

STATE OF INDIANA	)	MARION CIRCUIT AND
	)	SUPERIOR COURTS
	)	
COUNTY OF MARION	)	
	)	
In Re Local Court Rules	)	

**Notice of Proposed Local Rule Amendments, Finding Good Cause to Deviate from the Schedule for Amending Local Court Rules, and Requesting Comments**

The Judges of the Marion County Courts in compliance with the provisions of Trial Rule 81 give Notice of proposed amendments to their local court rule concerning the **Mass Tort Litigation Local Rules**. And, pursuant to Trial Rule 81(D), the Judges find that good cause exists to deviate from the schedule established by the Division of State Court Administration for the publishing of amendments to local rules. Accordingly, the Courts issue the following proposed amendments to the Marion County Local Court Rules and ask for comment from the bar and the public. Underlining indicates proposed additions and ~~striking through~~ indicates deletions. The amended rule will be effective on **October 26, 2016**.

Comments to this proposed Local Rule amendment will be received through **Noon on October 26, 2016**. Comments to this proposed amended Local Rule should be e-mailed to the Office of the Court Administrator, c/o Pauline Beeson, at [Pauline.Beeson@indy.gov](mailto:Pauline.Beeson@indy.gov) or mailed to:

Pauline Beeson  
Office of the Court Administrator Marion  
County Circuit and Superior Courts  
200 East Washington St., Ste. T-1221  
Indianapolis, IN 46204

All of the above is so ORDERED this 26<sup>th</sup> day of October, 2016.

s/ John M.T. Chavis, II  
\* Judge John M.T. Chavis, II  
Presiding Judge

\* Original signature on file with the Court.

Rule LR49-TR12-705. Plaintiffs' VIDS: Content.

Each plaintiff shall file a separate Verified Initial Disclosure Statement (VIDS) that shall contain the following information correlated for each alleged exposure:

1. *"Who"*:

(a) The identity of the Plaintiff/Worker, including his or her full name, all other names by which he or she has been known, his or her trade or craft, current or last address, and, if applicable, place and date of death. The SSN and birth date shall be verified and mailed under separate cover to Sims & Associates, Inc. Plaintiff shall state in his VIDS that he has transmitted this information to Sims & Assoc., Inc., and Sims & Assoc. shall release this information upon request to defense counsel who appear in the case.

(b) The identity of the Plaintiff/Worker's employer at the time of each and every exposure to asbestos, or period of exposure to asbestos, setting forth the name and last known address for each employer, as well as the beginning and ending dates for each employment (e.g., "for the alleged exposure of April 14-18, 1956: ABC General Contractors, 1234 Main Street, Connersville, Indiana 46703, Employed from November 1, 1952 to July 15, 1961.").

(c) The identities of those working with the products of asbestos-containing materials as described in 2, below, at the time of each such alleged exposure. State the identity of these persons, their trade, and their employer(s) (e.g., "Joe Smith, insulator, employee of XYZ Corporation.").

2. *"What"*: The name or type of the asbestos-containing product or item the Plaintiff/Worker used or to which he or she was allegedly exposed, stating the manufacturer's company name (e.g., "Allbrand 85% magnesia pipe covering"), being as particular as possible. If Plaintiff cannot remember the name of the product he alleges he used or to which he alleges he was exposed, he shall provide a description of the product, being as particular as possible.

3. *"When"*: The dates during which the Plaintiff/Worker was allegedly exposed to asbestos at each jobsite, setting forth the beginning and ending dates for each exposure period, including date, month and year.

4. *"Where"*: The location of each alleged exposure to asbestos, setting forth the address of the premises as well as the specific area on each premises where the claimed exposure occurred (e.g., "boiler room #3 of Generic plant on East Ohio Street in Indianapolis"), and;

5. *"How"*: us The circumstances of the alleged exposure to asbestos, including a description of what the Plaintiff/Worker was doing on the premises, and what, if anything, was occurring in the specific area on each premises where and when the claimed exposure occurred, including a description of work performed by both the Plaintiff/Worker at that time and by any third-party working with asbestos or asbestos-containing materials. For example, if the Plaintiff/Worker was a carpenter who did not personally use asbestos-containing materials, but is alleged to have been exposed because he or she worked near some insulators in boiler room #3 of the IPALCO generating station on South Harding Street in Indianapolis, then the work performed by the insulators must be described with particularity (e.g., "employees from XYZ Corp. removed insulation containing asbestos from pipes and pipe fittings in the boiler room.").

6. *Foreign law*. Plaintiff shall reference all foreign law plaintiff alleges applies in the case, if any, and the specific defendants to which plaintiff alleges the foreign law applies.

If Plaintiff is not able to provide the information provided above, Plaintiff shall specify the unsuccessful efforts to obtain the information and a precise date when the information will be provided to defendants.

Rule LR49-TR26-707. Plaintiff's discovery propounded to defendants.

A. Service. -- A plaintiff may serve upon any defendant a Master Set of Interrogatories and Production Requests tailored appropriately to the type of defendant being served. Plaintiff may serve the Master Set of Interrogatories and/or Production Requests by letter, which must specifically reference the eFile & Serve TID number assigned to the document containing the discovery requests being served. A single service letter to all defendants may be served and applies to all defendants, regardless of time of filing their appearance. If plaintiff serves all defendants by letter prior to the appearance of a defendant, the discovery shall be deemed served on the defendant.

~~B. Time for responding. — In a non-exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests or any other discovery within 120 days after the date of service or the filing of an Answer, whichever is later. In an exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests or any other discovery within 60 days after the date that the Motion for Expedited Trial was filed, the date of service of the discovery, or the filing of its Answer, whichever is later. A defendant will not be required to respond to any discovery until after the defendant has filed its Answer, except for good cause shown by plaintiff.~~

Time for responding. — In a non-exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests within 120 days after the date of service or the filing of an Answer, whichever is later. In an exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests within 60 days after the date that the Motion for Expedited Trial was filed, the date of service of discovery, or the filing of its Answer, whichever is later. Responses to any other case-specific discovery shall be due 60 days after the date of service of the discovery requests. A defendant will not be required to respond to any discovery until after the defendant has filed its Answer, except for good cause shown by plaintiff.

C. Master responses. -- Defendants may file a Master Set of Answers to Plaintiffs' Master Set of Interrogatories and Production Requests on the Master Docket and incorporate those answers into responses to discovery requests in individual cases.

D. Case-specific discovery. -- Plaintiffs may serve case-specific discovery that is not duplicative of any master discovery.

Rule LR49-TR26-708. Defendants' discovery propounded to plaintiffs.

~~A. Time for response.— In a non-exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production or any other discovery no later than 120 days after the VIDS was filed or the service of the discovery, whichever is later. In an exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production or any other discovery no later than 30 days after the date the Motion for Expedited Trial Setting was filed, the filing of the VIDS, or service of the discovery, whichever is later. Defendants may serve Master Discovery by letter, which must specifically reference the TID number assigned to the document containing the discovery requests being served.~~

Time for responding. — In a non-exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production no later than 120 days after the VIDS was filed or the service of the discovery, whichever is later. In an exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production no later than 30 days after the date that the Motion for Expedited Trial Setting was filed, the filing of the VIDS, or service of the discovery, whichever is later. Responses to any other case-specific discovery shall be due 60 days after the date of service of the discovery requests. Defendants may serve Master Discovery by letter, which must specifically reference the TID number assigned to the document containing the discovery requests being served.

B. Case-specific discovery. -- Individual defendants may serve additional written discovery in individual cases that is not duplicative of the Master Set of Interrogatories and Requests for Production or of other defendants' case-specific discovery in the individual case.

C. Effect of service. -- Defendants shall not serve duplicative discovery. All discovery served by one defendant in a particular case shall be deemed to have been served on behalf of all defendants who file a notice of joinder in the discovery within 10 days of the service of the discovery on Plaintiff. Any defendant who joins in the discovery may rely on a plaintiff's answers or responses to discovery regardless of which defendant actually served the written discovery or when the defendant appears in the case. Accordingly, any defendant who filed a joinder may seek to compel responses to discovery.

D. Required medical information. -- Within 30 days of filing the VIDS, a plaintiff shall serve to defendants:

1. A description or name of all illnesses or injuries from which the Plaintiff/Worker allegedly suffers as a result of exposure to asbestos;
2. The date each such illness or injury was diagnosed;
3. The name and address of each person who made such diagnosis;
4. A list of all symptoms experienced by Plaintiff/Worker which were allegedly asbestos-related, including a description of each symptom;
5. If Plaintiff/Worker smokes or has smoked tobacco, the quantity and duration of tobacco usage during his or her lifetime, and the brand name of the products or a description of the items used; and,
6. A list of all health care providers who have treated Plaintiff/Worker for each illness or injury allegedly caused by exposure to asbestos or any other airborne contaminants along with their current or last known addresses.
7. Any medical or employment records of the plaintiff in the possession of Plaintiff or his counsel.

E. Required records or materials. -- A plaintiff shall provide to Sims & Associates copies of the following documents if in plaintiff's or his counsel's possession, or signed and dated authorizations to obtain the same:

1. Plaintiff/Worker's medical and hospital records, and diagnosing and treating physician's records in the possession of the plaintiff, plaintiff's counsel or their agents, including any written reports relating to any alleged diagnosis or alleged confirmation of any diagnosis of an asbestos-related disease or disease process or any other disease allegedly caused by airborne contaminants;

2. Pension records and all related information;
3. Social Security Administration Work Histories (Form SSA-7050);
4. X-ray films, CT scans, and/or pathologies which are in the possession of the plaintiff, plaintiff's counsel and/or their agents, or in the alternative, specifically identify the person or entity in possession of these materials;
5. Federal Income Tax Returns (Form 1040 or 1040A for the prior seven years, or in the case of a decedent, for the seven years preceding his or her death);
6. Any and all forms, claims, or other documents submitted to any trust or other entity on plaintiff's behalf related to any injury plaintiff claims is a result of alleged asbestos exposure.
7. Any and all documents generated by any health and/or disease screening in which the plaintiff participated;
8. A list of all previous lawsuits in which the plaintiff was involved, identifying them by name, location, cause number, filing date, and current status.
9. Signed and undated releases, compliant with the Health Insurance Portability and Accountability Act, authorizing such Defendants' designee to obtain complete copies of Plaintiff/Worker's:
  - (a) medical, hospital and other health care records;
  - (b) radiology and/or pathology materials, which shall be addressed individually to the "Department of Radiology" and the "Department of Pathology;"
  - (c) employment records;
  - (d) pension records and information;
  - (e) Social Security Administration work histories (Form SSA-7050);
  - (f) federal income tax returns (Form 1040 or 1040A) for the prior seven (7) years, or in the case of a decedent, for the seven years preceding his or her death;
  - (g) forms, claims, or other documents submitted to any trust or other entity on plaintiff's behalf related to any injury plaintiff claims is a result of alleged asbestos exposure; and,
  - (h) records of any screenings in which Plaintiff participated.
10. A list of all health care providers who have treated Plaintiff/Worker within the last 20 years.

The time limit for providing this information to Sims & Associates is within 30 days of filing the VIDS in non-exigent cases, and within 15 days of filing the VIDS in exigent cases.

F. Standing to compel releases. -- Any defendant shall have the right to petition the Court for an Order to compel the plaintiff to provide a signed release if more than 30 days have passed from the time plaintiff was provided a release to be signed, provided that the defendant has complied with Rule 612(B).

G. Requirements to produce. -- Failure to provide the materials or authorizations set forth in this Rule after an entry of an Order compelling the same may be grounds for dismissal. All records described in Subdivisions (D) and (E) shall be produced within the time period allotted regardless of the stayed status of any individual case.

Rule LR49-TR40-711. Trial settings.

A. The Court will set no more than six trial settings per calendar year for the asbestos cases pending on the Marion County Mass Tort Litigation Docket.

~~B. Plaintiffs' firms are assigned no more than two trial settings per year.~~

C. B. Once a particular trial setting has been established, no cases can be added or removed, nor can the order of the cases be altered in any way without a written, verified showing of extraordinary circumstances. Specifically, if a case is settled, dismissed or resolved in some other manner, or an exigent case loses its exigent status, before the applicable trial date, the parties will not be allowed to fill the newly vacant slot in the trial setting with another case.

~~D. C.~~ This Court has determined that generally no more than eight cases shall be set for each trial setting. Of these eight cases, no more than two exigent cases should be included per setting. Relief from this Rule may be granted upon good cause shown.

E. D. Provisional order setting trial. -- No less than 18 months prior to a trial date, the parties shall submit to the Court a proposed Provisional Order Setting Trial (POST) tentatively scheduling cases for trial pursuant to the trial setting criteria in Rule 713.

1. The POST shall list:

(a) first and second-choice settings, consisting of two exigent cases, if any, and if not, two (2) slots tentatively reserved for exigent cases;

(b) third through eighth-choice settings, consisting of six non-exigent cases in First in, First out ("FIFO") order; and,

(c) two (2) additional non-exigent cases in FIFO order that shall be listed as alternates, and which are only tentatively set for trial, but which will be the eighth setting, or seventh and eighth-choice settings, in the event that there is only one or are no exigent cases for that trial setting.

2. All non-exigent cases are only tentatively set for trial, and are subject to displacement by cases that are rolled over from the previous trial setting for the same plaintiffs' counsel.

3. This POST is intended to allow the parties to begin preparing the tentatively scheduled cases for trial and alleviate the burden the parties bear in litigating entire cases in very short time frames.

~~F. E.~~ Final order setting trial. -- No less than five months prior to a trial date, the parties shall submit to the Court a proposed Final Order Setting Trial (FOST) for that trial date which confirms the cases set for trial pursuant to the trial setting criteria in Rule 713.

1. The FOST will:

a. Identify the rollover case(s) from the previous trial setting for that same plaintiffs' counsel;

b. Confirm any exigent case(s); and,

c. Vacate any previously scheduled case(s) for trial that is/are displaced by any rollover case(s).

~~G. F.~~ Exigent case. -- In the event that a case is granted exigent status pursuant to Rule 712 and set for trial less than 18 months prior to its scheduled trial date, certain Case Management Deadlines provided in these Rules are modified:

1. Plaintiff's VIDS, Plaintiff's Responses to Master Discovery, and Plaintiff's Preliminary Fact Witness List shall be eFiled & Served no later than 30 days after the Motion for Expedited Treatment is filed, or 480 days before trial, whichever is later;

2. Plaintiff's Statement of Special Damages shall be eFiled & Served no later than 30 days after the Motion for Expedited Treatment is filed, or 270 days before trial, whichever is later;

3. Defendants' Preliminary Fact Witness Lists shall be eFiled & Served no later than 30 days after the filing of Plaintiff's Preliminary Fact Witness List, or 420 days before trial, whichever is later;

4. This section modifies only those due dates specified herein. The deadlines established in section (I), below, control the remaining deadlines, and all other provisions of Section (I) otherwise control.

H. G. Stayed cases.

1. Definition and Designation of Stayed Cases. -- A "stayed case" is one that is currently not set for trial or one that is not exigent under Rule 712. The stayed case designation shall be lifted ~~automatically~~ when the case is reached in FIFO order and set on a POST ~~or~~ FOST. Otherwise, a party may move the Court to lift the stayed case designation, which the Court may order for good cause shown.

2. Effect of Stayed Status. -- No formal activity is required in a stayed case, other than the filing of plaintiffs' pleadings, appearances, and the gathering of information provided in Rules 708(D) and 708(E). Those filings must be made regardless of stayed status. Other filings are permitted by any party, but the time for response shall not begin until the case is set on a POST or FOST. For summary judgment motions filed pursuant to Rule 714 in a stayed case, the time for response is the time set forth in Rule 714.

I. H. Case management orders. -- Except as otherwise provided in Section (G), above, all cases shall be governed by the Case Management Order, provided herein:

STATE OF INDIANA )  
 )  
COUNTY OF MARION )

MARION SUPERIOR COURT TWO  
MASS TORT LITIGATION  
ASBESTOS DIVISION

IN RE: [month] [year] Trial Setting  
Master Docket, 95-000 :X60

[CASE NAMES]

[CAUSE NO.'S]

### CASE MANAGEMENT ORDER

Pursuant to Rule 711, the Court hereby enters the following Case Management Order to govern cases included in the POST.

The Court recognizes that some of the cases may have been subject to prior Case Management Orders. The deadlines established in this Order shall supersede all prior deadlines. Except where specifically noted below, nothing in this order shall be read to require a party to refile or re-serve any materials, except for Requests for Hearings on motions for summary judgment. Should any party desire to re-serve or re-file amended or supplemental materials in accordance with the following deadlines, leave is hereby granted to do so without the need for any further motion or order. The specific dates set forth in this Order are based on the recommendations of the parties.

1. Disclosure statements. -- Within 30 days after the Court issues the Provisional Order Setting Trial ("POST"), Plaintiffs shall eFile their Verified Initial Disclosure Statements ("VIDS"). To the extent that Plaintiffs have previously filed VIDS, Plaintiffs shall also by this date review them and supplement them to the extent necessary to comply with the Rules.

2. Statement of special damages and settled parties

A. Two hundred seventy (270) days before trial, Plaintiffs shall eFile their statement of special damages and their list of settled Defendants.

B. Plaintiffs shall have a continuing obligation to update this list of settled Defendants and shall provide a complete list to opposing counsel and the Court at the Final Pre-Trial Conference, at which time counsel for the Defense may orally amend their Answer and the record to add any Defendants recently dismissed from the case as nonparties.

3. Written discovery.

A. Written discovery shall be served and answered pursuant to ~~Local Rules~~ Mass Tort Local Rules 707 and 708.

B. No party shall serve written discovery any later than 90 days before trial.

4. Witnesses.

A. Within ~~60~~ 90 days after the Court issues the POST, Plaintiffs shall eFile their Preliminary Fact Witness Lists identifying all witnesses from whom Plaintiffs may offer testimony at trial or in connection with dispositive motions. To the extent Plaintiffs have previously filed a Preliminary or Final Fact Witness List, Plaintiffs shall also by this date review them and supplement and amend them to identify those witnesses Plaintiffs currently believe will actually testify. Plaintiffs' counsel shall accept service of subpoenas on behalf of all Plaintiffs' fact witnesses and/or produce those witnesses for deposition, unless Plaintiffs' counsel notifies Defendants otherwise. Except by agreement of all parties or by order of the Court for good cause shown, Plaintiff must produce for deposition by Defendants all of Plaintiff's fact witnesses upon whom Plaintiff will rely for purposes of summary judgment no later than 210 days before trial.

B. At least seven days prior to the scheduled deposition of a Plaintiff, coworker, or other identification witness, Plaintiff shall serve Defendants with a notice containing the names of each Plaintiff for whom the witness will be called to testify and against which Defendants the witness is offered. These witnesses shall be produced for deposition by Plaintiff's counsel without subpoena upon reasonable notice by Defendants. Plaintiff will be prohibited from relying on or using at summary judgment or trial any evidence from any witness who fails to appear for a deposition as noticed, without good cause.

C. Four hundred twenty (420) days before trial, or 30 days after Plaintiffs eFile their Preliminary Fact Witness Lists, whichever is later, Defendants shall eFile their Preliminary Fact Witness Lists identifying all witnesses from whom Defendants may offer testimony at trial or in connection with dispositive motions. To the extent Defendants have previously filed a Preliminary or Final Fact Witness List, Defendants shall also by this date review them and supplement and amend them to identify those witnesses Defendants currently believe will actually testify.

D. One hundred eighty (180) days before trial, Plaintiffs shall eFile their Expert Witness Lists identifying those expert witnesses from whom Plaintiffs may offer testimony at trial or in connection with any dispositive motions. To the extent Plaintiffs have previously provided Expert Witness Lists, Plaintiffs shall also by this date review them and supplement and amend them to identify those witnesses Plaintiffs currently believe will actually testify. Plaintiffs shall also by this date serve copies of any existing expert reports prepared in connection with these cases, if any, and reliance materials. Plaintiffs shall also by this date provide available deposition dates and locations for all of their testifying experts. Pursuant to T.R. 26(B)(4)(c), the parties seeking expert discovery shall pay the expert's reasonable fee for deposition testimony.

E. One hundred twenty (120) days before trial, or 30 days after Plaintiffs eFile their Expert Witness Lists, whichever is later, Defendants shall eFile their Expert Witness Lists identifying those expert witnesses from whom Defendants may offer testimony at trial or in connection with any dispositive motions. To the extent Defendants have previously provided Expert Witness Lists, Defendants shall also by this date review them and supplement and amend them to identify those witnesses Defendants currently believe will actually testify. Defendants shall also by this date serve copies of any existing expert reports prepared in connection with these cases, if any, and reliance materials. Defendants shall also by this date provide available deposition dates and locations for all of their testifying experts. Pursuant to T.R. 26(B)(4)(c), the parties seeking expert discovery shall pay the expert's reasonable fee for deposition testimony.

F. One hundred twenty (120) days before trial, Plaintiffs shall eFile their Final Witness and Exhibit Lists. The lists shall contain only those witnesses and exhibits Plaintiffs actually intend to call to testify or to introduce at trial.

G. Sixty (60) days before trial, or 60 days after Plaintiffs eFile their Final Witness and Exhibit Lists, Defendants shall eFile their Final Witness and Exhibit Lists. The lists shall contain only those witnesses and exhibits Defendants actually intend to call to testify or to introduce at trial.

H. Thirty (30) days before trial, the parties shall have made available for deposition all witnesses and all experts they have retained to testify. The parties shall cooperate in the scheduling of depositions and shall complete all deposition discovery by that date, unless otherwise agreed by all parties or by order of Court with good cause shown.

#### 5. Motions.

A. Motions for summary judgment shall be eFiled & Served at least 150 days before trial and comply with Rule 614. Responses, replies and surreplies shall be eFiled & Served as set forth in T.R. 56 and in Rule 614. Hearings on motions for summary judgment will be scheduled for any party requesting a hearing, pursuant to T.R. 56 and Rule 614.

B. Hearings on motions for summary judgment will be set at least 90 days before trial, or on such other dates as the Court may schedule for particular motions for any party tendering notice as required by T.R. 56. The Court will provide counsel with a schedule setting forth the order of arguments and time limits. The parties are encouraged to file written waivers of these oral arguments.

C. All responses and/or objections to motions, with the exception of motions for summary judgment and motions to dismiss, served by one Defendant shall be deemed joined by all other Defendants, without the filing of any joinders.

D. Parties must contact the Court to request a hearing on any motion.

#### 6. Trial preparation.

A. Not later than 21 days before the trial date, the parties shall make each of the exhibits described in their Final Exhibit Lists available for inspection and copying. Nothing in this Order is intended to limit any party's right to copy or inspect trial exhibits earlier through discovery requests.

B. Not later than 14 days prior to the trial date, each party shall eFile:

- 1) Any stipulations of fact;
- 2) A list of depositions intended to be used in the party's case-in-chief that includes page and line numbers that will be read;
- 3) Any motions in limine. -- All motions in limine must divide the subjects into categories and include legal authority for each point. Motions in limine which simply list subjects without proper briefing and legal authority will not be considered; and
- 4) A trial brief succinctly addressing the following matters: (a) contested issues of fact; (b) contested issues of law and supporting authority; (c) a summary of motions in limine and anticipated evidentiary disputes; (d) a list of witnesses counsel intends to call at trial. The trial brief shall be delivered to the Court and shall not be served on other parties or filed using eFile & Serve. Each party shall present two copies of the trial brief to the Court which the Clerk shall stamp as "RECEIVED."

C. Not later than seven days before trial, each party shall eFile:

- 1) Objections and counter-designations to depositions;
- 2) Objections or responses to motions in limine; and
- 3) Any proposed preliminary jury instructions to be read to the jury prior to opening statements, and an agreed preliminary issue instruction. The issue instruction shall also be provided to the Court via email to ~~masstortsmaster@indy.gov~~ MSC\_D02\_complex@indy.gov in "word" processing format. If the parties cannot agree to a preliminary issue instruction, the proposed instructions may be provided to the Court in hard copy and via email along with a summary of any areas of disagreement.

D. Nothing in this Order is intended to prohibit the parties from raising matters related to these cases during other conferences scheduled on the Court's Mass Tort Litigation dockets. The parties shall submit proposed agendas which comply with Rule 615 and list specifically those matters which require attention. If no agendas are received or if all parties represent that the status conference is necessary, the Court may vacate that conference from the Court's calendar.

E. The Court shall conduct a final pre-trial conference to be scheduled. All trial counsel who expect to participate in the trial shall attend the final pre-trial conference.

F. The Court will announce during the Defense Case-in-Chief the deadline for the Final Proposed Jury Instructions, as well as the number of proposed non-pattern instructions permitted per side. Counsel shall submit two copies of ALL proposed instructions (pattern and non-pattern), in three-ring binders, with numerical dividers; providing the instruction with the appropriate given/modified/refused/withdrawn provisions, followed by copies of the legal support for the proposed instructions. Counsel shall also provide proposed pattern instructions separated from the non-pattern instructions with the appropriate given/modified/refused/withdrawn provisions. The disks or email copies of the proposed instructions shall not have the citation that was provided on the hard copy (to reduce the amount of editing required during compilation for the instructions). Because the Court will require the Defendants to act in concert with regard to chargeable instructions, Defendants should collaborate when compiling the three-ring binder submission of proposed instructions.

Rule LR49-TR40-712. Exigent cases and expedited trial settings.

A. EXIGENT CASES.

1. "Exigent Case" shall mean the allegedly injured plaintiff has been diagnosed with malignant mesothelioma, any other asbestos-related Stage IV condition, or can show other compelling circumstances that justifies deviating from the strong presumption that all cases shall be handled in FIFO Order.

2. Any case that does not meet the definition of an "exigent case" shall be a non-exigent case. In the event the plaintiff in an exigent case dies before the deadline to file summary judgments and the Court grants a party's motion to remove the case from an expedited trial setting, the case will no longer be considered exigent for purposes of establishing deadlines and trial settings.

3. To obtain exigent status and an expedited trial setting, a plaintiff must:

(a) File with the Court a Motion for Expedited Trial Setting showing good cause why the plaintiff should be afforded the preferential treatment; and,

(b) ~~Attach to~~ The Motion for Expedited Trial Setting shall contain a statement that the Plaintiff has a confirmed pathological diagnosis and/or clinical diagnosis of the disease mesothelioma or a stage IV cancer. The Motion shall reference that the confirming medical documentation is available through counsel for plaintiff and/or Sims & Associates and shall not be attached to the motion to maintain privacy of the medical documentation. ~~an affidavit from a qualified physician speaking to the deteriorating health of the plaintiff and indicating that the plaintiff meets the definition of exigent. The qualified physician's affidavit must unequivocally state that the physician has read the Court's definition of an "exigent case" and that to a reasonable degree of medical certainty, the plaintiff meets the Court's definition.~~ In the event that Plaintiff seeks exigent status on a basis other than the Plaintiff's serious medical conditions stated above, Plaintiff shall attach a detailed affidavit that demonstrates facts supporting the need for an expedited trial date.

4. Following a Motion to Expedite Trial, the case shall proceed as if exigent pending the Court's ruling on that Request

~~5. Plaintiff shall make all reasonable attempts to make the affiant available for deposition within thirty (30) days of the filing of such affidavit. A deposition of the affiant for the purposes of challenging the exigent status will be limited solely to the facts and circumstances surrounding the determination that Plaintiff qualifies for exigent status.~~

6. ~~5.~~ Defendant(s) shall file any objection to Plaintiff(s) request for an exigent trial setting on or before 60 days after the date of the Motion for Expedited Trial Setting was filed, or within 30 days of service upon that Defendant, whichever is later.

7. ~~6.~~ An exigent case shall remain exigent and receive expedited treatment only so long as:

(a) the Plaintiff remains living; or,

(b) the parties and the Court have invested substantial amounts of time and effort in preparing the case for trial and the deadline for filing motions for summary judgment has passed such that in the interest of judicial economy the case should continue to receive expedited treatment and remain in place on the upcoming trial calendar.

~~8. 7.~~ At no time will an expedited trial setting be granted for any exigent case less than eight months after the date on which plaintiff requests the exigent status and expedited trial setting.

~~9. 8.~~ This Rule is only for the purposes of determining trial setting priority, and designation of a case as "exigent" shall not constitute evidence that the plaintiff's injuries were caused by or related to asbestos.



