

MS 2003-00-0022

DIANA ZALESKI

2003 NOV -4 PM 2:37

NOVEMBER 4, 2003 CASE MANAGEMENT MEETING NOTES

Present: Mike Reidy, George Rosin, Deborah Sesek, Linda Zahirsky, Dan Balmert, Tim Zix, Pat Walsh, Tom Wilson, Tom Bevan, Vincent Lombardo, Susie Steinhauer, Mag. John Shoemaker, Judge John Milligan

SUMMIT COUNTY
CLERK OF COURTS

Status of First Fifty Cases. The Court reported that 400 jurors have been summoned with tailored notice and questionnaire for December 4, 2003, trials. Television sets have been purchased; audio recording devices are available as needed; storage provisions for tapes and exhibits have been made in the jury room of visiting Judge Courtroom #2; Akron University is ready to proceed with editing testimonial video tapes to produce a trial evidence tape; space has been secured for jury viewing and deliberations; personnel, including court reporters are available.

Bevan and Balmert reported that they will have the video depositions ready for review by the court in their three cases (of the first 50) and will be filed timely.

Wilson reported that they are not prepared to try the cases and will not comply with the May 23, 2003 order to file video testimony by November 14. They continue to object to the process. The Court advised that on November 14, 2003, per this earlier order, the Court will examine each file in consecutive order to determine whether the case should be dismissed for want of prosecution, at Plaintiff's costs, and will rule on a case by case basis.

Wilson advised that they are planning to file an extraordinary writ request forthwith, and reiterated their objection to the video trial process. Milligan advised that the parties were consulted April 22, 2003, concerning the video trial process. He considered the costs involved, the nature of the action, the nature of the testimony (much of which is presented via expert witnesses who testify by video deposition in any case), the significant number of cases within this asbestosis category (over 450 in Summit County alone), the singular issue and verdict involved in Workers Compensation cases, and concluded then that there were compelling reasons for conducting the trial by videotape. See *Fantozzi v. Sandusky Cement Products*, (9/9/92) 64 Ohio St.3d 601. The parties have had since that time to prepare for video testimony trials. The court order of video trial was issued pursuant to the authority of **Sup. R. 13(B)**. Bevan and Sesek also registered objections to the video process.

Case No. AC2002-09-5170A, Lonnie Keyes V. B&W; AC2002-09-5170(B), Shirley Posten V. B&W, and AC2002-09-5170C, Billy Templeton V. B&W will proceed to trial on December 4. 60 jurors will be summoned.

Discovery. The Court noted that problems with discovery continue. Timely notice, content of discovery, and cost of video or travel were discussed. Counsel for the adverse party have a right to confront witnesses in person as the deposition is taken. The issue of costs was deferred. Failure of both parties in case after case to follow the Case Management Order (ex: Duty to identify trial witness by the 100th day) exacerbates

discovery problems.

Filing video depositions and exhibits. Trial video depositions are to be filed with Mary Randles at the Clerk's office, and will be stored in the court's jury room files. Each needs to be clearly identified with the Caption, Case Number, and the indexed objections, if any, of counsel to the deposition testimony.

Voire dire. The Court will conduct general voire dire and counsel will have the opportunity to question potential jurors. The Court will exercise discretion in the allocation of time for inquiry, but suggests that 30 minutes per side should be the standard.

Pleadings in Asbestosis Cases. All original pleadings must be filed with a properly executed designation sheet so that the clerk may properly identify and assign such case.

Group 2 Cases. The deadline for filing video trial testimony, exhibits, and objections, is extended to December 22, 2003. The trial date is extended to January 20, 2004.

October 27, 2003, is Day "1" for the 4th set of 50 cases, the Trial Date is May 3, 2004. Group 4 includes: AC 2002-12-7392 through AC 2003-01-0696, inclusively

Confidential Mandatory Status Report for Second 50 Cases—DUE BY DECEMBER 1, 2003. This is because the jury commissioner MUST order the jury no later than December 5, and the first 50 trials start December 4, 2003. The form is available today and on the web.

There are several interesting law review articles dealing with video trials. Erie County has a complete docket that consists of nothing except video trials. See:
"Pre-Recorded Videotape Trials—An Ohio Innovation" [1973] 39 Brooklyn L. Rev. 560
"Will Electronic Technology Take the Witness Stand?" [1980] 11 U.Tol.L.Rev. 239
"First Videotape Trial: Experiment in Ohio" [1972] 21 Defense L.J. 266
The law reviews can be found in the law library on the 4th floor, one is on microfilm.

NEXT MEETING. The Case Management Committee will meet Friday, December 12, 2003, at 9 A.M. The video trial of December 4 will have been concluded and a review of the process will be conducted. Judge Milligan reiterated his firm commitment to the video trial process and welcomes this next meeting as an opportunity to objectively evaluate the entire process, including the Case Management Order.

A handwritten signature in black ink, appearing to read "John J. Milligan". The signature is written in a cursive style with a large, sweeping initial "J" and a long, horizontal tail stroke.