

DIANA ZALESKI
2003 DEC 23 PM 2:17
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

IN RE:) MASTER FILE PLEADING
)
SUMMIT COUNTY WORKERS) MISC NO: 2003-00-0022
COMPENSATION ASBESTOS CASES)
) CONTROL NO. 1077
)
) JUDGE JOHN R. MILLIGAN
)
) ORDER:
)
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This pending workers compensation asbestosis case, and 31 other cases, identified by filing in the Master Control Docket, Summit County Misc No. 2003-00-0022, and in each of the cases named and identified therein, are the subject of Motions for Summary Judgment filed by the common defendant, Daimler Chrysler Corp., on December 1, 2003. Thereafter, on December 10, 2003, Plaintiffs in each of said cases filed their Motion to Strike Defendant Daimler Chrysler Corporation's Motion for Summary Judgment, or, in the Alternative, for Leave to File Response with Request for Oral Hearing. Thereafter, on December 12, 2003, Defendant filed its Motion for Leave to File its Motion for Summary Judgment, and tendered an, as yet unsigned Order granting leave so to file.

In those cases within this group that are appeals by the employer, example, Reagan v. Daimler Chrysler, AC 2002 11-7340, the Motion for Summary Judgment is summarily dismissed.

As to those cases where the Plaintiff, claimant, has been denied recovery by the administrative agency, and it is he or she who appeals, a different scenario is exhibited.

Cursory examination of the Motion demonstrates that the claim is, inter alia, that a Resolution of the Industrial Commission, adopted February 26, 1996, establishes a tripartite presentation of a claimant must be made as a precedent to referral of the claim

for an examination by a qualified medical specialist pursuant to R.C. 4123.68; and that in the absence of such agency action claimants, the Plaintiffs herein, have no standing to appeal according to statutory authorization for judicial review. R.C. 4123.512.

It is manifest that this substantive issue will be, in many cases, a matter of law appropriately resolved by Summary Judgment proceedings.

It is equally manifest from the proceedings in this and other cases that the Motion was not timely filed. The prior Case Management Orders of this court established time perimeters for process of groups of cases. Here the deadline for filing dispositive motions is day 100; Day one was identified as July 18, 2003, and day 100 was thus October 26(27), 2003. The filing on December 1, 2003, was thus out of time and requires leave of court for consideration.

The cases have not yet been assigned for trial notwithstanding the Case Management Order identifies 170 days as trial time, which has been extended to January 20, 2004.

Summary judgment is a process designed to expedite the administration of justice by prompt resolution of cases, or issues, where there is no genuine dispute of material facts and/or a party is entitled to judgment as a matter of law. "If the action has been set for pretrial or trial, a motion for summary judgment may be made only with leave of court." Civ.R. 56(B).

In the interests of justice and a recognition that the legal issues in this and other cases where the Plaintiff is the appealing party, impact a substantial number of cases now pending in this court,

IT IS ORDERED that the Plaintiff's Motion to Strike be OVERRULED.

IT IS ORDERED that leave be granted to file their Motion for Summary Judgment instanter.

IT IS FURTHER ORDERED THAT PLAINTIFF IS GRANTED LEAVE TO RESPOND TO THE SUMMARY JUDGMENT MOTION by January 9, 2004.

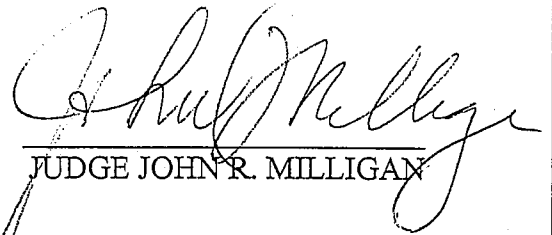
IT IS FURTHER ORDERED THAT THE MOTION FOR SUMMARY JUDGMENT BE SET FOR ORAL HEARING ON January 13, 2004, at 1 P.M. in the Visiting Courtroom of the Summit County Common Pleas Court.

IT IS FURTHER ORDERED THAT COUNSEL IN OTHER PENDING CASES ARE GRANTED LEAVE TO APPEAR AND PRESENT ARGUMENT AT SAID ORAL HEARING. THEY MAY ALSO FILE MEMORANDA PRO AND CON BY JANUARY 9, 2004, WITHOUT LEAVE.

This Master File Pleading shall be applicable to the following cases, and the Clerk will so note this master entry in the docket of the below-listed cases by date of Master File and Master File Control number:

AC 02-09-5204	AC 02-09-5205	AC 02-09-5215
AC 02-09-5217	AC 02-09-5219	AC 02-10-5610
AC 02-10-5876	AC 02-10-5911	AC 02-10-5912
AC 02-10-6057	AC 02-10-6059	AC 02-10-6060
AC 02-10-6061	AC 02-10-6062	AC 02-10-6063
AC 02-10-6064	AC 02-10-6065	AC 02-10-6083
AC 02-10-6086	AC 02-10-6092	AC 02-11-6204
AC 02-11-6356	AC 02-11-6357	AC 02-11-6358
AC 02-11-6359	AC 02-11-6360	AC 02-11-6361
AC 02-11-6362	AC 02-11-6363	AC 02-11-6364
AC 02-11-6365		

So ordered.



JUDGE JOHN R. MILLIGAN