

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

ORDER ESTABLISHING  
INACTIVE ASBESTOS DOCKET

GENERAL ORDER

NUMBER 64

ORDER

IT IS ORDERED that the clerk of court shall establish an Inactive Asbestos Docket which shall include: (1) claims presently pending before the court in which the plaintiff voluntarily agrees to be removed from the active docket; and (2) claims which a potential plaintiff, at plaintiff's option, chooses not to have litigated immediately. The procedures to be utilized in implementing this Inactive Asbestos Docket shall be as follows:

1. Pending Cases

a. Any plaintiff who has a case pending in this district in which injury and damages are alleged to have been caused by exposure to asbestos may file a statement requesting that the clerk administratively terminate his or her claim or claims. Such complaints will then be administratively terminated by the clerk, upon the following conditions.

b. The termination of any individual case shall be as to all plaintiffs named therein, shall be as to all defendants named therein, shall apply to all claims made therein, shall be without prejudice, and shall be without costs to any party. The case so terminated shall be added to the court's inactive docket.

c. The termination shall toll all applicable statutes of limitation regarding any claim for an asbestos-related pleural or parenchymal condition, disease or injury and/or the claims for injury or disease alleged in plaintiff's or plaintiffs' complaint or amended complaint (hereinafter referred to as "complaint"), except for claims based upon wrongful death. Said tolling shall apply only with respect to those defendants named in the complaint administratively terminated. Any defendant sought to be added to such a case after it has been administratively terminated shall be added only pursuant to Federal Rule of Civil Procedure 15 and after an appropriate ruling by the court. If the complaint does not allege a specific injury or disease, the statement requesting administrative termination shall state the specific nature of the plaintiff's alleged asbestos-related pleural or parenchymal condition, disease, or injury. All statute of limitations defenses that could have been asserted at the time the statement requesting administrative termination was filed and all statute of limitations defenses as to an injury or disease different from that alleged in the complaint or statement requesting administrative termination are preserved and are not tolled by the filing of a statement requesting administrative termination.

d. No complaint may be administratively terminated pursuant to this order after it has been placed on the court's regular trial calendar or assigned a trial date.

e. Once a case has been administratively terminated, it will be inactive. No further pleadings, motions or documents shall be filed in the case so long as it remains on the Inactive Asbestos Docket, except that a Notice of Removal from the Inactive Asbestos Docket may be filed. The court may require counsel for the plaintiff to file a report on the status of the case.

f. In the event that the complaint is reactivated and in the event that a verdict is rendered or judgment is entered for the plaintiff, interest on the amount of the damages shall be calculated from the date of the reactivation of the complaint, not from the date on which the complaint was originally filed.

g. Plaintiff or plaintiffs may reactivate his, her or their complaint once as a matter of course without leave of court.

h. The reactivation of the complaint shall be accomplished by the filing of a pleading entitled "Notice of Removal from the Inactive Asbestos Docket" and shall bear the individual docket number originally assigned to the complaint. A copy of the notice shall be served on the defendants' liaison counsel, if any, and counsel of record for the defendants in the original action, and a copy shall be sent to the asbestos docket clerk. There shall be no fee for reactivation of a complaint. The notice of removal from the Inactive Asbestos Docket shall state whether the plaintiff's medical condition has changed, and if so, in what manner, and shall state any other ground for reactivation

of the case. In no event shall the notice of removal from the Inactive Asbestos Docket be filed more than two years after the plaintiff or plaintiffs have knowledge of a diagnosis of an asbestos-related malignant disease or a more serious asbestos-related non-malignant disease.

i. On the reactivation of the complaint, the court may enter a scheduling order, or such other orders as may be necessary for the timely disposition of the complaint.

2. Potential Claims

a. A potential plaintiff shall file a complaint, an Affidavit of Notice of Claim, and a Request for Administrative Termination with the clerk of court. The clerk shall administratively terminate the case and place it on the Inactive Asbestos Docket.

b. The Affidavit of Notice of Claim shall contain the following information: (1) the names, addresses and marital status of the plaintiffs; (2) a brief statement concerning the occupation and exposure history of the plaintiff; (3) a copy of the medical diagnosis concerning the nature of the asbestos-related injury, disease or condition which the plaintiff alleges he or she has suffered; (4) the names of all entities with respect to which the plaintiff is giving notice of claim (hereinafter referred to as "Notice of Claim Defendants"); and (5) the name and address of each person served and the date of service.

c. Within thirty days of the filing of the Affidavit of Notice of Claim, the plaintiff shall serve a copy of the Affidavit of Notice of Claim upon each Notice of Claim Defendant by first class mail, postage prepaid and upon defendants' liaison counsel, if any.

d. Each defendant in every asbestos case pending in this district shall file, with the asbestos docket clerk, a designation of who is to be served with a copy of the Affidavit of Notice of Claim pursuant to the immediately preceding paragraph. The asbestos docket clerk shall maintain these designations in the Inactive Asbestos Docket. Service of an Affidavit of Notice of Claim upon the individual designated shall constitute sufficient notice pursuant to this section.

e. The filing of the complaint and Affidavit of Notice of Claim shall toll all applicable statutes of limitation regarding any claims of the plaintiff, his or her spouse, his or her children, his or her dependents or their estates, arising from the asbestos-related injury, disease or condition stated in the Affidavit of Notice of Claim except for claims based on wrongful death. Said tolling shall apply only with respect to the Notice of Claim Defendants.

f. Any claim initiated by the filing of a complaint and an Affidavit of Notice of Claim shall be exempt from the discovery provisions of the Federal Rules of Civil Procedure until such time as the case is transferred to the court's active docket.

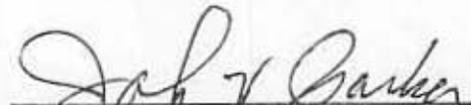
3. Reactivated Cases

a. A claim may be removed from the Inactive Asbestos Docket by the filing of a Notice of Removal from the Inactive Asbestos Docket. Service of the complaint shall then be accomplished in the usual manner as provided in the Federal Rules of Civil Procedure.

b. In the event that a verdict is rendered or judgment is entered for the plaintiff, interest on the amount of damages shall be calculated from the date of the filing of the Notice of Removal from the Inactive Asbestos Docket, not from the date of the filing of the complaint and Affidavit of notice of claim.

The foregoing order establishing an Inactive Asbestos Docket is applicable to all asbestos cases in this district and shall remain in full force and effect until further orders of this court.

Baton Rouge, Louisiana, May 2, 1988.

  
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JOHN V. PARKER, CHIEF JUDGE  
MIDDLE DISTRICT OF LOUISIANA

  
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FRANK J. POLOZOLO  
UNITED STATES DISTRICT JUDGE