

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**

**SEP 15 1989**

FRANK S. ZOLIN, COUNTY CLERK

*M. Cazares*

BY M. CAZARES, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

In re Los Angeles Asbestos ) No. C 700000  
Litigation - General Orders )  
GENERAL ORDER NO. 28

IT IS HEREBY ORDERED that any party who seeks to obtain production of any bodily tissue or fluid sample directly from the medical custodian thereof, whether by subpoena or otherwise, must give prompt written notice thereof to all adverse parties.

The terms "bodily tissue" and "fluid samples," as used herein, refer to bodily tissue or fluid samples (1) taken or received for the purpose of a cytological or pathological examination or test to be conducted with respect to any actual or anticipated issue in the litigation or (2) taken by a treating physician or consultant in connection with a diagnosis of plaintiff's medical condition, but which are still available and suitable for further examination and/or testing with respect to any actual or anticipated issue in the action.

IT IS FURTHER ORDERED that any party or the attorney for any party in possession or control of a bodily tissue or

1 fluid sample (which shall include the control of a treating or  
2 consulting physician, without interfering with the treatment pro-  
3 cess) which has not previously been available to, and examined  
4 by, all other parties in the action, and who directs the same to  
5 be examined and/or tested by an expert witness, potential expert  
6 witness or by a consultant, shall give at least 10-days' written  
7 notice of such intent to all other parties of record in the  
8 action. The notice shall include the following:

9           1. A technical description of the bodily tissue or  
10 fluid sample, including an accurate statement as to its size or  
11 quantity;

12           2. The name, address and telephone number of the  
13 person or entity which has possession of the same;

14           3. The date when such sample was taken from the body  
15 of the plaintiff or decedent, the process by which the sample was  
16 obtained and the name, address and telephone number of the person  
17 who obtained the same;

18           4. The nature and type of the examination and/or  
19 testing which is contemplated and whether or not any part or all  
20 of the sample will, or may be, used, consumed or destroyed by  
21 such process and, if so, to what extent;

22           5. The date and the place of such examination and/or  
23 testing.

24           IT IS FURTHER ORDERED that all parties shall meet and  
25 confer during the 10-day notice period for the purpose of reach-  
26 ing agreement as to the participation of all interested parties  
27 in the examination and testing of the samples and the maximum  
28 preservation thereof. To the extent that such conference does

1 not result in an agreement, then the dispute will be resolved by  
2 the Court upon ex parte application or noticed motion application  
3 of any party.

4 IT IS FURTHER ORDERED that any party who fails to give  
5 the notice specified herein or who willfully and without substan-  
6 tial justification fails to meet and confer, or who willfully and  
7 without substantial justification fails to perform any agreement  
8 reached at such conference, may not introduce into evidence at  
9 the time of trial any expert testimony regarding any examination  
10 and/or testing of tissue or fluid samples as to which this order  
11 applies, unless such party has made available to all other  
12 parties who request such access, at least 30 days prior to trial,  
13 the same quantity and quality of such samples as will reasonably  
14 permit said parties to conduct their own examination and testing  
15 of such samples.

16 IT IS FURTHER ORDERED that if the person conducting  
17 said examination or testing is designated as an expert witness,  
18 copies of all discoverable reports and writings made, or any  
19 reports relied upon, by the expert relating thereto shall be  
20 delivered to the opposing side within 10 days of said designation.

21 Dated: September 15, 1989.

22  
23 

24 RONALD E. CAPPAL  
25 Judge of the Superior Court  
26

REC/LL  
L/28  
09/12/89

27  
28  
1989