RULES

A. Applicability of Rules

Except as otherwise provided in this Order, the Federal Rules of Civil Procedure and the Local Rules of this Court will apply in this proceeding. However, the Court specifically notes that the provisions of this Order modify: (a) the obligation of any party to this proceeding to comply with any applicable initial disclosure requirements of Fed. R. Civ. P. 26(a)(1); (b) any applicable specifications on timing and sequencing of discovery set forth in Fed. R. Civ. P. 26(d); and (c) any

applicable obligation of any party to this proceeding to comply with the conference and planning requirements in Fed. R. Civ. P. 26(f).

B. Discovery Dispute Resolution

To avoid unnecessary litigation concerning discovery disputes, counsel are directed to meet and confer before contacting the Court on discovery issues. The Court will meet periodically by telephone with Plaintiffs' Lead Co-Counsel, Defendants' Liaison Counsel, and other interested counsel to discuss any unresolved discovery disputes. If discovery disputes arise that the parties cannot resolve on their own and that require resolution before the next scheduled meeting with the Court, the parties shall contact the Court by telephone. The Court, at its discretion, will then either: (1) schedule an additional meeting with Plaintiffs' Lead Co-Counsel, Defendants' Liaison Counsel, and other necessary plaintiffs' and defendants' counsel; (2) conduct a telephonic conference call with such counsel; or (3) invite written submissions from the parties explaining the dispute. Any motion to compel or motion for protective order not previously authorized by the Court will be summarily denied for failure to follow this procedure.

C. Document Confidentiality Order

An order preserving the confidentiality of confidential documents shall be prepared jointly by Plaintiffs' Lead Co-Counsel and Defendants' Liaison Counsel and filed on or before December 15. If counsel are unable to agree, they shall file separate motions and proposed orders on or before December 22, 2003.

D. Document Depository

1. The Plaintiffs Executive Committee shall establish and maintain at their expense a document depository (the "Depository"). The Depository shall store all materials produced by parties and third-parties in this proceeding that may be needed in more than a single Class Action Case, Individual Case, or State Court Case, including documents, interrogatories, requests for admission, requests for production of documents, deposition transcripts, and similar materials from this proceeding, to the extent consistent with the confidentiality order entered by the Court. These materials will be

made available to any litigants in any Class Action Case, Individual Case, or State Court Case, subject to the confidentiality order entered by the Court.

2. On or before December 15, 2003, the Plaintiffs' Lead Co-Counsel (and/or their representatives) shall meet with Defendants' Liaison Counsel (and/or his representatives) to confer about the design and operation of the Depository and shall endeavor to present to the Court a stipulation outlining a protocol for the Depository. On or before December 30, 2003, the parties shall present to the Court a proposed stipulation regarding the Depository protocol and, if necessary, briefing concerning any matters on which they disagree.

3. A party fully satisfies its obligation to produce documents to the parties to the Individual Cases and the Class Action Cases by placing those documents in the Depository.

4. The producing party shall be responsible for delivering to the Depository any documents that it produces in this proceeding in response to Fed. R. Civ. P. 34. The requesting party shall be responsible for delivering to the Depository any documents produced to it in this proceeding pursuant to Fed. R. Civ. P. 45. The party requesting a deposition shall be responsible for delivering to the Depository any transcription (including video tape) of any deposition taken in this proceeding. The party serving any objection, answer or response to an interrogatory, Rule 34 request, or request for admission in this proceeding shall be responsible for delivering a copy to the Depository.

5. Plaintiffs' Lead Co-Counsel (and their designated representatives) shall be responsible for monitoring the content of the Depository and shall provide periodic notification to all counsel in the Individual Cases, Class Action Cases, and State Court Cases of the addition of materials to the Depository, providing a basic description of the newly added materials.

6. Parties to the litigation may establish at their own expense private document depositories at other locations and make arrangements for obtaining documents for inclusion in those private depositories as they see fit. Any such private depositories must be maintained so that they adhere to any confidentiality orders entered by the Court.

E. Identification of Documents

1. Numbering System

The parties shall develop and use a system for identifying, by unique number or symbol, each document produced or referred to during the course of litigation. Each producing party shall give each page of any document it produces a unique number, using a consistent numbering system that identifies the producing party. All reasonable efforts should be made to avoid having the same page assigned more than one identifying number except when there is a need to account for different copies of the same document or page (for example, because of special notations being placed on the document). To the extent that documents have been previously numbered in connection with earlier cases, they need not be renumbered for purposes of this litigation, so long as they are appropriately identified.

2. Documents Produced by Non-Parties

In the event that documents produced by persons or entities who are not parties to this action are not, when produced, identified by a unique numbering system, the party at whose request production was made shall be responsible for numbering the documents in accordance with the terms of Paragraph E.1 above.

F. Legibility of Documents

Each producing party shall take reasonable steps to assure that the copies of the documents it produces are legible. To the extent a producing party cannot or does not produce a legible copy, it shall make the original document(s) available for inspection and copying upon request, to the extent possible.

G. Preservation of Documents

During the pendency of this litigation and for thirty (30) days after entry of a final order closing all cases (including appeals), each of the parties herein and their respective officers, agents, servants, employees, subsidiaries and attorneys, shall not alter or destroy any documents, tangible things, or other records in their custody or control that are likely to contain information that may be

relevant to this matter. Each party shall notify in writing its relevant officers, agents, servants, employees, subsidiaries and attorneys of their obligation to preserve documents in accordance with this Order.

XI. RULES APPLICABLE TO WRITTEN FACT DISCOVERY

A. Assembly of Prior Discovery

On or before January 20, 2004, each defendant shall provide to Plaintiffs' Lead Co-Counsel copies of any written discovery requests, any written discovery responses, and any documents previously produced in cases, within the subject matter of this proceeding that are located pursuant to a good-faith effort so that plaintiffs' counsel can evaluate the need for additional, non-duplicative discovery from that defendant. Each party shall also provide, for inclusion in the Document Depository, copies of deposition testimony, given by that party's fact and expert witnesses in any case within the subject matter of this proceeding, including any videotape of such testimony, and copies of any trial transcripts from cases within the subject matter of this proceeding from such cases, that are located pursuant to a good-faith effort.

B. Document Production

1. On or before February 20, 2004, Plaintiffs' Lead Co-Counsel shall meet with Defendants' Liaison Counsel to confer about the scope, process, and timing for additional document production by defendants in this matter and shall endeavor to present to the Court a stipulated order concerning document production matters.

2. On or before December 15, 2003, Plaintiffs' Lead Co-Counsel shall meet with Defendants' Liaison Counsel to confer about the scope, process and timing of document discovery by defendants on plaintiffs in individual cases, and shall endeavor to present to the Court a stipulated order concerning these document production matters.

3. Any party that produces documents and records in discovery that were either authored by that party or are shown on the document as having been received by that party shall, by

doing so, admit that such documents and records are authentic, unless otherwise so specified, on a document-by-document basis, within 30 days of such production.

4. Any party that has previously created a database of documents produced in response to production requests in litigation that includes objective information about the documents, shall produce only the non-privileged, objectively coded portions of that database to Plaintiffs' Lead Co-Counsel and Defendants' Liaison Counsel. Provided, that should a party have created an objective database of only a select group of documents previously produced, such that the selection reflects the work product of its attorneys, then the production of that database shall not be required. The opposing parties shall reimburse the producing party for any costs incurred in modifying previously created databases to meet the requirements of this paragraph.

C. Interrogatories and Requests for Admission

1. As soon as practicable after Plaintiffs' Lead Co-Counsel have received the previously-produced discovery pursuant to Subsection A above, Plaintiffs' Lead Co-Counsel, on behalf of the plaintiffs in this proceeding, may serve on each defendant interrogatories (not exceeding 75 in number, including subparts) and requests for admissions (not exceeding 75 in number, not including requests for document authentication or admissibility). The Court expects that in formulating discovery requests, the parties will take account of the discovery taken in previous cases and will avoid duplicative discovery. The party served shall answer and/or object to the interrogatories and requests for admission in the manner described in Rules 33 and 36, respectively, of the Federal Rules of Civil Procedure in accordance with a schedule that should be negotiated among the parties following service of the interrogatories. No additional interrogatories or requests for admission may be served on defendants without leave of Court upon good cause shown.

2. On or before December 15, 2003, Plaintiffs' Lead Co-Counsel shall meet with Defendants' Liaison Counsel to confer about the scope, process and timing of the service by defendants of interrogatories and requests for admissions on plaintiffs in individual cases and shall

endeavor to present to the Court a stipulated order concerning interrogatories and requests for admissions.

D. Third-Party Subpoenas

Consistent with the scheduling otherwise specified by this Order, the parties in the Individual Cases and the Class Action Cases may serve subpoenas on non-parties (including subpoenas for the production of documents without testimony) pursuant to Fed. R. Civ. P. 45. The party serving the subpoena shall be responsible for supplying to the Depository any documents produced by non-parties in response to the subpoena.

E. Local Rules

The foregoing requirements shall take precedence over any conflicting provisions in Rule 26.1 of the Local Rules of this Court.

F. Pending Requests

All pending discovery requests in any of the constituent actions to this proceeding shall be deemed withdrawn without prejudice to being re-served in accordance with the provisions of this Order.

G. Discovery Cutoff

Fact discovery in cases that are in this proceeding as of the date of entry of this Order shall be completed by October 22, 2004, except as that deadline may be extended by the Court for good cause shown.

XII. RULES APPLICABLE TO DEPOSITIONS OF FACT WITNESSES

A. General

The scheduling and conduct of depositions, including resolution of any disputes arising during depositions, shall be in accordance with the Federal Rules of Civil Procedure and Rule 30.1 of the Local Rules of this Court. Counsel are expected to cooperate with, and be courteous to, each other and deponents.

B. Scheduling of Depositions

1. As soon as practicable after Plaintiffs' Lead Co-Counsel's receipt of the previously-produced discovery pursuant to section XI.A above, Plaintiffs Lead Co-Counsel shall provide Defendants' Liaison Counsel with a list of those party fact witnesses (*i.e.*, employees of defendants) whom plaintiffs wish to depose. The parties shall use their best efforts to ensure that this list is comprehensive. Plaintiffs' Lead Co-Counsel and Defendants' Liaison Counsel thereafter shall attempt to establish by mutual agreement a schedule for depositions of the party fact witnesses identified by plaintiffs that reflects a sequencing that is consistent with (a) the availability of documents from among those produced by the parties and third parties and (b) the objective of avoiding the need to subject any person to repeated depositions. Disputes concerning the timing and scheduling of depositions may be presented to the Court, pursuant to section X.B above. Once the agreed-upon

schedule has been established, no deposition may be rescheduled except by agreement between Plaintiffs' Lead Co-Counsel and Defendants' Liaison Counsel, or by order of the Court.

2. The Court expects that the use of formal notices of depositions or subpoenas with respect to party witnesses will be unnecessary in this case – that is, party witnesses will be produced in accordance with whatever schedule is developed.

3. Liaison Counsel shall respectively be responsible for keeping plaintiffs' and defendants' counsel fully apprised of the scheduling of any depositions in this proceeding.

4. Counsel in this proceeding shall endeavor to cooperate with counsel in the State Court Cases to avoid the need for witnesses to be deposed multiple times.

5. The parties shall use their best efforts to coordinate the scheduling of third-party witnesses.

6. As soon as practicable after or in conjunction with the scheduling of the depositions of party fact witnesses set forth above, the parties shall exchange lists of the plaintiffs and other case-specific fact witnesses in the individual cases that the parties wish to depose. Plaintiffs' Lead Co-Counsel and Defendants' Liaison Counsel (or their designees) shall attempt to establish by mutual agreement a schedule for depositions of the plaintiffs and other case-specific fact witnesses. Disputes concerning the timing and scheduling of depositions may be presented to the Court, pursuant to section X.B above. Once the agreed-upon schedule has been established, no deposition may be rescheduled except by agreement between Plaintiffs' Lead Co-Counsel and Defendants' Liaison Counsel, or by order of the Court. The parties shall endeavor to schedule depositions at locations within a reasonable distance from the residence of the deponent.

C. Attendance

Unless otherwise ordered under Fed. R. Civ. P. 26(c), depositions may be attended by counsel of record, members and employees of their firms, attorneys specially engaged by a party for purposes of the deposition, the parties or the representative of a party, and counsel for the deponent. While a deponent is being examined about any stamped confidential document or the confidential

information contained therein, persons to whom disclosure is not authorized under the Confidentiality Order shall be excluded. Unnecessary attendance by counsel is discouraged and will not be compensated in any fee application to the Court. In particular, no more than two attorneys from a single firm may attend a deposition. Further, no attendance shall be compensated unless the attending attorney is actively involved in the taking or defense of the deposition.

D. Conduct of Depositions

1. In any deposition, each side should endeavor to limit the number of attorneys questioning each witness by conferring in advance of the deposition to allow one attorney to be the primary questioner. Attorneys who may wish to question a deponent should confer in advance to allocate among themselves the time permitted for the deposition under Paragraph XII.E below.

2. Counsel shall comply with Fed. R. Civ. P. 30(d)(1). Directions to the deponent not to answer are improper except on the ground of privilege or to enable a party or deponent to present a motion to the Court for termination of the deposition on the ground that it is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the party or deponent.

3. The only objections that may be raised at the deposition are those involving a privilege against disclosure or some matter that may be remedied if presented at the time, such as to the form of the question or the responsiveness of the answer. Objections on other grounds are unnecessary and shall not be made. In addition, the examining attorney may elect to waive the requirement that objections be voiced regarding matters that may be remedied if presented at the time, and allow those objections to be preserved, in which event such objections are unnecessary and shall not be made. Any objections that are made must be stated concisely and in a non-argumentative and non-suggestive manner, such as would be appropriate if the examination was conducted before a judicial officer.

4. When a privilege is claimed, the witness should nevertheless answer the questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made,

other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement.

5. Private consultations between deponents and their attorneys during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the Court for good cause shown, such conferences may be held during normal recesses and adjournments.

E. Duration of Examinations

1. Except by agreement of the parties, the deposition of any fact witness shall be limited to seven (7) hours, excluding time taken for breaks, meals, and other reasons. The seven hours shall be allocated as follows: up to six (6) hours of the deposition may be used by the side of the party requesting the deposition, and no more than one (1) hour shall be used by the opposing counsel.

2. A deposition shall not extend over more than two consecutive days (except by agreement of the parties).

3. Motions for leave of Court to deviate from these time limitations are disfavored and should be made only if the parties cannot reasonably agree to a deviation; such motions will be granted only for compelling reasons. Any request to extend the time limit on a deposition must be accompanied by a certification that compelling reasons preclude completion of the deposition during the allotted period and that the particular information being sought cannot be elicited from a witness that is (or could be) scheduled to appear at another time.

4. The foregoing time limitations shall apply regardless of the number of attorneys who may wish to question a witness.

F. Supplemental Depositions

Witnesses shall not be subjected to more than one deposition conducted within the limitations described above, nor to repetitive and redundant questioning. Supplemental depositions will be permitted only by agreement of the party producing the witness or upon motion demonstrating (a) a compelling need for the information sought and (b) compelling reasons why the desired lines of

questioning could not have been pursued in the original deposition and why the information cannot be obtained from any persons available for future depositions. Such motions will be disfavored and should be made only if the parties cannot reasonably agree to supplementation. If permitted, a supplemental deposition shall be treated as the resumption of the deposition originally noticed. Examination in any supplemental deposition shall not be repetitive of any prior interrogation.

G. Stenographic Recording

A certified court reporter shall stenographically record all deposition proceedings and testimony. The court reporter shall administer the oath or affirmation to the deponent. A written transcript by the court reporter shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) (submission to the witness) and 30(f) (filing, exhibits).

H. Videotaping

If reasonable advance notice is given to opposing Liaison Counsel and counsel for the deponent, a party may record a deposition by videotape pursuant to Fed. R. Civ. P. 30(b)(2) and (3).

The following rules shall apply to the taking of any such deposition:

1. Simultaneous Stenographic Recording

All videotaped depositions shall be simultaneously stenographically recorded.

2. Cost of the Deposition

The party requesting videotaping of the deposition shall bear the expense of the videotaping.

3. Videotape Operator

The operator(s) of the videotape recording equipment shall be subject to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s) shall swear or affirm to record the proceedings fairly and accurately.

4. Identification

Each witness, attorney, and other person attending the deposition shall be identified on camera at the commencement of the deposition. Thereafter, only the deponent (and demonstrative materials used during the deposition) will be videotaped.

5. Interruptions

No attorney shall direct instructions to the video operator as to the method of operating the equipment. The video camera operation will be suspended during the deposition only upon stipulation by counsel and during “off the record” discussions. The video operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.

6. Standards

The deposition will be conducted in a manner to replicate, to the extent feasible, the presentation of evidence at trial. Unless physically incapacitated, the deponent shall be seated at a table except when reviewing or presenting demonstrative materials for which a change in position is needed. To the extent practicable, the deposition will be conducted in a neutral setting, against a solid background, with only such lighting as is required for accurate video recording. Lighting, camera angle, lens setting, and field of view will be changed only as necessary to record accurately the natural body movements of the deponent or to portray exhibits and materials used during the deposition. Sound levels will be altered only as necessary to record satisfactorily the voices of counsel and the deponent.

7. Index

The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the depositions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any interruption of continuous tape-recording occurs, whether for recesses, "off-the-record" discussions, mechanical failure, or otherwise.

8. Certification

After the deposition is completed, the video operator shall certify on camera the correctness, completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter, and provide a true copy of the videotape, the transcript, and certificate to the party noticing the deposition. That party shall be responsible for ensuring that a copy of the videotape recording is placed in the Depository. No part of a videotaped deposition shall be released or made available to any member of the public unless authorized by the Court.

I. Use

Depositions may, under the conditions prescribed in Fed. R. Civ. P. 32(a)(1)-(4) or as otherwise permitted by the Federal Rules of Evidence, be used against any party (including parties later added and parties in cases subsequently filed in, removed to, or transferred to this Court as part of this litigation):

- (1) who was present or represented at the deposition;
- (2) who had reasonable notice thereof; or
- (3) who, within thirty (30) days after the filing of the deposition (or, if later, within sixty (60) days after becoming a party in this court in any action that is a part of this litigation), fails to show just cause why such deposition should not be usable against such party.

Further, it is the Court's expectation that the parties will use their best efforts to reach agreement on the use in State Court Cases of any deposition taken in this proceeding, in order to avoid multiple depositions of a witness.

J. Deposition Disputes

1. During depositions, disputes that arise that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, may be presented to the Court by telephone. The presentation of the issue and the Court's ruling will be recorded as part of the deposition.

2. The undersigned will exercise by telephone the authority granted under 28 U.S.C. § 1407(b) to act as district judge in the district in which the deposition is taken.

XIII. EXPERT DISCOVERY

A. Core Expert Identification and Reports

1. On or before August 20, 2004, Plaintiffs' Lead Co-Counsel shall provide Defendants' Liaison Counsel with a list identifying each Plaintiff Core Expert – that is, each expert who is expected to offer testimony that is generally applicable in support of plaintiffs' position in more than one of the then-pending Individual Cases and/or Class Action Cases. At the same time, Plaintiffs' Liaison Counsel shall serve on Defendants' Liaison Counsel the expert report required by Fed. R. Civ. P. 26(a)(2) for each Plaintiff Core Expert as to those opinions that are generally applicable to multiple cases.

2. If, after June 23, 2003 (the date of the original transfer order in this proceeding), any State Court Case involving a plaintiffs' counsel of record in this MDL proceeding is set for trial on or before October 22, 2004, that counsel shall provide to Defendants' Liaison Counsel the identification and reports required by the foregoing paragraph with respect to any Plaintiff Core Expert who may testify in the State Court Case trial. The identifications and reports shall be provided at least sixty (60) days in advance of the trial date in the State Court Case.

3. On or before October 22, 2004, defendants shall provide Plaintiffs' Lead Co-Counsel with a list identifying each Defendant Core Expert – that is, each expert who is expected to offer testimony that is generally applicable in support of any defendant's position in more than one of the then-pending Individual Cases and/or Class Action Cases. At the same time, Defendants' Liaison Counsel shall serve on Plaintiffs' Liaison Counsel the expert report required by Fed. R. Civ. P. 26(a)(2) for each Defendant Core Expert as to those opinions that are applicable to multiple cases.

4. Given the likely overlap in the Core Experts to be used in the Individual Cases and Class Action Cases in this proceeding and many of the State Court Cases, the Court expects the parties and their counsel to cooperate to avoid unnecessary duplication of effort among the various proceedings.

B. Core Expert Depositions

5. Plaintiffs and defendants shall be permitted to depose each other's core expert witnesses following the exchange of their reports.

6. The deposition of any Core Expert as to those opinions that are generally applicable to multiple cases shall be limited to fourteen (14) hours, excluding time taken for breaks, meals, and other reasons. The fourteen hours shall be allocated as follows: up to twelve (12) hours may be used for questions by the side of the party noticing the deposition, and no more than two (2) hours shall be used by opposing counsel. Depositions under this paragraph shall not extend over more than two consecutive days, except by agreement of the parties.

C. Supplemental Core Experts and Reports

A party may identify supplemental Core Experts and shall provide the expert reports required by Fed. R. Civ. P. 26(a)(2) from any such experts as to those opinions that are generally applicable to multiple cases. A party may also supplement the core report of a previously identified Core Expert. If a party provides a supplemental Core Expert report, the opposing parties may provide a responsive Core Expert report within 75 days.

D. Case-Specific Experts

Plaintiffs' Lead Co-Counsel and Defendants' Liaison Counsel shall submit a proposal for scheduling of discovery from case-specific experts (*i.e.*, non-core experts, or Core Experts who are offering case-specific opinions in a particular case) in the cases in the MDL proceeding and the cases that are subsequently transferred to or filed in this proceeding in the future that is based on either the expected date of remand of the cases to transferor courts or the setting of trial dates before this Court.

XIV. PRESENTATION OF BACKGROUND SCIENTIFIC ISSUES TO COURT

The Court has expressed an interest in receiving from counsel a general background tutorial on the technical/science issues presented by this litigation. On or before December 22, 2003, plaintiffs and defendants shall each present to the Court (and serve on each other) an audio/video background tutorial not to exceed one hour in duration.

XV. TOLLING AGREEMENT

The parties shall consult on the appropriateness of some form of tolling agreement, and, if agreement is reached, submit a proposal to the Court. Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall report back to the Court on or before December 22, 2003 on their progress in reaching an agreement.

XVI. RULES CONCERNING PRIVILEGE ISSUES

A. Generally

A party who, relying on any privilege or the work product doctrine, does not produce all documents that would have been produced but for the claim of privilege or work-product, must state that it is invoking a privilege. A party who invokes a privilege must specify which privilege or doctrine it is invoking.

B. Attorney-Client, Work Product and Other Privileges

A party who invokes the attorney-client, work product or other privilege also must provide to the opposing party a privilege log containing the following information for each document not disclosed, to the extent that providing this information will not destroy the privilege:

- (1) the name and job title or capacity of the author(s)/originator(s);

(2) the name of the person(s) who received the document or a copy of it and their affiliation (if any) with the producing party; and

(3) a brief statement as to the grounds for which the claim of privilege is asserted.

Such privilege log shall be produced within forty-five (45) days of the document production date, unless otherwise agreed by the parties or ordered by the Court.

C. Exempted Documents

Documents that were created or generated subsequent to the filing of the constituent actions to this proceeding, or the filing of other actions asserting allegations similar to those asserted in the constituent actions, and which concern or relate directly to the defense of a specific lawsuit and are privileged as communications or work product relating to the defense of those actions, need not be identified under this section.

D. Inadvertent Disclosure

The inadvertent production or disclosure of any privileged or otherwise protected document shall not be deemed a general waiver of privilege or work product protection as to the document inadvertently produced or disclosed. In the event of inadvertent disclosure of any document, promptly upon discovery of such inadvertent disclosure, the producing party may notify any party receiving the document that production was inadvertent, and that the producing party intends to move the Court for a protective order with respect thereto. Upon receipt of such notification, the receiving party shall treat the document as confidential, shall not disclose the document to any other person or use the document for any purpose in this litigation, and shall notify all persons to whom it may have provided the document that it was inadvertently produced and should be treated as confidential pursuant to the Confidentiality Order in this proceeding. Upon finding that the document is privileged or otherwise protected and that its production was inadvertent, the Court may direct the return of the document and all copies thereof to the producing party, preclude the use of the document and any information contained therein for any purpose in this litigation, and order such other relief as the Court deems necessary and appropriate. Before making application to the Court for such relief, the

producing party shall confer with the receiving party in an attempt to resolve informally any dispute regarding the inadvertent production.

XVII. ATTORNEYS' TIME AND EXPENSE RECORDS

A. Maintenance of Contemporaneous Records

Any counsel who may seek an award (or approval) of a fee (or expenses) by the Court in connection with this proceeding shall keep a daily record of his/her time spent and expenses incurred regarding this proceeding, including a specific record of the hours, location, and particular activity. The failure to maintain such records will be grounds for denying court-awarded attorneys' fees, as will insufficient description of the activity. The Court will issue contemporaneously a separate Order setting out other guidelines applicable to Common Benefit Fees and Expenses.

B. Submission

Within fifteen (15) days of the end of each calendar quarter, each counsel (or each firm) who may seek an award (or approval) of a fee (or expenses) by the Court shall submit to Co-Lead Plaintiffs' Counsel (or their designee) a report summarizing according to each separate activity the time and expenses spent during the preceding month (and the ordinary billing rates of such attorneys in effect during such month) and the accumulated total of counsel's time, hourly

rates, and expenses to date. No work or expense will be considered for common benefit compensation or reimbursement after the entry of this order unless previously authorized by Lead Co-Counsel.

IT IS SO ORDERED.

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

EXHIBIT A – INDIVIDUAL ACTIONS

Acy, et al. v. Lincoln Electric Co., et al.

Adams, et al. v. Lincoln Electric Co., et al.

Allen et al., v. Lincoln Electric Co., et al.

Anglin, et al., v. Lincoln Electric Co., et al.

Anselmo, et al. v. Nichols Wire, Inc., et al. – 1:03cv-17011-KMO

Archer, et al. v. Lincoln Electric Co., et al.

Armstrong v. Lincoln Electric Co., et al.

Backus, et al., v. Nichols Wire, Inc., et al. – 1:03cv-17014-KMO

Banks, et al. v. Lincoln Electric Co., et al.

Barnes, et al. v. Lincoln Electric Co., et al.

Bates, et al. v. Lincoln Electric Co., et al.

Beasley, Sr., et al. v. Lincoln Electric Co., et al.

Bender v. Lincoln Electric Co., et al.

Bishop v. Lincoln Electric Co., et al. – 1:03cv-17032-KMO

Blackman, et al. v. Lincoln Electric Co., et al.

Broughton v. Lincoln Electric Co., et al.

Burrell, et al. v. Lincoln Electric Co., et al.

Cadney, et al. v. Lincoln Electric Co., et al.

Campbell v. Lincoln Electric Co., et al. – 1:03cv-17020-KMO

Carr, et al. v. Lincoln Electric Co., et al.

Chambers III v. Lincoln Electric Co., et al. – 1:03cv-17033-KMO

Cox v. Lincoln Electric Co., et al. – 1:03cv-17029-KMO

Davenport v. Lincoln Electric Co., et al. – 1:03cv-17030-KMO

Dearmon, et al. v. Lincoln Electric Co., et al.

Dubose, et al. v. Lincoln Electric Co., et al.

Edwards v. Lincoln Electric Co., et al.

Evans, et al. v. Lincoln Electric Co., et al.

Fife v. Lincoln Electric Co., et al.

Frederick, et al. v. Nichols Wire, Inc., et al.

Garrison v. Lincoln Electric Co., et al. – 1:03cv-17024-KMO

Graham, et al. v. Lincoln Electric Co., et al.

Harris v. Lincoln Electric Co., et al. – 1:03cv-17028-KMO

Jackson v. Lincoln Electric Co., et al. – 1:03cv-17019-KMO

Jackson, Jr., et al. v. Lincoln Electric Co., et al.

Jay v. Lincoln Electric Co., et al. – 1:03cv-17022-KMO

Johnson v. Lincoln Electric Co., et al.

Johnson, et al. v. Nichols Wire, Inc., et al. – 1:03cv-17012-KMO

Kilcrease, et al. v. Lincoln Electric Co., et al.

Landry, et al. v. Nichols Wire, Inc., et al. – 1:03cv-17016-KMO

Lewis v. Lincoln Electric Co., et al. – 1:03cv-17025-KMO

Mackey v. Lincoln Electric Co., et al.

Maples v. Lincoln Electric Co., et al.

Mattix, et al. v. Lincoln Electric Co., et al.

Maye v. Lincoln Electric Co., et al.

Mills v. Lincoln Electric Co., et al. – 1:03cv-17031-KMO

Morris, et al. v. Lincoln Electric Co., et al.

Orr, Jr., et al. v. Lincoln Electric Co., et al.

Perrin, et al., v. Nichols Wire, Inc., et al. – 1:03cv-17013-KMO

Pickering, et al. v. Lincoln Electric Co., et al.

Pickering, et al. v. Lincoln Electric Co., et al.

Prentice v. Lincoln Electric Co., et al. – 1:03cv-17027-KMO

Presher v. Lincoln Electric Co., et al.

Reynolds v. Lincoln Electric Co., et al. – 1:03cv-17035-KMO

Ross v. Lincoln Electric Co., et al. – 1:03cv-17023-KMO

Russell v. Lincoln Electric Co., et al. – 1:03cv-17026-KMO

Ruth et al. v. Lincoln Electric Co., et al. – 1:03cv-17003-KMO

Shaver v. Lincoln Electric Co., et al. – 1:03cv-17021-KMO

Smith v. Lincoln Electric Co., et al.

Smith, et al., v. Nichols Wire, Inc., et al. – 1:03cv-17015-KMO

Stander, et al. v. Lincoln Electric Co., et al.

Stringer, et al. v. Lincoln Electric Co., et al.

Torrain v. Lincoln Electric Co., et al.

Watson v. Lincoln Electric Co., et al. – 1:03cv-17017-KMO

Wells, et al. v. Lincoln Electric Co., et al.

Wells, et al. v. Lincoln Electric Co., et al.

Williams, Sr., et al. v. Lincoln Electric Co., et al.

Wilson, et al. v. Lincoln Electric Co., et al. – 1:03cv-17018-KMO

Woods v. Lincoln Electric Co., et al.

Yager v. Lincoln Electric Co., et al. – 1:03cv-17034-KMO

EXHIBIT B – CLASS ACTIONS

Addison, et al. v. Lincoln Electric Co., et al. – 1:03cv-17006-KMO

Alexander, et al. v. Lincoln Electric Co., et al. – 1:03cv-17005-KMO

Martin v. Lincoln Electric Company, et al. – 1:03cv-17008-KMO

O’Neal v. Lincoln Electric Company, et al. – 1:03cv-17009-KMO

Robinson, et al., v. Lincoln Electric Co., et al. – 1:03cv-17007-KMO

Smith, et al. v. Lincoln Electric Company, et al. – 1:03cv-17010-KMO

Variste, Jr. v. Lincoln Electric Co., et al. – 1:03cv-17002-KMO

Weathersby, et al. v. Lincoln Electric Co., et al. – 1:03cv-17001-KMO

White v. Illinois Tool Works Inc., et al. – 1:03cv-17004-KMO