

**MARION COUNTY
MASS TORT LOCAL RULES**

PREAMBLE

The Indiana Supreme Court has recognized the advent of multiple claims by large numbers of individual plaintiffs present the courts with the need to administer groups of cases involving common questions of law or fact. (In re: Marion County Mass Tort Litigation, Supreme Court No. 49S00-0410-SJ-460, Order Denying Petition and Remanding to Trial Court.) Such “mass tort” cases present the trial court and parties with unique concerns and issues, and require unique rules to ensure the efficient administration of justice. The following Marion County Mass Tort Local Rules have been implemented to meet the needs of the court and parties in administrating the mass tort cases filed in Marion County.

LR49-TR3 Rule 600 **CAUSE NUMBER ASSIGNMENT, CASE INITIATION, SERVICE** **AND RULE APPLICATION**

A. Application of Rules. These Rules apply to all filings on the Marion County Mass Tort Litigation Docket. The Mass Tort Litigation Docket consists of those cases assigned to the docket by the Executive Committee of the Marion Superior Court. ~~File & Serve is the exclusive method of filing and service for cases assigned to the mass tort litigation docket.~~ These Rules are to be construed together with the Indiana Rules of Court and the Marion County Civil Court Local Rules. When two or more of these Rules apply to a given situation, the more docket-specific or document-specific provision shall control. “Court” as used herein, shall mean the Court to which the mass tort docket has been assigned.

~~**B. Cause Number Assignment and Case Initiation.** Prior to filing a complaint on a Marion County Mass Tort Litigation Docket, the party shall obtain from the Court a cause number, pursuant to Ind. Admin. Rule 8, with an additional three digit suffix number. In addition to the requirements of Ind. Trial Rule 3, Plaintiffs shall initiate the case on File & Serve as soon as reasonably possible after obtaining a cause number. Plaintiff’s counsel must post an appearance at the time of initiation, along with the complaint.~~

~~**C. Citation to Cause Number.** Parties may cite to the cause number by the full 20 digit cause number or the shortened cause number in the following format: [Uniform Case Number] + [“ ”] + [assigned suffix number]. The “Uniform Case Number” is equivalent to the first two characters referenced in Admin. R. 8(B)(2), with the exception that the numbers do not reference the actual year the case was filed, but rather the numbers reference reserved cause numbers for consistent cause numbering.~~

B. Filing. Documents filed prior to October 28, 2016, are stored within each case or the master docket on File & ServeXpress. Documents filed after October 28, 2016, must be filed using the Indiana E-Filing System (“IEFS”). Parties may use any E-Filing Service Provider (EFSP) certified to participate in IEFS. Parties must comply with the requirements of Ind. Trial Rule 86.

C. Service. The Indiana Supreme Court through its Office of Judicial Administration has ~~permitted~~ authorized Parties to continue to use File & ServeXpress for electronic service and storage of documents. Using File & ServeXpress for service of filed documents will maintain

complete case histories for each case as well as the master and deposition dockets. Parties should select “service only” to serve documents on File & ServeXpress after they have been filed using an approved E-Filing Service Provider. This is a two-step process.

~~**D. Service.** Posting a complaint on File & Serve does not constitute service of process on any defendant. In addition to providing the clerk necessary copies of the complaint and summons, the serving party shall provide the clerk with sufficient copies of the notice provided in Rule 602. File & Serve is the “alternative method of notice,” to all parties of all documents in cases assigned to the Marion County Mass Tort Litigation docket.~~

~~**D.E. Duty of plaintiffs to provide proof of service.** If a party serves process on an individual or an organization, the party shall promptly provide the Court’s filing clerk with original proof of service. ~~within 10 days of receipt.~~ When perfecting service by registered or certified mail, the party shall promptly transmit a return receipt to the Court’s filing clerk. ~~within 10 days of the return of service.~~~~

LR49-TR3.1 Rule 601 APPEARANCES

A. Form for Appearances. The attached form is adopted as the exclusive Appearance Form for Attorneys admitted to the Indiana Bar for the Marion County Mass Tort Litigation Docket. An appearance must be completed, signed, filed and served before the first document filed and posted by the signing attorney.

B. Titling. ~~A single attorney appearance shall be filed on File & Serve with the title on the document and on the docket in the following format: [“Attorney”] + [Name, Attorney number, Email address,] + [“Appearing on Behalf of”] + [Party type] + [Party name]. For example: “Attorney John H. Doe, #11111-49, j.doe@firm.com, Appearing on behalf of ABC Company, Inc.”~~ Where multiple attorneys use a single form for the same party, the above information shall be provided for each individual attorney. For example: “Attorneys John H. Doe, #11111-49, j.doe@firm.com and Jane M. Doe, 22222-49, j.doe@firm.com, Appearing on behalf of ABC Company, Inc.” If several attorneys share a designated email address, that email address may be placed at the end of the named attorneys rather than throughout the title.

C. Substitutions. ~~Where a party serves a Substitution of Appearance to reflect a change of counsel of record, the following format must be used: [Party type] + [Party name] + [“Notice of Substitution of Counsel”] + [New attorney name, New attorney’s number, New attorney’s email] + [For] + [Former attorney name, Former attorney number, Former attorney’s email]. Example: “Defendant ABC Company, Inc.’s Notice of Substitution of Counsel John Doe, 11111-49, j.doe@firm.com, for Attorney Sam Smith, 22222-49, s.smith@firm.com.”~~

For substitution appearances, counsel shall file with the Court both a motion for substitution and the new attorney’s appearance form for each affected case. The appearance may be filed as a supporting document to the main document, Notice Motion for of Substitution.

D. Pro hac vice Attorneys. ~~Out of state attorneys who have sought and received limited admission shall use the same appearance form as attorneys regularly admitted to practice law in Indiana after the attorney has received a temporary license number and the Court has granted the petition for limited admission in that case.~~

E. Withdrawal of Appearances. ~~A motion for withdrawal of an appearance where new counsel has not appeared must include a letter to the client that was mailed at least 10 days prior to the filing of the motion and certify the last known address and telephone number of the party, pursuant to T.R. 3.1(E). The letter of withdrawal shall explain to the client that failure to secure new counsel may result in dismissal of the client’s case or a default judgment entered against him and shall contain other pertinent information such as hearing dates.~~

~~If a plaintiff is the moving party, the motion shall be accompanied by a proposed order that both grants the motion for withdrawal and sets a T.R. 41(E) hearing for a date and time to be indicated on the attached Information/Comments page. The Relief Requested paragraph shall state, “It is therefore ORDERED that the motion for withdrawal of appearance is GRANTED, and Plaintiff shall appear for a hearing at the date and time indicated on the attached Information/Comments page or Plaintiff’s case may be dismissed with prejudice.” Counsel who moved for the withdrawal shall mail the order setting the T.R. 41(E) hearing to the plaintiff within five days of the date of the service of the Order. The distribution list shall indicate that the Order will be mailed to the plaintiff and was distributed electronically.~~

IN THE MARION SUPERIOR COURT

~~Case Number: 49D02-9901 MI-0001~~
~~IN RE MASS TORT LITIGATION) Case Number: 49D02-9801 MI-0001~~
~~MARION COUNTY) Case Number: 49D02-9601 MI-0001~~
~~SUPERIOR COURT ROOM 2) Case Number: 49D02-9501 MI-0001~~

~~["Attorney"] + [Name, Attorney Number, E-mail address] + [Appearing on Behalf of] [Party Type] + [Party Name]~~

~~Party Classification: Initiating _____ Responding _____ Intervening _____~~

~~1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s):~~

~~_____~~

~~2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:~~

~~Name: _____ Atty. Number: _____~~

~~Address: _____ Phone: _____~~

~~_____ FAX: _____~~

~~_____ Computer Address: _____~~

~~*[Please add additional lines for each attorney appearing and provide their attorney number and computer address]*~~

~~3. I will accept service by FAX at the above noted number: Yes _____ No _____~~

~~4. I have reviewed and discussed the **Commitment to Respect and Civility** with my client and agree to aspire to its goals.~~

~~5. This form has been filed and served on all other parties in the above referenced case via File & Serve. The attached Certificate of Service must be completed, pursuant to LR49 TR5 MTL-2(L).~~

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically served on all counsel of record on the date shown on the service stamp on the first page of this document, by using File & Serve.

[Signature]

IN THE MARION SUPERIOR COURT

IN RE MASS TORT LITIGATION)

MARION COUNTY _____) Case Number: **49D12-XXXX-MI-XXXXXX**
SUPERIOR COURT ROOM 2 _____)

**E-FILING APPEARANCE BY [“Attorney”] + [Name, Attorney Number, E-mail address] +
[Appearing on Behalf of”] [Party Type] + [Party Name]**

Party Classification: Initiating _____ Responding _____ Intervening _____

1. _____ The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s):

2. _____ Attorney information for service as required by Trial Rule 5(B)(2):

Name: _____ Atty. Number: _____
Address: _____ Phone: _____
_____ FAX: _____
_____ Email Address: _____

3. _____ Each attorney specified on this appearance:
- (a) _____ certifies that the contact information listed for him/her on the Indiana Supreme Court Roll of Attorneys is current and accurate as of the date of this Appearance;
 - (b) _____ **acknowledges that all orders, opinions, and notices from the court in this matter that are served under Trial Rule 86(G) will be sent to the attorney at the email address(es) specified by the attorney on the Roll of Attorneys regardless of the contact information listed above for the attorney;** and
 - (c) _____ understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information current and accurate, see Ind. Admis. Disc. R. 2(A).

Attorneys can review and update their Roll of Attorneys contact information on the Courts Portal at <http://portal.courts.in.gov>.

4. _____ This is a Miscellaneous case type as defined in administrative Rule 8(B)(3).

5. _____ This case involves child support issues. Yes _____ No X

6. _____ This case involves a protection from abuse order, a workplace violence restraining order, or a no – contact order. Yes _____ No X (If Yes, the initiating party must provide

an address for the purpose of legal service but that address should not be one that exposes the whereabouts of a petitioner.) The party shall use the following address for purposes of legal service:

Attorney's address

The Attorney General Confidentiality program address
(contact the Attorney General at 1-800-321-1907 or e-mail address is
confidential@atg.in.gov).

Another address (provide)

This case involves a petition for involuntary commitment. Yes No X

7. If Yes above, provide the following regarding the individual subject to the petition for involuntary commitment:

a. Name of the individual subject to the petition for involuntary commitment if it is not already provided in #1 above: _____

b. State of Residence of person subject to petition: _____

c. At least one of the following pieces of identifying information:

(i) Date of Birth _____

(ii) Driver's License Number _____
State where issued _____ Expiration date _____

(iii) State ID number _____
State where issued _____ Expiration date _____

(iv) FBI number _____

(v) Indiana Department of Corrections Number _____

(vi) Social Security Number is available and is being provided in an attached confidential document Yes No _____

8. There are related cases: Yes No X *(If yes, list on continuation page.)*

9. Additional information required by local rule:

10. There are other party members: Yes No X *(If yes, list on continuation page.)*

11. This form has been served on all other parties and Certificate of Service is attached:
Yes X No

12. I have reviewed and discussed the **Commitment to Respect and Civility** with my client and agree to aspire to its goals.

Attorney-at-Law

(Attorney information shown above.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically served on all counsel of record on the date shown on the service stamp on the first page of this document, by using File & ServeXpress.

[Signature]

**LR49-TR4 Rule 602
FILE & SERVE INITIAL NOTICE SHEET**

The following Notice shall be served with each Summons and Complaint in all cases assigned to the Marion County Mass Tort Litigation Docket:

*****NOTICE*****

DOCKET ASSIGNMENT: The enclosed Complaint has been filed in Marion Superior Court, Civil Division, in the State of Indiana and has been assigned to the Mass Tort Litigation Docket. Therefore, several Local Rules, including required Electronic Service procedures, govern the case. You are directed to provide this sheet to any counsel you retain for the defense of this case.

ELECTRONIC FILING: Documents filed prior to October 28, 2016, are stored within each case or the master docket on File & ServeXpress. Documents filed after October 28, 2016, must be filed using the Indiana E-Filing System (“IEFS”). Parties may use any E-Filing Service Provider (EFSP) certified to participate in IEFS. Parties must comply with the requirements of Ind. Trial Rule 86.

ELECTRONIC SERVICE: The Indiana Supreme Court Office of Judicial Administration has authorized that Aall service required by Ind. Trial Rule 5 and other required documents may shall be served exclusively using File & ServeXpress. as authorized by the Indiana Supreme Court Office of Judicial Administration and Local Rules. File & ServeXpress is an electronic, web-based service system. Counsel must contact the File & Serve vendor to establish an administrator who will register and receive user names and passwords for appearing counsel and their staff. All counsel must have Internet connect and an e-mail account. A File & Serve user name and password is required necessary to serve any pleadings or other documents in this case, as well as

receive electronic notice of documents served. ~~in the case.~~ To sign up for File & ServeXpress, contact Customer Service at 888.529.7587.

ELECTRONIC DEPOSITORIES:

The active Marion County Mass Tort Master Docket is maintained on File & ServeXpress and is assigned the case number 95-000. The Master Docket contains Plaintiff Master Complaints, Master Discovery, Defendant Master Answers, Defendant Master Discovery Responses, Trial Setting Orders and Agenda Postings relevant to all cases assigned to the Mass Tort Docket. Every attorney who files an appearance in a case must also add themselves to the Master Docket (95-000) service list.

The Marion Country Mass Tort Deposition Docket is maintained on File & ServeXpress and is assigned the case number 98-000. When citing to depositions which are already posted in this depository, parties shall cite to the TID number assigned to the uploaded deposition. If the deposition to which a party intends to cite does not appear in the 98-000 depository, parties shall upload the new deposition to the depository first then cite appropriately to the TID newly assigned to the deposition.

LOCAL RULES: The Marion County Local Rules governing the Marion County Mass Tort Litigation Docket are available on the Indiana Judicial Website, ~~in~~ the Marion County Clerk's Office Website, and through File & Serve after counsel obtains a user name and password. The File & Serve vendor will provide all technical information and instructions necessary to use File & Serve and will identify those Local Rules applicable to Marion County Mass Tort Litigation Docket. The Local Rules have been adopted pursuant to T.R. 81 and compliance is mandatory.

COURT CONTACT: Contact the Marion County Clerk's Office at 317.327.4740 or marioncounty-efiling@indy.gov with filing questions or for failure to receive Court notices.

LR49-TR5 Rule 603
DOCUMENT TITLING & ARRANGEMENT

~~FILE & SERVE PROCEDURE AND ACCESS~~

~~A. Electronic Filing and Service.~~

- ~~1. Electronic filing is the electronic transmission of documents to the Court, and from the Court, for the purposes of filing.~~
- ~~2. Electronic service is the electronic transmission of documents to a party, attorney or representative under these rules.~~
- ~~3. All documents filed with the Court must be served on all counsel of record. This subsection does not apply to Trial Briefs, which are addressed separately in Local Rule 711, or to submissions for *in camera* review.~~
- ~~4. File & Serve is authorized as the exclusive means for filing or serving all documents to be filed or served pursuant to T.R. 5 and other Rules in cases assigned to the Marion County Mass Tort litigation docket. All references to “document” in this Rule shall include any exhibits or attachments to a document. Document formats and types are defined in Rules 604 and 605.~~

~~**B. Documents Filed Under Seal.** Documents filed under seal (“sealed documents”) may not be efiled and shall be filed conventionally as required by the trial rules. A notice entitled “Notice of Filing of Sealed Document(s)” shall be served via File & Serve. This notice shall reference the date the sealed documents were independently served and filed and the means of service.~~

~~**C. Posting of Documents.** All documents posted on File & Serve must be served on all counsel of record, and it is not permissible to deselect any counsel from the service list on File & Serve.~~

~~A copy of each document filed or served in this litigation shall be sent to File & Serve by one of the following methods: (1) electronic transfer via the Internet ("uploaded documents") or (2) facsimile transmission. Uploaded documents may be submitted in WordPerfect, Microsoft Word, .pdf, .tif, .bmp, .jpg, .gif, or .hfd format. File & Serve will convert all documents into .pdf format and will make them available to system users on an internet website maintained by File & Serve ("Website"). Timing for posting to the Website is as follows:~~

~~1. Electronic documents will be posted immediately upon submission by counsel and receipt by File & Serve (documents are converted to .pdf prior to submission as efiled or eserved documents).~~

~~2. Faxed documents will be converted to .pdf by File & Serve. Users will receive an e-mail notification once their document is converted. Users must then finalize transmission of the document on File & Serve. The document is not served until the transmission step is completed.~~

~~**D. Service Stamp and Time of Filing and Service.** Any posted document shall be deemed filed and served as of the date and time indicated on the File & Serve service stamp, located on the first page of every posted document. The "service stamp" contains the date, time and Transaction ID Number (TID) of the document and appears in the upper right hand corner of the first page of all documents transmitted to File & Serve. For purposes of this rule, "transmitted" or "transmission" is defined as .pdf converted documents submitted to File & Serve for posting. The provisions of T.R. 6(E) allowing for additional time after service by mail shall not apply to extend deadlines.~~

~~**E. Linking.** File & Serve shall organize the documents through a chronological index, which will indicate whether that document is linked to others. If the document being served is in response or in addition to another document(s) served on the system, it must be “linked” to that document, as explained in the online rules for the File & Serve system. A document may be linked to multiple other documents, but only within the same case. Failure to properly link a document may result in omitted consideration of a submission.~~

~~**F. Signature on Documents Filed or Served Electronically.**~~

~~1. The LexisNexis File & Serve log in and password required to submit documents to the File & Serve system serve in part as the Filing User’s signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Indiana Rules of Trial Procedure, including T.R. 11, the Local Rules of this Court and any other purpose for which an attorney’s signature is required in connection with proceedings before the Court.~~

~~2. All filings must contain either a traditional, scanned signature that attests to the verification or the individual name of the attorney who is authorizing the filing and/or service of the document preceded by an “/s/” typed on the signature line where the attorney’s handwritten signature would otherwise appear. Reference to “one of the attorneys” is not proper and may result in summary denial or striking of the filing.~~

~~3. Electronically filed documents must include a signature block above the certificate of service (except on appearances) that includes the signature (described above), name, party for whom appearing, attorney number, firm, address, telephone number, and e-mail address of the authorizing attorney or the designated e-mail address for the attorney’s firm.~~

~~**G. Notification of Submissions.** Each registered File & Serve user will be provided with an electronic “mailbox” on the Website. Within one hour of posting the document to the system, File & Serve will send a document hyperlink to the mailboxes of all relevant registered users. Sending such a hyperlink to the recipient’s mailbox shall constitute service of the document pursuant to T.R. 5, T.R. 72(D) and Rule 600(D), and File & Serve and the parties will have no further duty to notify recipients of postings. “Relevant registered users” refers to counsel who have filed their appearances in the case and staff members within the same firm to whom notice is forwarded through File & Serve. Notice is not forwarded to staff or attorneys outside the Appearing Attorneys’ firms.~~

~~Only those registered users who have properly served appearances in the case by the time a document was transmitted will receive notice that the document was posted. Counsel who appear in a case have a duty to review and appropriately respond to documents served in a case prior to the counsel’s appearance. Knowledge of the contents of documents posted prior to a user’s appearance in the case will be imputed to a user who appears in the case, regardless of when the user does appear.~~

~~**H. User Access to File & Serve.** Only registered users may post documents on the case dockets or receive notice of document postings. National counsel who has not filed an appearance must either rely on their local counsel to send those copies or become part of the service list by filing an appearance or petition for temporary admission. In order to file documents on the system, the registered user must also be an attorney admitted to the Indiana Bar. Attorneys admitted *pro hac vice* may sign documents, but Local Counsel must also sign and post the document on the system. Non-filed documents are exempt from the Local Counsel posting rule.~~

~~**I. Public Access.** Public access to the system is provided through use of the Court's Public Access Terminal to view selected documents pursuant to Admin. Rule 9. Members of the public may schedule an appointment to view selected dockets on File & Serve by scheduling an appointment with the Court.~~

LR49-TR5 Rule 604
DOCUMENT FORMATTING AND SUBMISSION

~~_____ **A. Service Stamp.** The first page of all documents will receive a service stamp upon submission and acceptance with the date, time and Transaction ID Number (TID).~~

~~_____ **B. Top margin.** All filed documents must have a two-inch top margin on the first page.~~

~~_____ **C. Depositions.** Publication of depositions, pursuant to T.R. 5(E)(5), shall be made, without Motion, on the File & ServeXpress Deposition Docket (98-000) only.~~

~~_____ **D. Captioning.** With the exception of the captions for the Complaint, documents filed with the Court and served on File & Serve may be captioned, using the shortened cause number defined in Rule 600(C) in the following format:~~

~~STATE OF INDIANA _____) _____ MARION SUPERIOR COURT TWO
_____) _____ MASS TORT LITIGATION DOCKET
COUNTY OF MARION _____) [“Asbestos,” “Silica,” “Coal Tar Pitch”] Section
CARL CLAIMANT AND CARRIE CLAIMANT, Plaintiffs. _____) [95-002]~~

~~_____ **E. Proposed Order Format.** All motions must be accompanied by a separate Proposed Order, posted as a supporting document with Document Type “Proposed Order,” when submitted to File & Serve. The Order shall be in the following format:~~

~~_____ 1. _____ *Margin.* There shall be a margin of two inches on top of the first page of the Proposed Order.~~

~~_____ 2. _____ *Caption.* The document may be captioned as described in subdivision D above.~~

~~_____ 3. _____ *Title.* The Title of the Proposed Order shall not presume the Court’s Ruling. Proposed orders served on File & Serve shall be titled in the following format: [Proposed order on] + [Party type] + [Party name] + [Title of judicial review document]. An example is “Proposed Order on Defendant ABC Corporation’s Motion for Enlargement of Time to File Preliminary Exhibit List.”~~

4. ~~Text of Order.~~

~~a. Introduction. The Proposed Order shall initially state that the moving party filed a Motion, followed by the exact title of the Motion as well as any supporting document titles, and that the Court is duly advised in the premises. No further reference to the Motion is necessary and use of the notation "H.I." or other incorporation language is improper. Example: "Plaintiff John Doe filed his Motion for Enlargement of Time to File Final Exhibit List, and the Court is duly advised on the premises."~~

~~b. Ruling. The second paragraph of the Proposed Order shall state: "The Court rules as indicated herein, and on the attached Information/Comments Page," as described in subdivision (F)(2) below.~~

~~c. Relief Requested. The third paragraph of the Proposed Order shall state "IT IS THEREFORE ORDERED ["ADJUDGED AND DECREED" if the Ruling is final and appealable] [Relief requested in Motion]." In the event that the Court ruling is "Ruling with Comments," the relief requested paragraph on the proposed order shall have no weight and shall not form a part of the ruling unless expressly adopted in the Court's comments.~~

~~d. Signature. No provision shall be made for Judicial signing or dating the Order.~~

~~e. Distribution. The distribution information provided on the Proposed Order shall state "DISTRIBUTION via Electronic Service."~~

~~**F. Official Order Format.** A complete Order issued on the Marion County Mass Tort Litigation Docket shall be in the format of one of the following: (1) A file stamped, signed Order in the standard Order format; or (2) An Order including the text and format referenced in subdivision E, along with the Court's electronic Ruling Overlay in the upper margin and the Court's attached Information/Comments Page.~~

~~1. Ruling Overlay. The Court's electronic Ruling Overlay shall be superimposed on the Proposed Order and shall include the State Seal, the Judge's signature, and the ruling language.~~

~~2. Information/Comments Page. Every Order shall include an additional page including pertinent information and comments regarding the ruling indicated in the Ruling Overlay. Such information provided includes the Court, the Cause Number and case name, the Original Proposed Order Transaction ID Number (TID), the current date and the Judge's signature, as well as comments, if any, necessary to the ruling.~~

B. ~~G. Previously Served Documents.~~ Any document already posted using File & ServeXpress should not be attached to new documents or resubmitted to File & Serve. Reference shall be made to the File & ServeXpress TID, the Document Title, the cause number, and the date submitted. Users shall link to the document if on the same docket.

C. H. Certificate of Service. All filed documents must include a Certificate of Service referencing the service stamp and the manner of service. The Certificate of Service shall be in the following format:

CERTIFICATE OF SERVICE

The undersigned attorney certifies that the foregoing was electronically served on all counsel of record on the date shown on the service stamp on the first page of this document, by using File & ServeXpress.

~~“Electronically served” shall mean the methods described in Rule 603.~~ The document, before the Certificate of Service, must include the filing attorney’s name, party for whom appearing, attorney number, firm, address, telephone number, and e-mail address of the authorizing attorney or the designated e-mail address for the attorney’s firm.

D. I. Exhibits. To prevent the file stamp from obscuring information on an exhibit, a cover page shall be filed with exhibits and sufficiently identify the exhibit by number, letter or Bates Stamp, as designated and cited in the briefing. ~~The cover page shall contain a two-inch top margin and only succinctly identify the exhibit to which it is attached. Exhibits must be marked in such a way, e.g., Bates stamped, to allow for easy reference and specific designation.~~

E. J. Rules for Titling Documents. ~~Documents filed or served via File & Serve shall comply with the following title requirements to facilitate searching and generating reports and to comply with T.R. 77(B):~~ For Marion County Mass Tort Cases, a two-step method of filing and service is used.

1. All court filings must filed pursuant to TR 86 using an approved E-Filing provider.
E-File Indiana provides limited space for document titles. Parties shall use Court Document abbreviations contained in a current edition of a Uniform System of Citation (Bluebook).

<http://www.personal.psu.edu/dhk3/research/Bluebook/T-08-17.htm>. Party name(s) must be first word(s) of document description. Use abbreviations as necessary.

2. Service of all court filings, discovery, or other case materials or communications may be served using File & ServeXpress as authorized by the Supreme Court. Documents filed not for public access pursuant to Administrative Rule 9 must be served using the “Serve Only – Private” option. All other documents must be served using the “Serve Only – Public” option.

4. a. Filings, excluding Appearances and Proposed Orders. Documents filed with the Court shall be titled ~~on File & Serve~~ in the following format: [Party Type] + [Name of Party] + [Title of Document] + [Title of document to which the new document relates or responds, if applicable]. ~~+ [Basis therefore].~~ The following are examples of how to title documents:

- a. 1. Plaintiff John Doe's Complaint; Pl. John Doe's Compl.
- b. 2. Defendant XYZ Corporation's Motion to Dismiss Plaintiffs' Complaint; ~~on the basis of the Statute of Limitations;~~ Def. XYZ Corp.'s Mot. to Dismiss Pl.'s Compl.
- c. 3. Plaintiffs John Doe's and Jane Doe's Response in Opposition to Defendant XYZ Corporation's Motion to Dismiss on the Basis of the Statute of Limitations.
- d. 4. Plaintiff John Doe's Exhibit A to Designation of Evidence to collective Response to Defendants' Motion for Summary judgment.
- e. 5. Deposition of Phil Physician, January 1, 2005, Vol. 2.
- f. 6. Defendant XYZ Corporation's Response to Plaintiff's Supplemental Interrogatories.

2.b. Letters or Notices. Letters or other document forms served on File & Serve shall be titled in the following format: [“Letter” or Other Document Form] + “From” + [Name of Sending Party] + “to” + [Name of Recipient Party] + [Subject Matter]. The following are examples of how to title these documents:

- a. Letter from XYZ Corporation to Plaintiffs Concerning Case Management Order Conference Schedule
- b. Notice From XYZ Corporation to All Counsel of Record of John Doe's Availability for Deposition

3. c. Cancellations. Documents intended to cancel previously scheduled events must use the document type “CANCELLATION” and be titled on File & Serve in the following format: [“CANCELLATION:”] + [Party Type] + [Party Name] + [Description of Canceled Event]. Example: “CANCELLATION: Defendant ABC Company, Inc.'s Notice of Canceling John Doe's Deposition scheduled for January 1, 2012.”

4. d. Verified documents. All documents required to be verified by statute, Ind. Trial Rules, or any Local Rule shall include the word “Verified” in the title of the document.

e. Main and Supporting Documents. Each distinct document should be prepared and uploaded to File & Serve separately, as a main or supporting document. “Main” is the default setting for the first document uploaded on File & Serve in each transaction. “Supporting” documents may be uploaded, but are restricted to only those documents that relate to the main document uploaded in the transaction. File & Serve does not restrict the number of supporting documents.

For example, when filing a Motion for Summary Judgment, Designation of Evidence, Brief in Support, Exhibits and Proposed Order, each document type should be uploaded separately and properly titled. The motion for summary judgment is the main document and all others are supporting documents.

f. Tombstoning.

1. Definition and application. “Tombstoning” is the procedure by which all documents within a transaction are removed from the File and ServeXpress docket. This procedure is only to protect privileged or confidential information and is not for removal of merely incorrectly filed documents. A record of the transaction will remain in a user’s mailbox, but the document will no longer be able to be viewed.

2. Procedure. In the event that privileged or confidential information is inadvertently served and posted on File & Serve, counsel shall contact support@FileandServe.org.

LR49-TR5 Rule 605
DOCUMENT TYPES

~~A. “Document Type” Selection.~~ When users submit documents to File & Serve, the user must specify the “Document Type” for each document from the menu of approved document categories. An asterisk (*) accompanies the document types that are referred for judicial review, and only those documents will receive judicial review.

~~F.~~ **B. Extra Documents.** CCS entries are not permitted. Cover or transmittal letters shall not be served with documents submitted for filing.

~~C. Main and Supporting Documents.~~ Each distinct document should be prepared and uploaded to File & Serve separately, as a main or supporting document. “Main” is the default setting for the first document uploaded on File & Serve in each transaction. “Supporting” documents may be uploaded, but are restricted to only those documents that relate to the main document uploaded in the transaction. File & Serve does not restrict the number of supporting documents.

For example, when filing a Motion for Summary Judgment, Designation of Evidence, Brief in Support, Exhibits and Proposed Order, each document type should be uploaded separately and properly titled. The motion for summary judgment is the main document and all others are supporting documents.

LR49-TR5 Rule 606
FILE & SERVE ERRORS

~~**A. Resubmission.** If a document that comprises part of a transaction filed on File & Serve contains errors in violation of these Local Rules, the entire transaction will be rejected by the filing clerk, and the entire transaction must be re-filed. Questions regarding reasons for rejection of a transaction may be directed to the Court's special master.~~

~~**B. Relation Back.** A document that has been resubmitted after being rejected for violations of these Local Rules will relate back to the time of the first attempted filing and be deemed filed as of the time of the first attempted filing provided that the violations were corrected and the document is resubmitted within two business days of the notice of rejection. Any time limit triggered by any resubmitted document does not begin until the day after the filing of the document.~~

~~**C. Penalties.** The Court may impose penalties, including striking documents, if firms or attorneys commit repeated or egregious violations of these Local Rules.~~

~~**D. Tombstoning.**~~

~~1. **Definition and application.** "Tombstoning" is the procedure by which all documents within a transaction are removed from the File and ServeXpress docket. This procedure is only to protect privileged or confidential information and is not for removal of merely incorrectly filed documents. A record of the transaction will remain in a user's mailbox, but the document will no longer be able to be viewed.~~

~~2. **Procedure.** In the event that privileged or confidential information is inadvertently served and posted on File & Serve, counsel shall contact support@FileandServe.org the Court immediately to request that the document be tombstoned. After counsel has contacted the Court to initiate the tombstoning procedure, counsel must submit within two days a Verified Motion to Tombstone Documents, a proposed order, and any substitution documents.~~

~~a. **Verified Motion to Tombstone Documents.** This motion shall contain the document's TID number, date submitted, the cause number/case name, and the basis for claiming privilege and/or confidentiality. The verified motion shall explain how the error occurred and must be signed by the submitting/authorizing attorney. Any~~

~~documents that the party wishes to substitute for the tombstoned document must be attached to the verified motion and contain the word “Substituted” in their title.~~

~~b. Proposed Order. The proposed order shall be titled, “Order Tombstoning [original document title] [(TID Number)].” If the party wishes to substitute documents for the tombstoned document, the proposed order must specifically refer to the documents and state, “By this Order, TID Number [TID number] and its Supporting Document(s) are removed from the docket of the above captioned matter and the Court substitutes the document(s) *nunc pro tunc*.”~~

LR49-TR5 Rule 607-604
CONTACTING THE COURT

~~E-mail is the preferred method by which counsel should communicate with the Court regarding all Mass Tort Local Rules substantive language and requirements. All questions regarding technological procedures should be directed to File & Serve Technical Support relating to E-file Indiana, any approved E-Filing vendors, and/or File & ServeXpress, the approved service provider, should be directed to the technical support staff for such entities and not the Court.~~

~~When sending e-mail to the Court regarding specific items filed with the Court using E-File Indiana and submitted as “serve only” to File & Serve, provide the following information:~~

- ~~_____ A. Cause number/case name;~~
- ~~_____ B. Date document submitted;~~
- ~~_____ C. Transaction ID Number (TID); and~~
- ~~_____ D. Title.~~

~~If a party files a motion or any other document that requires prompt Court review, the party shall e-mail the Court at masstortsmaster@indy.gov and provide notice of the filing. (Need to update contact information.)~~

LR49-TR5 Rule ~~608~~ 604
MOTION PRACTICE

A. Motions for Enlargement of Time.

All motions for enlargement of time must be verified and demonstrate good cause.

(1) *Plaintiffs*. Plaintiffs shall not seek consent of opposing counsel before filing a motion for enlargement of time, but shall file a motion for enlargement of time. Defendants shall have five days, including days when the Court is not open, after the filing of plaintiffs' motion to file an objection.

(2) *Defendants*. Defendants shall determine whether opposing counsel objects to a motion for enlargement before filing. The motion shall specify which opposing counsel was contacted and whether opposing counsel objected to the motion.

~~(a) Plaintiff cannot be reached. If opposing counsel cannot be reached, the motion shall specify the efforts made to contact opposing counsel.~~

~~(b) Plaintiff objects. If opposing counsel does object to the motion, the motion shall so state and demonstrate good cause for the enlargement in a verified motion.~~

~~(a)-(c)~~ Plaintiff does not object. If opposing counsel does not object, only a "Notice of Agreed Enlargement of Time" needs to be filed and the name of the counsel consenting to the enlargement shall be specified. Such notice shall not include a proposed order.

~~(b) (d)~~ Contents of all motions for enlargement. The contents of a motion for enlargement of time or notice of agreed enlargement of time shall include:

- (1) Whether the case is currently set for trial, and, if so, when.
- (2) The filing to be submitted, the time period that is sought to be extended, and the time period that triggered it.
- (3) The specific due date requested.

Any motion not satisfying these requirements may be summarily denied.

B. Time for Response to All Motions. Notwithstanding LR49-TR5-203, any party objecting to a motion shall have 10 days from the date of filing to file a response, except as otherwise provided by Mass Tort Local Rule or Court order. The party filing the motion or any other interested party in the case may file a reply thereto within seven days of the responsive filing. The Court will not await a response before ruling on the following motions: defendants' motions to enlarge time, to file an oversize brief, or to withdraw an appearance.

C. Joinder in Motions. Any party wishing to join in a filed motion shall file a notice of joinder within seven days of the filing of the motion.

~~**D. Multiple case service.** Multiple case service document types are restricted to Appearances, Notices of Substitution of Counsel, Notices of Withdrawal of Counsel, Notices of Deposition, Notices of No Objection to Motion for Summary Judgment, Notices of Dismissal, Notices of Agreed Enlargement of Time, Notice of Naming a Nonparty, and Notices of Bankruptcy. Leave of Court is required to file any other document, including a motion and a proposed order, by multiple case service. A document may contain multiple captions before the title of the document, but unless it falls within the previous categories of documents approved for multiple case service or a party has received leave of Court, it must be transmitted in separate transactions for each case to which it applies.~~

**LR49-TR5 Rule ~~609-605~~
MASTER DOCKET**

~~Each section of~~ The Marion County Mass Tort Litigation Docket has an archived and an active S-2, 95-000 Master Docket. The active Master Docket is used for serving items of general applicability such as Trial Calendars, Case Management Order proposals and Case Management Orders, Notices of Depositions if not case specific, Agenda Items, Committee Reports, Requests for Local Rules or amendments, Master Pleadings, Master Discovery and similar documents. ~~Case Management Order proposals and Case Management Orders for trial settings shall be served on the Master Docket.~~ The Master Docket is the only method of service for Court notifications relating to non-case specific mass tort matters. Parties must first obtain leave of Court before filing any other documents on the Master Docket. No documents may be filed on the archived Master Dockets.

**LR49-TR8(C) Rule ~~610-606~~
NONPARTY PRACTICE**

When a party identifies a nonparty through written notice or pleading, that identification sufficiently amends the Answers of all parties by interlineation, regardless of whether the party first naming the nonparty is subsequently dismissed from the case.

**LR49-TR 12(B)(6) Rule ~~611 607~~
GRANT OF TRIAL RULE 12 MOTIONS**

A party shall have 30 days following the grant of a T.R. 12(B) motion within which to replead. All Proposed Orders for motions to dismiss must indicate the 30-day repleading period. ~~Also,~~ Proposed Orders for motions to dismiss must specify that the motion is granted “without prejudice” in the Relief Requested paragraph. An example is: “IT IS THEREFORE ORDERED that Defendant XYZ Corp.’s Motion to Dismiss Plaintiffs’ Complaint on the basis of the Statute

of Limitations is GRANTED without prejudice. Plaintiffs have thirty (30) days within which to replead their claims against Defendant XYZ Corporation.” If Plaintiff fails to replead, parties may move for entry of final judgment.

LR49-TR26 Rule ~~612-608~~
DISCOVERY

A. Joint Defense Privilege. All communications, in any form whether oral, written, or transcribed by any means, among defense counsel in the Marion County Mass Tort Litigation cases are hereby deemed privileged. Plaintiffs and their attorneys are prohibited from discovering such information in such filed cases.

B. Certificate of T.R. 26(F) Compliance. Parties must certify in detail in a motion to compel the efforts that the moving party has taken to informally resolve any discovery dispute. The statement of efforts shall include the dates, time, place, ~~TID numbers~~ of relevant correspondence, other methods of communication, and the names of all participating attorneys and parties. Failure to include a verified T.R. 26(F) certification may result in summary denial of a motion to compel.

C. Effect of Trial Rule 12 and Rule 706 motions. The filing of a motion under T.R. 12 ~~or Rule 706~~ tolls pending discovery deadlines for the filing party.

D. No Local Limits. The limitation on the number of interrogatories and requests for production in the Marion County Local Rules shall not apply.

LR49-TR41 Rule ~~613~~ 609
PLAINTIFFS' DISMISSALS

A. Dismissal of Defendants. When plaintiff has resolved the claims with all the defendants named or no longer wishes to pursue claims against the remaining defendants, plaintiff shall file, "Plaintiff's Motion to Dismiss Remaining Defendants," together with a proposed order dismissing with or without prejudice all remaining defendants who have not settled for consideration. The filing of this motion does not divest this Court of jurisdiction with regard to enforcement of settlements or other agreements. After an order dismissing all defendants has been entered, the Court may administratively designate the case as closed. For cases dismissed without prejudice, defendants may file motions for entry of final judgment. ~~beginning two years after the dismissal.~~

B. Final Dismissal. When the plaintiff has filed the final signed Stipulation of Dismissal and there remains no further need for enforcement jurisdiction, the plaintiff shall file a "Notice of Final Dismissal of Pending Claims." The filing of this Notice closes the case statistically. ~~and completely divests this Court of jurisdiction over the matter.~~

LR49-TR56 Rule 614–610
MOTIONS FOR SUMMARY JUDGMENT

A. Party Filing Motion for Summary Judgment. A party filing a motion for summary judgment shall:

1. File a motion, supporting brief not to exceed 15 pages, and designation of any evidence upon which the party relies.
2. The designation of evidence may be made in the motion or by a separate document, and shall contain specific and appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or attached as an exhibit to the designation or brief.
3. The supporting brief must include a separate section labeled “Statement of Undisputed Material Facts” listing, in separately numbered paragraphs, the individual undisputed facts that are potentially determinative of the motion as to which the moving party contends there is no genuine issue that contain specific and appropriate citations to admissible evidence already in the record or attached as an exhibit to the brief. The Statement of Undisputed Material Facts should not contain mere background facts which put the case in perspective or the party’s argument which should be in the argument portion of the brief.
- ~~4. The movant may not incorporate by reference any designation of evidence or statement of undisputed material fact contained in another section or part of the supporting brief.~~
- ~~5.~~ 4. The moving party must also submit to the Court a proposed order on its motion for summary judgment.

B. Party Responding to Motion for Summary Judgment.

1. 30 days after service of the motion, a party opposing the motion shall file:
 - a. a response brief not to exceed 15 pages. However this brief may be a consolidated response brief addressing multiple motions for summary judgment and may exceed traditional page limitations if addressing more than one motion for summary judgment, and;
 - b. a designation of evidence that is specific and separate as to each movant and that designates evidence that the respondent asserts creates a disputed fact or a genuine issue. Respondents’ designation shall contain specific and appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or attached as an exhibit to the designation or brief.
2. The response brief shall contain a separate section labeled “Statement of Material Facts in Dispute and Genuine Issues,” which shall contain a separate subsection as to each movant, listing in separately numbered paragraphs, the individual disputed facts and/or

genuine issues as to that movant. Each subsection shall contain at least one of the following two separate parts:

- (a) the disputed material facts which preclude summary judgment; and/or
- (b) the material facts which are not in dispute, but which respondent asserts create a genuine issue and preclude summary judgment.

3. The asserted material facts and genuine issues shall be supported by specific and appropriate citations to discovery responses, depositions, affidavits, and other admissible evidence either already in the record or attached as an exhibit to the brief.

4. The non-movant's Statement of Material Facts in Dispute and Genuine Issues should not contain mere background facts which put the case in perspective or the party's argument which should be in the argument portion of the brief.

5. The response brief shall contain a separate argument section as to each movant, unless the entire argument is identical as to each movant.

~~6. The respondent may not incorporate by reference any designation of evidence, statement of material fact in dispute, or genuine issue contained in another section or part of the response brief or "Statement of Material Facts in Dispute and Genuine Issues".~~

~~7.~~ 6. Citation to documents previously served on File & ServeXpress shall be by document name, date document was served on File & Serve, and TID number, and if possible, page and line, paragraph number or similar specific reference.

C. Reply Brief. A party filing a motion for summary judgment may file a reply brief, not to exceed 8 pages in length, 10 days after service of the opposing party's submissions.

D. Surreply. If, in reply, the moving party relies upon evidence not previously cited or objects to the admissibility of the non-moving party's evidence, the non-moving party may file a surreply brief, not to exceed 8 pages in length, limited to such new evidence and objections, five days after service of the reply brief.

~~**E. Page limits.** Memoranda in support of or in opposition to motions for summary judgment shall not exceed 15 pages in length and reply briefs and surreply briefs shall not exceed eight pages in length, unless accompanied by a Motion for Leave to File a Brief in Excess of Page Limits, along with an email alerting the Court to the pending motion.~~

F. E. Designated Documents. With respect to documents designated in support of or in opposition to motions for summary judgment:

1. Counsel shall attach as supporting documents to the motion any designated documents not previously uploaded onto File & ServeXpress, other than deposition transcripts.

2. Counsel shall upload any deposition transcripts, not previously uploaded on File & ServeXpress, but relied upon for purposes of summary judgment, in their entirety on the Deposition Docket, as provided in Rule 604(C).
3. Counsel need not upload copies of designated documents already posted on File & ServeXpress unless they have been altered and such alteration is relevant to the designation.
4. Counsel need not attach as an exhibit any designated document already posted on File & ServeXpress, but rather, citation to the document as described above shall be sufficient.
5. “Specific and appropriate citations” throughout this Rule shall mean case name and shortened cause number, document title, date document was served on File & ServeXpress, TID number, and if possible, page and line, paragraph number or similar specific reference.

G. F. Hearings. Pursuant to Rule 711(I)(5), the Court schedules summary judgment hearings for each trial setting on Motions Day between 110-90 days prior to trial. This scheduled hearing will be vacated, unless a party files a request for hearing in accordance with Ind. T.R. 56(C) at least 10 days before the scheduled summary judgment hearing date. The request for hearing shall be made in a separate document from any other filing, but it may be submitted as a main or supporting document. The document type shall be “Request for Hearing,” and the request shall be titled,

[Party type] [Party name]’s Request for Hearing on [(party name)’s or “Its”] Motion for Summary Judgment for the [month] [year] Summary Judgment Settings.

H. G. Outlines. At the time of the hearing, counsel must provide three copies of an outline summarizing the brief submitted to the Court in support of or opposing the motion for summary judgment. Two ~~three-hole punched~~ copies must be provided to the Court and opposing counsel shall receive one.

LR49-TR73 Rule ~~615~~ 611
COURT HEARINGS

~~A.~~ STATUS CONFERENCES AND MOTION DAYS

1. **A.** *Agenda Item Proposals.* Any party that wishes to address any pending motion or general issue at status conferences or on monthly motion days must submit a written notice containing proposed agenda items. Proposed agendas must be filed on the Master Docket no less than ~~10~~ 7 days prior to the scheduled motion days or status conference. Parties must describe proposed agenda items with particularity, including the cases, dates, titles, and File & Serve Xpress TID numbers for all written submissions relating to each item proposed in the agenda.

2. **B.** *Motions Must Be Fully Briefed.* Only motions that are fully briefed and at issue at least seven days before the hearing will be considered by the Court, absent leave of court.

3. **C.** *Failure To Submit Items.* If no proposed agendas are submitted to the Court by the aforementioned deadline, the motions day or status conference may be vacated.

~~B.~~ HEARINGS CALENDARED BY THE COURT

~~1. All hearings scheduled by the Court will be posted on the File & Serve calendar. Parties may access the calendar from the File & Serve home page, search under Marion County Court, and input the desired search criteria. A search must include the relevant dates.~~

~~2. Court hearings will be marked as “tentative”, “confirmed” or “cancelled”. The Court does not send out notice when a hearing’s status is changed. It is the responsibility of the parties to confirm a hearing’s status by checking the Court’s calendar.~~

LR49-AD3 Rule ~~616~~ 612
CONDUCT OF ATTORNEYS *PRO HAC VICE*

Local Counsel must appear on behalf of his client when an attorney admitted *pro hac vice* plans to participate at a hearing or trial. Trial counsel admitted *pro hac vice* and Local Counsel are required to attend any Final Pre-Trial Conferences scheduled for cases to which they have been admitted, unless the trial counsel admitted *pro hac vice* has received leave of Court not to attend the final pre-trial conference. Local Counsel shall maintain responsibility for all court filings and service of documents consistent with Indiana Rules for Admission 3§2(d).

LR49-TR01-ASB-700
SCOPE OF MARION COUNTY MASS TORT
ASBESTOS LITIGATION DOCKET AND LOCAL RULES

Pursuant to the Order of the Marion Superior Court Executive Committee and this Rule, the Marion County Clerk of the Courts is directed to file all asbestos-related personal injury, wrongful death, or survival action cases in Marion Superior Court ~~Two~~ Twelve, Civil Division, ~~creating~~ the Marion County Mass Tort Asbestos Litigation Docket. ~~The cause numbers assigned to these cases shall begin with 49D02-["95," "96," or "98"]01-MI-0001 followed by a numeric suffix. On File & Serve, the cases will be identified in the division field as "Asbestos."~~

Any Local Rule in the 700 Series shall apply to the asbestos division only. The Mass Tort Litigation Rules, Series 600 *et seq.*, govern litigation in the asbestos personal injury division.

The Master Docket for the Asbestos Division is ~~49D02-9501-MI-00001-000-(95-000)~~.

E-mail is the preferred method by which counsel should contact the Court Staff in Superior Court 12. ~~The Court may be contacted at masstortsmaster@indy.gov~~

R49-TR8 Rule 701
MASTER COMPLAINTS

- A. All plaintiffs' counsel who intend to file cases under the Master Docket shall file Master Complaints that shall set forth all allegations required by statute and case law for a personal injury lawsuit alleging exposure to asbestos.
- B. There shall be a master complaint form filed for each form of filing anticipated by counsel (e.g., single plaintiff, married plaintiff, and deceased plaintiff).
- C. Master Complaints shall be identified as "[Firm Name]'s [Single/Married/Deceased] Plaintiff Master [A/B/C] Complaint." The Firm Name may be shortened for ease of application.
- D. Plaintiffs' counsel shall file their Master Complaints under the Master Docket and they shall be available for use and incorporation into new case filings by referencing the TID number.
- E. In the event of a change in the name of the Plaintiffs' counsel's firm, Plaintiffs' counsel shall re-file each form of Master Complaint on the Master Docket, making sure that each Master Complaint contains the firm's proper and current name.

Attorney for _____
Attorney Block

LR49-TR8 Rule 703
RESPONSIVE PLEADINGS/ANSWERS

A. Time for filing. The obligation of defendants to respond to a Plaintiff's Complaint is not triggered until 30 days after Plaintiff serves a Verified Initial Disclosure Statement or 30 days after the defendant is served with summons in the case, whichever time is later. No T.R. 12 motions or other responsive pleadings may be filed until the time for Plaintiff to file his VIDS has expired. LR49-TR5 Rule 203(D) shall not apply in Asbestos Section cases.

B. Master Answers. Defendants may file Master Answers in response to Master Complaints. Any Master Answers shall be identified as "Defendant [Party Name]'s Master Answer to [Firm Name]'s [Single/Married/Deceased] Plaintiff Master [A/B/C] Complaint." If a defendant has filed a Master Answer, the defendant's case-specific answer shall refer to the defendant's applicable Master Answer by TID number, if any, and may add any additional responses or defenses.

C. Additional Defendants. In cases where the plaintiff has been granted leave only to join additional defendants, the plaintiff shall limit the amendments to allegations pertaining to the new defendants or to correct originally named parties. The original defendants need not respond to the amended complaint, and the filing of the amended complaint only to join additional defendants does not toll or vacate any existing deadlines under these rules as to the original defendants.

D. Denial of Trial Rule 12 and Rule 706 Motions. A defendant shall not be required to file an Answer while it has a T.R. 12 or Rule 706 motion pending, but rather shall file its Answer no later than 10 days after denial of its T.R. 12 or Rule 706 motion, if applicable.

LR49-TR12 Rule 704
VERIFIED INITIAL DISCLOSURE STATEMENTS (VIDS)

A. Verified Initial Disclosure Statements

1. Verified Initial Disclosure Statements (“VIDS”) shall be signed under oath.
2. Plaintiff’s VIDS shall be considered part of the Complaint and constitute a pleading pursuant to the Trial Rules.
3. ~~Any party’s~~ Plaintiff’s VIDS may be used ~~in all pre-trial proceedings and at trial~~ consistent with the Indiana Rules of Trial Procedure and Indiana Rules of Evidence.

B. Timing

1. In an exigent case, a plaintiff shall file and serve the VIDS no later than 30 days after filing the Motion for Expedited Trial Setting in accordance with Rule 711(G).
2. In a non-exigent case, a plaintiff shall file and serve the VIDS no later than 90 days after filing the Complaint.
3. A plaintiff will not be required to respond to any discovery, including interrogatories, requests for productions, requests for admissions, or deposition requests propounded by defendants until after plaintiff has filed his VIDS, except for good cause shown by defendants, or as allowed by Rule 709.

LR49-TR12 Rule 705
PLAINTIFFS' VIDS: CONTENT

Each plaintiff shall file a separate Verified Initial Disclosure Statement (VIDS) that shall contain the following information correlated for each alleged exposure:

1. "Who":

- (a) The identity of the Plaintiff/Worker, including his or her full name, all other names by which he or she has been known, his or her trade or craft, current or last address, and, if applicable, place and date of death. The SSN and birth date shall be verified and mailed under separate cover to ~~Sims & Associates, Inc.~~ the joint defense records gathering service. Plaintiff shall state in his VIDS that he has transmitted this information to the joint defense records gathering service ~~Sims & Assoc., Inc., and Sims & Assoc.~~ and the joint defense records gathering service shall release this information upon request to defense counsel who appear in the case.
- (b) The identity of the Plaintiff/Worker's employer at the time of each and every exposure to asbestos, or period of exposure to asbestos, setting forth the name and last known address for each employer, as well as the beginning and ending dates for each employment (e.g., "for the alleged exposure of April 14-18, 1956: ABC General Contractors, 1234 Main Street, Connerville, Indiana 46703, Employed from November 1, 1952 to July 15, 1961.").
- (c) The identities of those working with the products of asbestos-containing materials as described in 2, below, at the time of each such alleged exposure. State the identity of these persons, their trade, and their employer(s) (e.g., "Joe Smith, insulator, employee of XYZ Corporation.").

2. “What”: The name or type of the asbestos-containing product or item the Plaintiff/Worker used or to which he or she was allegedly exposed, stating the manufacturer’s company name (e.g., “Allbrand 85% magnesia pipe covering”), being as particular as possible. If Plaintiff cannot remember the name of the product he alleges he used or to which he alleges he was exposed, he shall provide a detailed description of the product.

3. “When”: The dates during which the Plaintiff/Worker was allegedly exposed to asbestos at each jobsite, setting forth the beginning and ending dates for each exposure period, including date, month and year.

4. “Where”: The location of each alleged exposure to asbestos, setting forth the address of the premises as well as the specific area on each premises where the claimed exposure occurred (e.g., “boiler room #3 of Generic plant on East Ohio Street in Indianapolis”), and;

5. “How”: The circumstances of the alleged exposure to asbestos, including a description of what the Plaintiff/Worker was doing on the premises, and what, if anything, was occurring in the specific area on each premises where and when the claimed exposure occurred, including a description of work performed by both the Plaintiff/Worker at that time and by any third-party working with asbestos or asbestos-containing materials.

6. Foreign law. To the extent known at the time of filing, Plaintiff shall reference all foreign law plaintiff alleges applies in the case, ~~if any~~, and the specific defendants to which plaintiff alleges the foreign law applies.

7. Required Medical Information.

- a) A description or name of all illnesses or injuries from which the Plaintiff/Worker allegedly suffers as a result of exposure to asbestos;
- b) The date each such illness or injury was diagnosed;
- c) The name and address of each person who made such diagnosis;
- d) A list of all symptoms experienced by Plaintiff/Worker which were allegedly asbestos-related, including a description of each symptom;
- e) If Plaintiff/Worker smokes or has smoked tobacco, the quantity and duration of tobacco usage during his or her lifetime, and the brand name of the products or a description of the items used; and,
- f) A list of all health care providers who have treated Plaintiff/Worker for each illness or injury allegedly caused by exposure to asbestos or any other airborne contaminants along with their current or last known addresses.
- g) Any medical or employment records of the plaintiff in the possession of Plaintiff or his counsel.

If Plaintiff is not able to provide the information provided above, Plaintiff shall specify the unsuccessful efforts to obtain the information and a date when the information will be provided to defendants.

LR49-TR12 Rule 706
~~DISPOSITIVE MOTIONS BASED ON PLAINTIFFS' VIDS~~
TRIAL RULE 12 MOTIONS

Trial Rule 12 motions ~~in a non-exigent case~~ must be filed within 30 days of the filing of VIDS. ~~or, in a previously stayed case, within 30 days of the Court issuing a provisional order setting the case for trial (POST), whichever is later.~~ Plaintiff's response to any motion to dismiss will be due 30 days after the motion was filed. Any reply shall be filed within 10 days after the response is filed. ~~In an exigent case, a defendant must file a dispositive motion or motion for more definite statement based on the pleadings within 15 days of the filing of such VIDS, a response is due within 10 days, and any reply is due within five days.~~

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LR49-TR26 Rule 707
PLAINTIFF'S DISCOVERY PROPOUNDED TO DEFENDANTS

A. Service. A plaintiff may serve upon any defendant a Master Set of Interrogatories and Production Requests tailored appropriately to the type of defendant being served. Plaintiff may serve the Master Set of Interrogatories and/or Production Requests by letter, which must specifically reference the File & Serve TID number assigned to the document containing the discovery requests being served. A single service letter to all defendants may be served and applies to all defendants, regardless of time of filing their appearance. If plaintiff serves all defendants by letter prior to the appearance of a defendant, the discovery shall be deemed served on the defendant.

B. Time for responding. In a non-exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests within 120 days after the date of service or the filing of an Answer, whichever is later. In an exigent case, defendants shall respond to Plaintiff's Master Set of Interrogatories and Production Requests or any other discovery within 60 days after the date that the Motion for Expedited Trial was filed, the date of service of the discovery, or the filing of its Answer, whichever is later. Responses to any other case-specific discovery shall be due 60 days after the date of service of the discovery requests, including requests for admission. A defendant will not be required to respond to any discovery until after the defendant has filed its Answer, except for good cause shown by plaintiff.

C. Master Responses. Defendants may file a Master Set of Answers to Plaintiffs' Master Set of Interrogatories and Production Requests on the Master Docket and incorporate those answers into responses to discovery requests in individual cases.

D. Case-specific Discovery. Plaintiffs may serve case-specific discovery that is not duplicative of any master discovery.

LR49-TR26 Rule 708
DEFENDANTS' DISCOVERY PROPOUNDED TO PLAINTIFFS

A. Time for responding. In a non-exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production no later than 120 days after the VIDS was filed or the service of the discovery, whichever is later. In an exigent case, a plaintiff shall respond to Defendants' Master Set of Interrogatories and Requests for Production no later than 30 days after the date that the Motion for Expedited Trial Setting was filed, the filing of the VIDS, or service of the discovery, whichever is later. Responses to any other case-specific discovery shall be due 60 days after the date of service of the discovery requests, including requests for admission. Defendants may serve Master Discovery by letter, which must specifically reference the TID number assigned to the document containing the discovery requests being served.

B. Case-specific discovery. Individual defendants may serve additional written discovery in individual cases that is not duplicative of the Master Set of Interrogatories and Requests for Production or of other defendants' case-specific discovery in the individual case.

C. Effect of Service. Defendants shall not serve duplicative discovery. All Master Interrogatories or Master Requests for Production of Documents served by one defendant in a particular case shall be deemed to have been served on behalf of all defendants, and any defendant may rely on a plaintiff's answers or responses to the Master Discovery regardless of whether that defendant actually served the Master Discovery or when the defendant appeared in the case. Likewise, any defendant may seek to compel responses or otherwise enforce Master Discovery Requests.

Any other discovery served by one defendant in a particular case shall be deemed to have been served on behalf of all defendants who file a notice of joinder in the discovery within 10 days of the service of the discovery on Plaintiff. Any defendant who joins in the discovery may rely on a plaintiff's answers or responses to discovery regardless of which defendant actually served the written discovery or when the defendant appears in the case. Accordingly, any defendant who filed a joinder may seek to compel responses or otherwise enforce the case specific discovery requests.

~~D. Required Medical Information.~~ Within 30 days of filing the VIDS, a plaintiff shall ~~serve on defendants:~~

- ~~1. A description or name of all illnesses or injuries from which the Plaintiff/Worker allegedly suffers as a result of exposure to asbestos;~~
- ~~2. The date each such illness or injury was diagnosed;~~
- ~~3. The name and address of each person who made such diagnosis;~~
- ~~4. A list of all symptoms experienced by Plaintiff/Worker which were allegedly asbestos-related, including a description of each symptom;~~
- ~~5. If Plaintiff/Worker smokes or has smoked tobacco, the quantity and duration of tobacco usage during his or her lifetime, and the brand name of the products or a description of the items used; and,~~
- ~~6. A list of all health care providers who have treated Plaintiff/Worker for each illness or injury allegedly caused by exposure to asbestos or any other airborne contaminants along with their current or last known addresses.~~
- ~~7. Any medical or employment records of the plaintiff in the possession of Plaintiff or his counsel.~~

D. Required Records or Materials. A plaintiff shall provide to Sims & Associates copies of the following documents if in plaintiff's or his counsel's possession, or signed and dated authorizations to obtain the same:

1. Plaintiff/Worker's medical and hospital records, and diagnosing and treating physician's records in the possession of the plaintiff, plaintiff's counsel or their agents, including any written reports relating to any alleged diagnosis or alleged confirmation of any diagnosis of an asbestos -related disease or disease process or any other disease allegedly caused by airborne contaminants;
2. Pension records and all related information;
3. Social Security Administration Work Histories (Form SSA-7050);
4. X-ray films, CT scans, and/or pathologies which are in the possession of the plaintiff, plaintiff's counsel and/or their agents, or in the alternative, specifically identify the person or entity in possession of these materials;

5. Federal Income Tax Returns (Form 1040 or 1040A for the prior seven years, or in the case of a decedent, for the seven years preceding his or her death);
6. Any and all forms, claims, or other documents submitted to any trust or other entity on plaintiff's behalf related to any injury plaintiff claims is a result of alleged asbestos exposure.
7. Any and all documents generated by any health and/or disease screening in which the plaintiff participated;
8. A list of all previous lawsuits in which the plaintiff was involved, identifying them by name, location, cause number, filing date, and current status.
9. Signed and undated releases, compliant with the Health Insurance Portability and Accountability Act, authorizing such Defendants' designee to obtain complete copies of Plaintiff/Worker's:
 - (a) medical, hospital and other health care records;
 - (b) radiology and/or pathology materials, which shall be addressed individually to the "Department of Radiology" and the "Department of Pathology;"
 - (c) employment records;
 - (d) pension records and information;
 - (e) Social Security Administration work histories (Form SSA-7050);
 - (f) federal income tax returns (Form 1040 or 1040A) for the prior seven (7) years, or in the case of a decedent, for the seven years preceding his or her death;
 - (g) forms, claims, or other documents submitted to any trust or other entity on plaintiff's behalf related to any injury plaintiff claims is a result of alleged asbestos exposure; and,
 - (h) records of any screenings in which Plaintiff participated.
10. A list of all health care providers who have treated Plaintiff/Worker within the last 20 years.
11. Medicare Form A-1 (HICN request) and Medicare Form A-2 (Authorization to Release Information).

The time limit for providing this information to ~~Sims & Associates~~ the joint defense records gathering service is within 30 days of filing the VIDS in non-exigent cases, and within 15 days of filing the VIDS in exigent cases.

F. Standing to Compel Releases. Any defendant shall have the right to petition the Court for an Order to compel the plaintiff to provide a signed release if more than 30 days have passed from the time plaintiff was provided a release to be signed, provided that the defendant has complied with ~~Rule 612(B)~~ Indiana Trial Rule 26(F).

G. Requirements to Produce. Failure to provide the materials or authorizations set forth in this Rule after an entry of an Order compelling the same may be grounds for dismissal. All records described in Subdivisions (D) ~~and (E)~~ shall be produced within the time period allotted regardless of the stayed status of any individual case.

LR49-TR30 Rule 709
DEPOSITIONS DE BENE ESSE

A. If ~~counsel for the plaintiff~~ a party has ~~has~~ a good faith belief that the health and medical condition of their client or a witness requires that a videotaped deposition *de bene esse* be taken of such witness, they shall provide to defendants not less than 20 days prior to the date set for such deposition, the following information:

1. written notice of their intent to take such a deposition to all defendants (to their counsel if counsel have appeared for such defendant(s), or to any defendant's appropriate person for receipt of service of process if no counsel has yet appeared for that defendant). Such Notice of Deposition shall be in writing, delivered by facsimile together with hard copy by mail, or by hard copy hand-delivered to counsel for such defendant (if there is one), or by electronic mail (or similar computer assisted electronic means), but if and only if such defendant has previously agreed to such service; and,
2. copies of the following documents:
 - (a) a copy of the Verified Initial Disclosure Statement;
 - (b) any and all medical and hospital records and reports in the possession of such plaintiffs' counsel (except that these are to be delivered to Sims & Associates);
 - (c) signed and undated authorizations for the release of all medical and hospital records (except that these are to be delivered to Sims & Associates);
 - (d) Plaintiff's Social Security Administration Work History (Form SSA-7050), if available or establish that such records have been timely requested pursuant to LR _____; and,
 - (e) Answers to Defendants' Master Set of Interrogatories and Requests for Production.

B. The *de bene esse* deposition shall not occur less than 60 days from the date the Complaint is filed, other than by leave of Court for good cause shown.

C. Prior to the taking of the witness' deposition *de bene esse* as noticed above, the non-noticing party shall have the right to take a discovery deposition of such witness, notwithstanding Rule 704(B).

D. The *de bene esse* deposition shall occur no less than seven days after the completion of the discovery deposition, except as by agreement of all parties or by order of the Court.

E. In extraordinary circumstances, counsel may conduct the evidentiary deposition *de bene esse*, without the non-noticing party first taking a discovery deposition, if the noticing party's counsel can establish to the satisfaction of the non-noticing parties (or, if necessary, the Court) a necessity for doing so. The non-noticing party shall have the right to conduct cross examination

immediately following the conclusion of the direct examination in the deposition *de bene esse*, which shall continue day-to-day until completed, as the witness's health permits.

**LR49-TR30 Rule 710
DEPOSITIONS**

A. Attendance by defendant. A defendant shall not be required to attend depositions of product identification and exposure witnesses identified by plaintiff, unless plaintiff, in good faith, has identified, along with the notice of deposition or on the plaintiffs' Witness List, that this witness will testify regarding a product manufactured, distributed by, or attributed to, that particular defendant; an alleged exposure upon a premises owned by or in the control of that particular defendant; or an alleged exposure caused by work performed by that particular defendant. At least seven days prior to the scheduled deposition of a Plaintiff, coworker, or other identification witness, Plaintiff shall serve Defendants with a notice containing the names of each Plaintiff for whom the witness will be called to testify and against which Defendants the witness is offered. These witnesses shall be produced for deposition by Plaintiff's counsel without subpoena upon reasonable notice by Defendants. Plaintiff will be prohibited from relying on or using at summary judgment or trial any evidence from any witness who fails to appear for a deposition as noticed, without good cause.

B. Use of testimony. If a witness submits an affidavit, testifies in his or her deposition, or testifies at trial about a product or job site which was not identified with the notice of deposition or on the plaintiff's Witness List, plaintiff shall be prohibited from introducing that testimony at trial, using that testimony in opposition to a motion for summary judgment or using that testimony in any other manner against the defendant who did not receive proper notice. Plaintiff may be allowed to

utilize such testimony, however, upon giving those defendants, who were only identified by such witness subsequent to the issuance of the original notice of deposition, proper notice and a chance to re-depose this witness as to issues regarding their products, job sites, or work at issue.

C. Video Depositions. Any party may videotape a deposition taken in a case subject to these Local Rules after providing advanced written pursuant to Ind. R. Trial P. 30(B)(4). Any party or parties who videotape a deposition must videotape the entire deposition and be responsible for the expense related to the videotaping.

**LR49-TR40 Rule 711
TRIAL SETTINGS**

A. The Court will set no more than four trial settings per calendar year (January, April, July, and October) for the asbestos cases pending on the Marion County Mass Tort Litigation Docket.

B. Once a particular trial setting has been established, no cases can be added or removed, nor can the order of the cases be altered in any way without a written, verified showing of extraordinary circumstances. Specifically, if a case is settled, dismissed or resolved in some other manner, or an exigent case loses its exigent status, before the applicable trial date, the parties will not be allowed to fill the newly vacant slot in the trial setting with another case.

C. This Court has determined that generally no more than eight cases shall be set for each trial setting. Of these eight cases, no more than two exigent cases should be included per setting. Relief from this Rule may be granted upon good cause shown.

D. Provisional order setting trial. -- No less than 48-15 months prior to a trial date, Plaintiff's counsel shall post to the S-2 master docket a proposed Provisional Order Setting Trial (POST) the parties shall submit to the Court a proposed Provisional Order Setting Trial (POST) tentatively scheduling cases for trial pursuant to using the trial setting criteria in Rule 713. Parties shall have a seven-day period from the POST to file and serve an objection. Absent any objections, the Court may enter the POST.

1. The POST shall list:

(a) first and second-choice settings, consisting of two exigent cases, if any, and if not, two (2) slots tentatively reserved for exigent cases;

(b) third through eighth-choice settings, consisting of six non-exigent cases in First in, First out ("FIFO") order; and,

(c) two (2) additional non-exigent cases in FIFO order that shall be listed as alternates, and which are only tentatively set for trial, but which will be the eighth setting, or seventh and eighth-choice settings, in the event that there is only one or are no exigent cases for that trial setting.

2. All non-exigent cases are only tentatively set for trial, and are subject to displacement by cases that are rolled over from the previous trial setting for the same plaintiffs' counsel.

3. This POST is intended to allow the parties to begin preparing the tentatively scheduled cases for trial and alleviate the burden the parties bear in litigating entire cases in very short time frames.

~~E. Final order setting trial. -- No less than five months prior to a trial date, the parties shall submit to the Court a proposed Final Order Setting Trial (FOST) for that trial date which confirms the cases set for trial pursuant to the trial setting criteria in Rule 713.~~

~~1. The FOST will:~~

~~— a. Identify the rollover case(s) from the previous trial setting for that same plaintiffs' counsel;~~

~~— b. Confirm any exigent case(s); and,~~

~~c. Vacate any previously scheduled case(s) for trial that is/are displaced by any rollover case(s).~~

~~E.F.~~ Exigent case. -- In the event that a case is granted exigent status pursuant to Rule 712 and set for trial less than 18 months prior to its scheduled trial date, certain Case Management Deadlines provided in these Rules are modified:

1. Plaintiff's VIDS, Plaintiff's Responses to Master Discovery, and Plaintiff's Preliminary Fact Witness List shall be filed eFiled & Served and served on File & ServeXpress no later than 30 days after the Motion for Expedited Treatment is filed;

2. Plaintiff's Statement of Special Damages shall be filed eFiled & Served no later than 30 days after the Motion for Expedited Treatment is filed,;

3. Defendants' Preliminary Fact Witness Lists shall be filed eFiled & Served no later than 30 days after the filing of Plaintiff's Preliminary Fact Witness List,;

4. This section modifies only those due dates specified herein. The deadlines established in section (~~F~~ G), below, control the remaining deadlines, and all other provisions of Section (~~F~~ G) otherwise control.

~~G.F.~~ Stayed cases.

1. Definition and Designation of Stayed Cases. -- A "stayd case" is one that is currently not set for trial or one that is not exigent under Rule 712. The stayed case designation shall be lifted when the case is reached in FIFO order and set on a POST. ~~or FOST.~~ Otherwise, a party may move the Court to lift the stayed case designation, which the Court may order for good cause shown.

2. Effect of Stayed Status. -- No formal activity is required in a stayed case, other than the filing of plaintiffs' pleadings, appearances, and the gathering of information provided in Rules 708(D) and 708(E). Those filings must be made regardless of stayed status. Other filings are permitted by any party, but the time for response shall not begin until the case is set on a POST ~~or FOST.~~ ~~For summary judgment motions filed pursuant to Rule 714 in a stayed case, the time for response is the time set forth in Rule 714.~~

~~H.G.~~ Case management orders. -- Except as otherwise provided in Section (~~G~~ E), above, all cases shall be governed by the Case Management Order, provided herein:

STATE OF INDIANA)	MARION SUPERIOR COURT TWO
)	MASS TORT LITIGATION
COUNTY OF MARION)	ASBESTOS DIVISION
IN RE: [month] [year] Trial Setting		Master Docket, 95-000
[CASE NAMES]	[CAUSE NO.'S]	

CASE MANAGEMENT ORDER

Pursuant to Rule 711, the Court hereby enters the following Case Management Order to govern cases included in the POST.

The Court recognizes that some of the cases may have been subject to prior Case Management Orders. The deadlines established in this Order shall supersede all prior deadlines. Except where specifically noted below, nothing in this order shall be read to require a party to refile or re-serve any materials, except for Requests for Hearings on motions for summary judgment. Should any party desire to re-serve or re-file amended or supplemental materials in accordance with the following deadlines, leave is hereby granted to do so without the need for any further motion or order. The specific dates set forth in this Order are based on the recommendations of the parties.

1. Disclosure statements. -- Within 90- Days of the filing of the Complaint, , Plaintiffs shall eFile their Verified Initial Disclosure Statements ("VIDS"). In an exigent case, 30 days from the filing of Plaintiff's Motion to Expedite.

2. Statement of special damages and settled parties

A. 270 In both exigent and non-exigent cases, 120 days before trial Plaintiffs shall eFile file their statement of special damages and their list of settled Defendants.

B. Plaintiffs shall have a continuing obligation to update this list of settled Defendants and shall provide a complete list to opposing counsel and the Court at the Final Pre-Trial Conference, at which time counsel for the Defense may orally amend their Answer and the record to add any Defendants recently dismissed from the case as nonparties.

3. Written discovery.

A. Written discovery shall be served and answered pursuant to Mass Tort Local Rules 707 and 708.

B. No party shall serve written discovery any later than 90 days before trial.

4. Witnesses.

~~A., 270 days before trial,~~ Within 90 days after the Court issues the POST, Plaintiffs shall eFile file their Preliminary Fact Witness Lists identifying all witnesses from whom Plaintiffs may offer testimony at trial or in connection with dispositive motions. To the extent Plaintiffs have previously filed a Preliminary or Final Fact Witness List, Plaintiffs shall also by this date review them and supplement and amend them to identify those witnesses Plaintiffs currently believe will actually testify. Plaintiffs' counsel shall accept service of subpoenas on behalf of all Plaintiffs' fact witnesses and/or produce those witnesses for deposition, unless Plaintiffs' counsel notifies Defendants otherwise. Except by agreement of all parties or by order of the Court for good cause shown, Plaintiff must produce for deposition by Defendants all of Plaintiff's fact witnesses upon whom Plaintiff will rely for purposes of summary judgment no later than 210 days before trial. In an exigent case Plaintiff must produce all fact witnesses upon whom Plaintiff will rely for purposes of summary judgment no later than 180 days before trial.

B. At least seven days prior to the scheduled deposition of a Plaintiff, coworker, or other identification witness, Plaintiff shall serve Defendants with a notice containing the names of each Plaintiff for whom the witness will be called to testify and against which Defendants the witness is offered. These witnesses shall be produced for deposition by Plaintiff's counsel without subpoena upon reasonable notice by Defendants. Plaintiff will be prohibited from relying on or using at summary judgment or trial any evidence from any witness who fails to appear for a deposition as noticed, without good cause.

C. ~~30~~ 60 days after Plaintiffs ~~eFile~~ file their Preliminary Fact Witness Lists, Defendants shall file their Preliminary Fact Witness Lists identifying all witnesses from whom Defendants may offer testimony at trial or in connection with dispositive motions in both regularly scheduled and exigent cases. To the extent Defendants have previously filed a Preliminary or Final Fact Witness List, Defendants shall also by this date review them and supplement and amend them to identify those witnesses Defendants currently believe will actually testify.

D. ~~150~~ 180 days before trial, Plaintiffs shall file their Expert Witness Lists identifying those expert witnesses from whom Plaintiffs may offer testimony at trial or in connection with any dispositive motions. To the extent Plaintiffs have previously provided Expert Witness Lists, Plaintiffs shall also by this date review them and supplement and amend them to identify those witnesses Plaintiffs currently believe will actually testify. Plaintiffs shall also by this date serve copies of any existing expert reports prepared in connection with these cases, if any, and reliance materials. 150 days before trial, Plaintiffs shall ~~also by this date~~ provide available deposition dates and locations for all of their testifying experts. Pursuant to T.R. 26(B)(4)(c), the parties seeking expert discovery shall pay the expert's reasonable fee for deposition testimony.

In exigent cases Plaintiffs shall file their Expert Witness Lists and produce reports 150 days before trial and provide their expert's availability for deposition 120 days before trial.

E. ~~30 days after Plaintiffs eFile their Expert Witness Lists~~, 150 days before trial, Defendants shall file their Expert Witness Lists identifying those expert witnesses from whom Defendants may offer testimony at trial or in connection with any dispositive motions. To the extent Defendants have previously provided Expert Witness Lists, Defendants shall also by this date review them and supplement and amend them to identify those witnesses Defendants currently believe will actually testify. Defendants shall also by this date serve copies of any existing expert reports prepared in connection with these cases, if any, and reliance materials. 120 days before trial, Defendants shall ~~also by this date~~ provide available deposition dates and locations for all of their testifying experts. Pursuant to T.R. 26(B)(4)(c), the parties seeking expert discovery shall pay the expert's reasonable fee for deposition testimony.

In exigent cases, Defendants shall file their Expert Witness Lists and produce reports 120 days before trial and provide their expert's availability for deposition 90 days before trial.

F. 120 days before trial, Plaintiffs shall file their Final Witness and Exhibit Lists. The lists shall contain only those witnesses and exhibits Plaintiffs actually intend to call to testify or to introduce at trial. In exigent cases Plaintiffs shall file their final lists 90 days before trial.

G. ~~Sixty (60)~~ 120 days before trial, , Defendants shall file their Final Witness and Exhibit Lists. The lists shall contain only those witnesses and exhibits Defendants actually intend to call to testify or to introduce at trial. In exigent cases Defendants final lists shall be filed 60 days before trial.

H. Thirty (30) days before trial, the parties shall have made available for deposition all witnesses and all experts they have retained to testify. The parties shall cooperate in the scheduling of depositions and shall complete all deposition discovery by that date, unless otherwise agreed by all parties or by order of Court with good cause shown.

5. Motions.

A. Motions for summary judgment shall be filed ~~& Served 165~~ 210 days before trial and comply with Rule ~~614~~ 610. Responses, replies and surreplies shall be filed ~~& Served~~ as set forth in T.R. 56 and in Rule ~~614~~ 610. Hearings on motions for summary judgment will be scheduled for any party requesting a hearing, pursuant to T.R. 56 and Rule 614.

In exigent cases, motions for summary judgment must be filed 150 days prior to trial.

B. Hearings on motions for summary judgment will be set at least 90 days before trial, or on such other dates as the Court may schedule for particular motions for any party tendering notice as required by T.R. 56. The Court will provide counsel with a schedule setting forth the order of arguments and time limits. The parties are encouraged to file written waivers of these oral arguments.

C. All responses and/or objections to motions, with the exception of motions for summary judgment and motions to dismiss, served by one Defendant shall be deemed joined by all other Defendants, without the filing of any joinders.

D. Parties must ~~contact the Court to~~ file a request for a hearing on any motion.

6. Trial preparation.

A. Not later than ~~24~~ 28 days before the trial date, the parties shall make each of the exhibits described in their Final Exhibit Lists available for inspection and copying. Nothing in this Order is intended to limit any party's right to copy or inspect trial exhibits earlier through discovery requests.

B. Not later than ~~14~~ 21 days prior to the trial date, each party shall file:

- 1) Any stipulations of fact;
- 2) A list of depositions intended to be used in the party's case-in-chief that includes page and line numbers that will be read;
- 3) Any motions in limine. -- All motions in limine must divide the subjects into categories and include legal authority for each point. Motions in limine which simply list subjects without proper briefing and legal authority will not be considered; and
- 4) A trial brief succinctly addressing the following matters: (a) contested issues of fact; (b) contested issues of law and supporting authority; (c) a summary of motions in limine and anticipated evidentiary disputes; (d) a list of witnesses that counsel intends to call at trial. The trial brief shall be delivered to the Court and shall not be served on other parties or filed using eFile & Serve. Each party shall present two copies of the trial brief to the Court which the Clerk shall stamp as "RECEIVED."

C. Not later than ~~seven~~ 14 days before trial, each party shall file:

- 1) Objections and counter-designations to depositions;
- 2) Objections or responses to motions in limine; and
- 3) Any proposed preliminary jury instructions to be read to the jury prior to opening statements, and an agreed preliminary issue instruction. The issue instruction shall also be provided to the Court via email to ~~MSC_D02_complex@indy.gov~~ in "word" processing format. If the parties cannot agree to a preliminary issue instruction, the proposed instructions may be provided to the Court in hard copy and via email along with a summary of any areas of disagreement.

D. Nothing in this Order is intended to prohibit the parties from raising matters related to these cases during other conferences scheduled on the Court's Mass Tort Litigation dockets. The parties shall submit proposed agendas which comply with Rule ~~615~~ 611 and list specifically those matters which require attention. If no agendas are received or if all parties represent that the status conference is necessary, the Court may vacate that conference from the Court's calendar.

E. The Court shall conduct a final pre-trial conference to be scheduled. All trial counsel who expect to participate in the trial shall attend the final pre-trial conference.

F. The Court will announce during the Defense Case-in-Chief the deadline for the Final Proposed Jury Instructions, as well as the number of proposed non-pattern instructions permitted per side. Counsel shall submit two copies of ALL proposed instructions (pattern and non-pattern), in three-ring binders, with numerical dividers; providing the instruction with the appropriate given/modified/refused/withdrawn provisions, followed by copies of the legal support for the proposed instructions. Counsel shall also provide proposed pattern instructions separated from the non-pattern instructions with the appropriate given/modified/refused/withdrawn provisions. The disks or email copies of the proposed instructions shall not have the citation that was provided on the hard copy (to reduce the amount of editing required during compilation for the instructions). Because the Court will require the Defendants to act in concert with regard to chargeable instructions, Defendants should collaborate when compiling the three-ring binder submission of proposed instructions.

LR49-TR40 Rule 712
EXIGENT CASES AND EXPEDITED TRIAL SETTINGS

A. Exigent Cases.

1. "Exigent Case" shall mean the allegedly injured plaintiff has been diagnosed with malignant mesothelioma, any other asbestos-related Stage IV condition, or can show other compelling circumstances that justifies deviating from the strong presumption that all cases shall be handled in FIFO Order.

2. Any case that does not meet the definition of an "exigent case" shall be a non-exigent case. In the event the plaintiff in an exigent case dies before the deadline to file summary judgments and the Court grants a party's motion to remove the case from an expedited trial setting, the case will no longer be considered exigent for purposes of establishing deadlines and trial settings.

3. To obtain exigent status and an expedited trial setting, a plaintiff must:

(a) File with the Court a Motion for Expedited Trial Setting showing good cause why the plaintiff should be afforded the preferential treatment; and,

(b) The Motion for Expedited Trial Setting shall contain a statement that the Plaintiff has a confirmed pathological diagnosis and/or clinical diagnosis of the disease mesothelioma or a stage IV cancer. The Motion shall reference that the confirming medical documentation is available through counsel for plaintiff and/or ~~Sims & Associates~~ or the joint defense records gathering service and shall not be attached to the motion to maintain privacy of the medical documentation. In the event that Plaintiff seeks exigent status on a basis other than the Plaintiff's serious medical conditions stated above, Plaintiff shall attach a detailed affidavit that demonstrates facts supporting the need for an expedited trial date.

4. Following a Motion to Expedite Trial, the case shall proceed as if exigent pending the Court's ruling on that Request

5. Defendant(s) shall file any objection to Plaintiff(s) request for an exigent trial setting on or before 60 days after the date of the Motion for Expedited Trial Setting was filed, or within 30 days of service upon that Defendant, whichever is later.

6. An exigent case shall remain exigent and receive expedited treatment only so long as:

(a) the Plaintiff remains living; or,

(b) the parties and the Court have invested substantial amounts of time and effort in preparing the case for trial and the deadline for filing motions for summary judgment has passed such that in the interest of judicial economy the case should continue to receive expedited treatment and remain in place on the upcoming trial calendar.

7. At no time will an expedited trial setting be granted for any exigent case less than eight months after the date on which plaintiff requests the exigent status and expedited trial setting.

8. This Rule is only for the purposes of determining trial setting priority, and designation of a case as "exigent" shall not constitute evidence that the plaintiff's injuries were caused by or related to asbestos.

LR49-TR40 Rule 713
TRIAL SETTING CRITERIA

- A. Asbestos cases pending on the Marion County Mass Tort Litigation Docket shall be set for trial pursuant to the following criteria, absent a written, verified showing of good cause:
1. Any case identified by the Court as an “exigent case” may receive a priority setting and expedited trial date, in comparison with non-exigent cases.
 2. No more than two “exigent cases”, as that term is defined in Rule 712, will be scheduled for trial in any single trial setting.
 3. Non-exigent cases will fill the remaining slots in a particular trial setting using cause number order, beginning with a particular plaintiffs’ firm’s oldest pending cases and moving forward according to cause number.
- B. In the event that one or more cases set in any particular trial setting is not tried, settled, dismissed or otherwise resolved:
1. The case shall roll over and displace the settings in that firm’s next trial setting.
 2. Cases rolled over will be set for trial behind only exigent cases assigned to that trial setting by the Court.
 3. Cases that are rolled over will be assigned to that firm’s next trial setting in the same order as originally scheduled for trial.
 4. Any vacancies remaining in the new trial setting shall be filled according to the trial setting criteria in section A of this Rule.
 5. Cases displaced by the cases rolled over from the previous trial setting then become first choice settings in that firm’s very next trial setting in the order that they were originally set for trial, behind any exigent cases set for that day.
 6. Any vacancies remaining in that trial setting shall be filled according to trial setting criteria in section A of this Rule.
 7. For good cause the Court may make exception to ~~the limit of eight~~ the number of cases set in a trial setting.
 8. In the event that one exigent case rolls over from the previous trial setting and two exigent cases are set for the next trial setting, no exigent case will be displaced, but all of the non-exigent cases will roll over to the next trial setting.
- C. Cases will be released from a trial setting by the Court as follows:
1. Four weeks before the first scheduled day of trial, the seventh and eighth choice settings shall be released from the trial setting and roll over to the Plaintiff firm’s next trial setting.
 2. Two weeks from the first scheduled day of trial, cases that are not first, second, or third choices in the trial setting shall be released from the trial setting and roll over to the plaintiffs’ firm’s next trial setting.
 3. At Noon on the day before trial is set to begin, all cases but the first choice in the trial setting shall be released from the trial setting and roll over to the plaintiffs’ firm’s next trial setting.

- D. Once cases are assigned to a particular trial setting by the Court, the trial setting will not be altered or modified without good cause shown, other than to accommodate cases rolling over from previous trial settings, as described above.
- E. A motion to continue trial may be made only by a written and verified motion pursuant to T.R. 53.5, and will be granted only upon a showing of exceptional circumstances.
- F. If a motion to continue trial is granted:
1. The case(s) affected by the motion to continue shall roll over to the plaintiffs' firm's next trial setting immediately upon entry of the Court's order granting the motion; and,
 2. The case(s) affected shall roll over to the plaintiffs' firm's next trial setting in the same order as previously set, in accordance with the provisions of this Rule.
 3. ~~All existing Case Management Order deadlines for that case are vacated.~~
- G. For any case released from one trial setting and removed to another, all existing Case Management Order deadlines for that case are vacated unless already expired before the motion to continue was filed.

LR49-TR56 Rule 714
INITIAL SUMMARY JUDGMENT MOTION DOCKET

~~**A. Application.** This Rule shall apply to any summary judgment motion that is filed in a stayed case. Summary judgment motions filed pursuant to this Rule shall be termed “initial summary judgment motions.” Only summary judgment motions that raise issues for which no significant discovery is deemed necessary for the preparation and filing of the motion may be filed as an initial summary judgment motion. Examples of such issues would be the product liability or construction statute of repose bars.~~

~~**B. Title and Proposed Orders.** The title of an initial summary judgment motion shall include the word “Initial.” In addition to the requirements of Rule 614, parties moving for summary judgment pursuant to this Rule shall submit two proposed orders as supporting documents: one that sets a hearing date and time for the motion to be indicated on the attached Information/Comments page, and a second proposed order that grants the initial summary judgment motion. The proposed orders shall not be final or appealable. Motions that are submitted without both proposed orders will be rejected.~~

~~**C. Procedure.** A party may file an initial summary judgment motion at any time. The time for responding to an initial summary judgment motion is continued to such time as the Court orders that the initial summary judgment motion is set for a hearing date. A party shall have 30 days after an initial summary judgment motion is set for a hearing date to file a response. The party that filed the initial summary judgment motion shall have 10 days to file a reply. Documents on which a party relies in moving or responding to an initial summary judgment motion shall be attached as supporting documents to the motion or response. The requirements of Rule 614 shall apply to procedure and to the format and the content of filings to the extent not inconsistent with this Rule.~~

~~**D.—**~~

~~A Plaintiff who responds to the initial summary judgment motion by asserting that Plaintiff does not yet have sufficient information to file a substantive response to the initial summary judgment motion must comply with T.R. 56(F) and file a responding affidavit, request for case management conference and proposed order.~~

~~**D.— Requests for Hearing.** If a plaintiff does not file a response to an initial summary judgment motion and request a hearing, the plaintiff must file a separate Request for Hearing that complies with Rule 614(G). Any defendant that desires a hearing on its initial motion for summary judgment shall file a Request for Hearing that complies with Rule 614(G). If no request for hearing is filed for the hearing date set in the order setting the initial summary judgment motions for hearing, the Court may vacate the hearing.~~

LR49-TR01 Rule 800
SCOPE OF MARION COUNTY MASS TORT SILICA LITIGATION DOCKET AND LOCAL RULES

~~Pursuant to the Marion Superior Court Executive Committee and this Rule, the Marion County Clerk of the Courts is directed to file all Silica and Mixed Dust related personal injury cases in Marion Superior Court Two, Civil Division, creating the Marion County Mass Tort Silica and Mixed Dust Litigation Docket (“Silica Division”). The cause numbers assigned to these cases shall begin with 49D02 [“95,” “96,” or “98”]01 MI 0001 followed by a numeric suffix.~~

~~Any Local Rule in the 800 Series shall apply to the Silica and Mixed Dust personal injury division only. The Mass Tort Litigation Rules, Subset 600 *et seq.*, govern litigation in the Silica Division.~~

~~The Master Docket for the Silica Division is 49D02 9601 MI 00001 000 (96 000). Master Docket filings for the Silica Division submitted prior to June 1, 2007, may be found on the Master Docket for the Asbestos Division, 49D02 9501 MI 00001 000 (95 000). Counsel who appear in a Silica Division case are ordered to link themselves to the Silica Master Docket. Users may contact Sims & Associates at 765.483.9528, for assistance.~~

~~E-mail is the preferred method by which counsel should contact the Court. The Court contact is the Special Master for Mass Tort Litigation at masstortsmaster@indy.gov~~

LR49-TR01 Rule 900
SCOPE OF MARION COUNTY MASS TORT COAL TAR PITCH LITIGATION DOCKET AND LOCAL RULES

~~Pursuant to Order of the Marion Superior Court Executive Committee and this Rule, the Marion County Clerk of the Courts is directed to file all Coal Tar Pitch related personal injury cases in Marion Superior Court Two, creating the Marion County Mass Tort Coal Tar Pitch Litigation Docket (“CTP Division”). The cause numbers assigned to these cases shall begin with 49D02 9901 MI 00001, followed by a numeric suffix.~~

~~Any Local Rule in the 900 Series shall apply to the Coal Tar Pitch personal injury division only. The Mass Tort Litigation Rules, Subset 600 *et seq.*, govern litigation in the CTP division.~~

~~The Master Docket for the CTP Division is 49D02 9901 MI 00001 000 (99 000). Counsel who appears in a CTP Division case is ordered to link themselves to the CTP Master Docket. Users may contact Sims & Associates at 765.483.9528, for assistance.~~

~~E-mail is the preferred method by which counsel should contact the Court. The Court contact is Special Master for Mass Tort Litigation at masstortsmaster@indy.gov~~

