

Amy Eddy, Asbestos Claims Court Judge
Department No. 1
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IN THE SUPREME COURT OF THE STATE OF MONTANA

<p>IN RE ASBESTOS LITIGATION, <i>Consolidated Cases.</i></p>	<p>Cause No. AC 17-0694 ORDER RE: MOTION FOR MODIFICATION OF JUNE 8, 2018 ORDER RE: MOTIONS TO QUASH</p>
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Pending before the Court is the State of Montana's *Motion for Modification of June 8, 2018 Order Re: Motions to Quash*, filed September 4, 2018. The matter has been fully briefed with the Plaintiffs, CARD Clinic and CARD Foundation filing their respective *Responses*, and a *Reply* subsequently being filed. The matter came before the Court for a hearing on September 18, 2018. Considering the expedited timeframes involved in this matter, the Court is issuing this abbreviated *Order* with limited rationale.

ORDER

The State of Montana's *Motion for Modification of June 8, 2018 Order Re: Motions to Quash* is GRANTED in part and DENIED in part, consistent with the below Rationale.

RATIONALE

On May 14, 2018, the Defendants in this matter served the following subpoenas pursuant to Rule 45, Mont.R.Civ.P.: (1) *Subpoena to Testify at a Deposition in a Civil Action* on the Rule 30(b)(6) representative of the CARD Clinic, outlining 56 areas of testimony; (2) *Subpoena Duces Tecum* on the CARD Clinic, outlining 54 categories of documents to be produced; (3) *Subpoena to Testify at a Deposition in a Civil Action* on the Rule 30(b)(6) representative of the CARD Foundation, outlining 21 areas of testimony; and (4) *Subpoena Duces Tecum* on the CARD Foundation, outlining 21 categories of documents to be produced.

The Plaintiffs, CARD Clinic and CARD Foundation objected to the subpoenas on multiple grounds. Upon review, the Court issued its *Order Re: Motions to Quash*, which effectively quashed half of the requests as duplicative, overly broad, overly burdensome and/or seeking confidential information. Accordingly, consistent with Rule 45(d)(1), Mont.R.Civ.P., the Court found the Defendants were responsible for paying the attorneys' fees and costs incurred by the CARD Clinic and the CARD Foundation for moving to quash the *Subpoenas*. Consistent with Rule 45(3)(C)(ii), Mont.R.Civ.P., the Court found the Defendants were also responsible for paying

reasonable costs incurred by the CARD Clinic and CARD Foundation in responding to these *Subpoenas*.

Following the July 24-25, 2018, evidentiary hearing, the State of Montana filed the present motion requesting the Court to review its *Order Re: Motion to Quash* based on testimony presented at the evidentiary hearing by the Plaintiffs that directly related to information requested in the *Subpoenas*, but that the Court had quashed. The Court generally agrees it would be inequitable to allow the Plaintiffs, CARD Clinic and CARD Foundation to on one hand object to production of the requested information; but on the other hand rely on such information in hearings before the Court when the Defendants were deprived of that very information.

(1) *Subpoena to Testify at a Deposition in a Civil Action on the Rule 30(b)(6) representative of the CARD Foundation and Subpoena Duces Tecum on the CARD Foundation*

Based on the evidence and testimony presented at the July 24-25, 2018, evidentiary hearing, the Court will require the CARD Foundation to produce, within 14 days of the date of this *Order*, all information requested in *Subpoena Duces Tecum* to the CARD Foundation in Attachment A, §II, ¶3 (“Documents and materials related to funding for all studies produced and/or published by CARD Foundation related to asbestos-related disease.”). The Court will also permit the reopening of the Rule 30(b)(6) deposition on this topic for a period not to exceed one hour.

(2) *Subpoena to Testify at a Deposition in a Civil Action on the Rule 30(b)(6) representative of the CARD Clinic and Amended Subpoena Duces Tecum to the Center for Asbestos Related Disease (CARD Clinic)*

Based on the evidence and testimony presented at the July 24-25, 2018, evidentiary hearing, the Court will require the CARD Clinic to produce, within 14 days of the date of this *Order*, all information requested in *Subpoena Duces Tecum* to the CARD Clinic in Attachment A, §II as follows and as amended:

- (1) Documents and materials, including but not limited to all radiologists’ narratives, B readers’ reports, original chest x-rays, original x-ray jackets, pulmonary function tests, electronic files, electronic files of pulmonary function tests, occupational histories, medical histories, questionnaires, notes, and diagnostic reports, in your possession, custody or control and/or any other data currently in your possession, custody or control which in any way relates to, identifies or organizes the requested documents, related to any client or person as treated by CARD, ~~including but not limited to the persons listed on Attachment B.~~
- (2) All files, including but not limited to patient files, relating to the testing, screening or diagnosing of any person, ~~including but not limited to the persons listed on Attachment B.~~
- (3) All invoices prepared by you or on your behalf for services rendered in performing x- ray tests, B reads, physical examinations, pulmonary function tests or

screenings, or any other testing or screening, or in generating reports or diagnoses for any client or person, ~~including but not limited to the persons listed on Attachment B.~~

- (4) Documents that reflect expenses submitted by you including but not limited to credit card statements, receipts or other expense reports, related to the screening of any person, ~~including but not limited to the persons listed on Attachment B.~~
- (5) Documents relating to or reflecting payments for services rendered in connection with any person, ~~including but not limited to the persons listed on Attachment B,~~ for whom you rendered x-ray tests, physical examinations, pulmonary function tests, B-reads, screenings, or generated reports or diagnoses.
- (6) Signature stamps presently or formerly owned or used by you, on your behalf, or by or for any other business name by and through which you have operated, in connection with services rendered for any person screened or tested by you, or for whom you obtained a diagnosis, ~~including but not limited to the persons listed on Attachment B.~~
- (7) Any and all documents, including but not limited to patient agreements, patient waivers, notices, letters, correspondence, business records, and/or communications, relating to the testing, screening or diagnosing of persons listed on Attachment B, including but not limited to correspondence between you and:
 - a. any person or client, ~~including but not limited to the persons listed on Attachment B;~~
 - b. any persons' attorneys or other agents of persons listed on Attachment B;
 - c. any attorney of persons listed on Attachment B;
 - d. any union or union representative of persons listed on Attachment B;
 - e. any screening company; and
 - f. any physician or technician, including but not limited to Dr. Brad Black.

* * *

- (9) Any and all documents, contracts or other agreements concerning payment by the person, their attorneys, representatives, unions, insurance companies, physicians and/or any other entity or individual for the services rendered by you and the terms and conditions under which services were performed by you in connection with the testing, diagnosing or screening of or for any person or client, ~~including but not limited to the persons listed on Attachment B.~~

* * *

- (11) Any and all documents, including but not limited to, documents which indicate results of any x-ray testings, physical examinations, pulmonary function testings or screenings of any person, ~~including but not limited to the persons listed on Attachment B,~~ which also meant to include re-examinations, re-tests, positive and negative tests, positive and/or negative test lists, and/or any criteria

used for positive and/or negative tests and which list, tabulate, summarize, set forth or contain information about the number or percentage of persons who tested positive and/or negative for asbestos related disease at any of your screening or testing locations.

- (12) Patient-type or client specific documents, including but not limited to, questionnaires, interview sheets or notes, information cards, written statements, recorded or taped oral statements, summaries of such statements, or summaries of such statements from any person, relied upon or which formed the basis for data entry and/or reports concerning gender, age, race, height, smoking history, exposure history, work history, medical history, patient identification number or other variables noted on any pulmonary function test or study for any person; ~~including but not limited to the persons listed on Attachment B and/or which formed the basis of any pulmonary function test and/or any physician report generated by you or on your behalf.~~

* * *

- (23) Documents and related files that establish, relate or pertain to any medical doctor or practitioner prescribing the x-ray tests and the pulmonary function tests performed on any person or client, including but not limited to the persons listed on Attachment B.

* * *

- (34) Any and all documents and/or literature relating to “Libby Disease,” “Libby Amphibole Disease,” and/or “lamellar pleural thickening.”

- (35) Any and all documents and/or literature providing an evaluation, assessment, or feedback on “Libby Disease,” “Libby Amphibole Disease,” and/or “lamellar pleural thickening.” This includes but is not limited to any responses from journals to which articles were submitted, or any scientific or medical professionals who reviewed the data, methodology, or findings.

- (36) Any documents that relate in any way to the relationship between CARD Clinic and the CARD Foundation, including but not limited to any funding or expenditures made on behalf of the CARD Foundation for the benefit of CARD Clinic or employees of the CARD Clinic.

* * *

- (42) Any written procedures, protocols, or policies relating to CARD Clinic’s patient record keeping system and document retention.

* * *

- (52) Any written communication between CARD Clinic and Agency for Toxic Substances and Disease Registry [“ATSDR”].

The Court will also permit the reopening of the Rule 30(b)(6) depositions on these topics for a period not to exceed one hour for each witness.

(3) Fees and Costs Associated with Compliance

The parties have requested the Court to clarify which fees and costs being incurred the Defendants are responsible for paying. The Court does not have enough information in front of it, at this point in time, to make such a determination. If the parties would provide such information to the Court at the October 3, 2018, hearing, the Court will make a determination at that time.

DATED this 26th day of September, 2018.

/s/ AmyEddy

Amy Eddy, Asbestos Claims Court Judge

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