

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[FILED: December 16, 2014]

CONSTANCE PODEDWORNY, :  
Executor for the ESTATE of JOSEPH :  
PODEDWORNY, by her agent, :  
THE FEDERAL-MOGUL ASBESTOS :  
PERSONAL INJURY TRUST :  
Plaintiff, :

v. :

C.A. No. PC 11-5268  
Consolidated with:

AMERICAN INSULATED WIRE :  
CORP., T&N LIMITED, f/k/a T&N plc, :  
TURNER & NEWALL PLC, and :  
TURNER & NEWALL LIMITED, :  
TAF INTERNATIONAL LIMITED, :  
f/k/a TURNERS ASBESTOS FIBRES :  
LIMITED and RAW ASBESTOS :  
DISTRIBUTORS LIMITED, and JOHN DOE :  
Defendants. :

MAUREEN GALLAGHER, :  
Executor for the ESTATE of DENNIS :  
GALLAGHER, by her agent, :  
THE FEDERAL-MOGUL ASBESTOS :  
PERSONAL INJURY TRUST :  
Plaintiff, :

v. :

C.A. No. PC 11-5269

AMERICAN INSULATED WIRE :  
CORP., T&N LIMITED, f/k/a T&N plc, :  
TURNER & NEWALL PLC, and :  
TURNER & NEWALL LIMITED, :  
TAF INTERNATIONAL LIMITED, :  
f/k/a TURNERS ASBESTOS FIBRES :  
LIMITED and RAW ASBESTOS :  
DISTRIBUTORS LIMITED, and JOHN DOE :  
Defendants. :

## **DECISION**

**GIBNEY, P.J.** Before this Court is the Plaintiffs' Objection and Motion to Quash Defendants' Notice of Deposition. Pursuant to Super. R. Civ. P. 30(b)(6), Defendants filed a notice of deposition, seeking to depose the representative of the Federal-Mogul Asbestos Personal Injury Trust.

### **I**

#### **Facts & Travel**

The factual background and travel of the case, in pertinent part, follows. Mrs. Gallagher and Mrs. Podedworny allege that their husbands' mesotheliomas were caused by exposure to the Defendants' product, Limpet, when they worked for Narragansett Electric. Both Mr. Podedworny and Mr. Gallagher are now deceased. On the 12<sup>th</sup> and 14<sup>th</sup> of September 2011, the Federal-Mogul Asbestos Personal Injury Trust (the Trust) filed the instant complaints against T&N entities on behalf of Mr. Podedworny's and Mr. Gallagher's estates.

For the purposes of this decision, this Court briefly discusses the bankruptcy reorganization plan entered into by T&N and the corresponding Federal-Mogul Asbestos Personal Injury Trust Distribution Procedures. See Federal-Mogul Form of Asbestos Personal Injury Trust Distribution Procedures (TDP). On October 1, 2001, T&N and 156 domestic and foreign affiliates (the Debtors), including its corporate parent Federal-Mogul Global, Inc., filed voluntary chapter 11 petitions. In re Fed.-Mogul Global, Inc., 282 B.R. 301, 303 (Bankr. D. Del. 2002). Pursuant to 11 U.S.C. § 524(g), the Debtors proposed a reorganization plan to resolve all current and future liability claims. In re Fed.-Mogul Global, 402 B.R. 625, 628 (D. Del. 2009). Under the proposal, a "§ 524(g) trust was created 'to which all of [the debtors] personal injury liabilities . . . would be transferred for resolution and payment . . .'" Id. at 628.

Funding for the § 524(g) trust (Trust) included 50.1 percent of the reorganized Federal-Mogul Global stock and the rights of all remaining Federal-Mogul Global insurance coverage for the transferred asbestos liabilities. Id. The proposed plan of reorganization went through several amendments before being confirmed as the Fourth Amended Joint Plan of Reorganization (the Plan) by the U.S. Bankruptcy Court for the District of Delaware. Id.; see Order Confirming Fourth Am. Joint Plan of Reorganization, filed Nov. 8, 2007. The Plan became effective on December 27, 2007. Id.

The Plan provides that on the effective date, December 27, 2007, “the Trust shall . . . assume sole and exclusive responsibility and liability for all Asbestos Personal Injury Claims . . . .” Fourth Am. Joint Plan of Reorganization § 4.4. Regarding the Trust’s authority to bring claims on behalf of claimants, the Plan states, in pertinent part:

“[f]rom and after the Effective Date, *each holder of a Debtor HPE Asbestos Claim irrevocably appoints the Trust as his agent*, in the name of such holder or otherwise, to assert such Debtor HPE Asbestos Claim against the Reorganized Hercules-Protected Entity in any appropriate forum, and such holder shall not be entitled to assert such holder’s Debtor HPE Asbestos Claim *except* through the agency of the Trust.” Id. at § 4.5.8 (emphasis added).

In sum, the Plan creates a system in which a claimant—who has alleged injury as a result of exposure to one of the Debtor’s products—must bring his or her claim through the Trust in order to recover. Id.

Pursuant to the Plan, Trust Distribution Procedures (TDPs) were promulgated and set forth detailing how the Trust would assess, process, and liquidate claims. See TDP, § 9. Ultimately, the Plan sought to create a system that quickly, efficiently, and fairly assessed and paid claims without proceeding through the tort system. The Trust, and the ensuing TDPs, were designed so as “to enable each claimant to receive a payment from the [Trust] . . . of the

liquidated value of his or her asbestos personal injury claim that [was] at a level proportionate to payments to other claimants and that [was] calculated by reference to the level of settlements, verdicts or judgments, which claimants [had] historically received in their respective tort systems.” TDP, § 2.1(a).

Accordingly, claimants submit their claims to the Trust, along with relevant medical evidence, and elect to either pursue their claim under the Expedited Review<sup>1</sup> or Individual Review Process.<sup>2</sup> TDP, §5.3(a)(1)(A). Once a claim is submitted, the Trust reviews the claim, and the supporting medical documentation, and makes a determination as to whether the claim meets certain predetermined “Medical/Exposure Criteria.” TDP, § 5.3(a)(1)(A). If the evidence meets such criteria, the claim is paid based upon a schedule which has been created to reflect the type and severity of the disease as well as the calculations of average settlement amounts. TDP, §§ 5.3(a)(1)(B)-(C). If the Trust determines that a claim is meritorious, it tenders to the claimant an offer of payment. Accordingly, the Claimant may choose to accept the payment; however, as a condition to making any payment, the Trust requires the claimant provide a general release from liability with respect to each claim paid. See TDP, § 7.8. Alternatively, a claimant may choose to reject the Trust’s offer and either bring their claim through the tort system or arbitration.

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<sup>1</sup> “The [Trust’s] Review Process is designed primarily to provide an expeditious, efficient, and inexpensive method for liquidating all U.S. TDP Valued Claims . . . in cases in which the claim can easily be verified by the U.S. Asbestos Trust as meeting the presumptive Medical/Exposure Criteria for the relevant Disease Level.” TDP, § 5.3(a)(1)(A).

<sup>2</sup> “The [Trust’s] Individual Review Process provides a claimant with an opportunity for individual consideration and evaluation of a U.S. TDP Valued Claim or Claims, that fail to meet the presumptive Medical/Exposure Criteria for Diseases Levels I-V, and VII-VIII. In any such case, the [Trust] shall either deny the claim, or, if the [Trust] is satisfied the claimant has presented a claim that would be recognizable and valid in the relevant tort system, the [Trust] can offer the claimant a liquidated value amount up to the Schedule Value for the Disease Level . . .” TDP, § 5.3(a)(2).

However, as was discussed in more detail in this Court’s previous decisions, denying summary judgment, section 4.5 of the Plan specifically conditioned the Defendants’ discharge upon the exhaustion of the Hercules Insurance Policy.<sup>3</sup> Accordingly, a special provision was added to the Plan which allows the Trust to bring suit against T&N—as well as other Reorganized Hercules Protected Entities—for the purpose of reaching the Hercules Policy. Specifically, “the Plan provides, in Article IV, a mechanism by which the [Trust] can seek, for the benefit of all holders of T&N Subfund claims, to pursue Asbestos Personal Injury Claims . . . against the Reorganized Hercules Protected Entities . . . and to access certain insurance coverage of the Reorganized Hercules Protected Entities.” TDP, § 9.1.

Thus, “as a condition of the submission [of a claim] by [a claim holder] to the [Trust] for processing liquidation and payment of a Trust Claim[,]” each claimant must: (a) appoint the

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<sup>3</sup> In its holdings, denying summary judgment, this Court found:

“In 1996, T&N purchased from its wholly-owned captive insurance subsidiary, Curzon Insurance, Ltd., a U.K. law-governed asbestos liability policy known as the “Hercules Policy” (the Policy or the Hercules Policy). The Hercules Policy’s terms and U.K. law prohibited the Plan from assigning the Hercules Policy to the Trust—as the Plan did with domestic policies—as was done in other asbestos chapter 11 cases in which the Bankruptcy Code overrides typical anti-assignment provisions. Thus, in order to preserve the Policy’s value, section 4.5.6 of the Plan deferred discharge of asbestos claims against T&N so that they could be asserted against T&N to reach the Hercules Policy. Section 4.5 denied a discharge to reorganized Hercules-protected entities on the effective date, including the T&N entities, for a limited time period solely to allow the Trust to prosecute and establish Debtor HBE asbestos claims in the tort system up to the proceeds of the Hercules Policy. The Plan provided, however, that when the Hercules Policy was exhausted, the Hercules-protected entities would automatically be discharged.” Constance Podedworny v. American Insulated Wire Corp., 2014 WL 5490028, at \*2 (R.I. Super.); Gallagher v. American Insulated Wire Corp., 2014 WL 5489973, at \*2 (R.I. Super.) (internal citations omitted).

Trust as his or her agent, (b) assign to the Trust his or her rights to the proceeds of his or her claim against any and all of the Reorganized Hercules Protected Entities (including but not limited to the T&N Entities), and (c) grant the Trust a power of attorney, in such form as the Trust may require, to pursue such claim, on his or her behalf. See TDP, § 9.1 (a)-(c). The Trust then has the option of bringing the claim, against T&N, in the name of the claimant, in order to access the Hercules Policy.<sup>4</sup> If the Trust elects to prosecute a claim, the claimant must cooperate with the Trust and provide assistance or testimony prior to and during trial. TDP, § 9.2. The sole purpose of bringing the claim is to establish a judgment against the Reorganized Hercules Protected Entity so that the Trust can reach the Hercules Insurance Policy. Once the Hercules Policy has been exhausted, the Reorganized Hercules Protected Entities shall receive an automatic discharge from bankruptcy. See Podedworny, 2014 WL 5490028, at \*6; Gallagher, 2014 WL 5489973, at \*6.

Here, the terms of the Plaintiffs' agreement with the Trust are unknown; however, the Trust has brought suit because the Plaintiffs have assigned their claims and appointed the Trust as their agent. Accordingly, The Trust has chosen to prosecute these particular claims in order to access the Hercules Policy by establishing a judgment against T&N. Pursuant to the terms of the Plan and § 9 of the TDPs, any monetary judgment will be deducted from the Hercules Policy and the Plaintiffs shall not receive any of the settlement.<sup>5</sup>

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<sup>4</sup> "The U.S. Asbestos Trust is empowered to select for prosecution against one or more Reorganized Hercules-Protected Entities those Debtor HPE Asbestos Claims whose prosecution the U.S. Asbestos Trust, in its discretion, determines will best serve the purposes of the U.S. Asbestos Trust." TDP, § 9.2.

<sup>5</sup> "[T]he [Trust] is authorized to enter into arrangements with such holders of selected claims, and with their personal counsel, to compensate them fairly for the effort and expense required of them to assist and cooperate with the [Trust] in the prosecution of selected Debtor HPE Asbestos Claims . . . ." TDP, § 9.3. However, the claimants shall not receive any of the proceeds from the suit.

On September 30, 2014, Defendants filed a notice of deposition pursuant to Rule 30(b)(6), seeking to depose the representative of The Federal-Mogul Asbestos Personal Injury Trust. See Pls.’ Mem. of Law in Supp. of their Mot. for Protective Order and to Quash Rule 30(b)(6) Deposition Notice, Ex. B. The notice states that the Plaintiffs are required to identify and designate a witness most knowledgeable to testify on behalf of the Trust. The witness is required to be knowledgeable regarding the Trust’s system for evaluating Trust Claims, the Trust’s evaluation of any Trust Claim by or on behalf of the Plaintiffs, the assignment of proceeds of Debtor HPE Asbestos Claims to the Trust, the appointment of the Trust as agent to assert Debtor HPE Asbestos Claims against Reorganized Hercules-Protected Entities, the Trust’s reasons for selecting the Plaintiffs’ claims, the Trust’s overall system for selecting claims for prosecution, and whether the Trust has followed these procedures. Id. The Plaintiffs have brought a timely motion seeking to quash the Rule 30(b)(6) Deposition Notice pursuant to Rule 26(c). See Super. R. Civ. P. 26(c).

## II

### Standard of Review

Rule 26(b) of the Superior Court Rules of Civil Procedure states that “parties may obtain discovery [of] any matter, not privileged, which is relevant to the subject matter involved in the pending action.” The Rule further provides that even inadmissible evidence may be obtained if “the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Rule 26(b)(1). These provisions “are to be construed liberally.” Bashforth v. Zampini, 576 A.2d 1197, 1201 (R.I. 1990). However, in granting or denying discovery motions, “a Superior Court justice has broad discretion.” Colvin v. Lekas, 731 A.2d 718, 720 (R.I. 1999). Section 26(b)(2) details the scope of discovery and provides, in relevant part:

“[t]he frequency or extent of use of the discovery methods set forth in these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, the parties’ resources, and the importance of the issues at stake in the litigation.” Rule 26(b)(2).

Upon a motion by a party or by the person from whom discovery is sought, this Court may make “any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Rule 26(c). “This accords with the underlying purpose of the Rules, which should always be ‘construed and administered to secure the just, speedy, and inexpensive determination of every action.’” Martin v. Howard, 784 A.2d 291, 296 (R.I. 2001) (citing Super. R. Civ. P. 1). A court may enter a protective order upon the finding of good cause shown and that discovery sought is neither relevant to the subject matter of the pending litigation, nor reasonably calculated to lead to the discovery of admissible evidence. Travelers Ins. Co. v. Hindle, 748 A.2d 256 (R.I. 2000); Rule 26(c).

### **III**

#### **Analysis**

In support of their motion, Plaintiffs argue that the information sought by the deposition notice does not concern Mr. Gallagher’s or Mr. Podedworny’s alleged exposure to the Defendants’ product, or the resulting injury. Furthermore, Plaintiffs contend that such information is not related to any defenses the Defendants may put forward. Rather, Plaintiffs allege that the notice seeks information wholly unrelated to the issues of the case.

In response, Defendants argue that the details of the relationship between the named Plaintiffs and the Trust are relevant and necessary to their evidentiary motions, including

motions in limine, the development of defenses, and trial strategy. Specifically, Defendants contend that information relating to the relationship between the Plaintiffs and the Trust is relevant to whether Plaintiffs are entitled to receive punitive damages and whether the Trust has standing to represent the Plaintiffs. Furthermore, Defendants assert that they are entitled to know whether the Trust followed the procedures mandated by the Plan in bringing the instant claims.

This Court notes that the Trust and its function are thoroughly explained and defined in the Plan as well as the corresponding TDPs. See Fourth Am. Joint Plan of Reorganization; TDP § 9. Accordingly, this Court finds that the requested deposition is unreasonably cumulative because such information may be obtained through other means which are less burdensome, expensive, and time consuming. See Super. R. Civ. P. 26(b)(2)(i)-(iii).

#### **IV**

#### **Conclusion**

After due consideration of the arguments advanced by counsel, this Court finds that good cause has been shown that a protective order should enter, barring the Defendants' deposition of the representative of the Federal-Mogul Asbestos Personal Injury Trust. Defendants will be permitted, after review by the Court, to propound interrogatories to the representative of the Federal-Mogul Asbestos Personal Injury Trust. Order to enter.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Podedworny v. American Insulated Wire Corp., et al.  
Gallagher v. American Insulated Wire Corp., et al.

**CASE NO:** PC 11-5268; PC 11-5269

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** December 16, 2014

**JUSTICE/MAGISTRATE:** Gibney, P.J.

**ATTORNEYS:**

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For Defendant: Lawrence G. Cetrulo, Esq.; Stephen T. Armato, Esq.