

CAUSE NO. 2004-03964

BEFORE THE ASBESTOS MDL PRE-TRIAL JUDGE

IN RE:

MDL ASBESTOS LITIGATION

MDL MASTER ASBESTOS FILE

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

11<sup>TH</sup> JUDICIAL DISTRICT

**FILED**  
Loren Jackson  
District Clerk

AUG 13 2010

Time: 9:57 AM  
By: [Signature]  
Harris County, Texas  
Clerk

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**STANDING ORDER ON OBTAINING PATHOLOGY FROM  
BAYLOR COLLEGE OF MEDICINE**

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The Court, having been advised that Baylor College of Medicine (hereinafter "Baylor") had reached an amicable resolution to its pending Motion for Protection, hereby sets forth the procedure for handling pathology requests directed to Baylor for all cases pending in or eligible for the Texas Asbestos MDL. Any future production of pathology and/or pathology-related material(s) by Baylor in such cases is pursuant to this court order. Baylor is only required to produce pathology and/or pathology-related material(s) in such cases pursuant to this standing order.

1. All requests for the release of pathology materials in the custody of Baylor shall be in writing and shall clearly state that the request is for a case pending in or subject to the Texas Asbestos MDL, or for a potential asbestos-related claim which, if filed, would be subject to the jurisdiction of the Texas Asbestos MDL Court. Such request must be accompanied by a signed HIPAA-compliant authorization approved for use in the MDL Texas Asbestos Docket ("HIPAA authorization") that explicitly authorizes Baylor to provide original pathology materials, pathology reports, virtual slides and an inventory of pathology materials. If the requesting party's HIPAA authorization does not

specifically include any of the items stated above, Baylor is not required to produce and/or release that (those) item(s). The written request shall state the approximate time period or date(s) and procedure(s) for which production is sought, if known.

2. Such written requests for the release of pathology and/or pathology-related material(s) from Baylor shall be sent by certified mail to Baylor College of Medicine, Department of Pathology Custodian of Records, One Baylor Plaza, BCM315, Room 286A, Houston, TX 77030 and by regular mail to Thomas M. Wheeler, M.D., Baylor College of Medicine, Department of Pathology, One Baylor Plaza, Room T-203 (MC B315), Houston, TX 77030.

3. Baylor's initial response to all such requests for pathology and/or pathology-related materials shall be to produce virtual slides of all original glass slides in its possession responsive to the request along with copies of the relevant pathology report(s), if applicable and authorized. If Baylor has other pathology material(s) in its possession in addition to the original glass slides, Baylor shall identify in writing what additional pathology material(s) it has and produce a written inventory (which will include a list of the original slides from which virtual slides have been made), if applicable and authorized, with the virtual slides and pathology report(s), if applicable and authorized. The virtual slides will be made at the highest level of magnification (currently 40x) using the Trestle® system, or an equivalent or better system. The virtual slides will be produced to the requesting party on one or more DVD's. The DVD(s) will also contain all necessary software for viewing the virtual slides.

4. In its request, the requesting party will specify whether it will pick up the DVD(s) containing the virtual slides from Baylor or whether the DVD(s) containing the virtual slides is (are) to be sent to the requesting party at the cost of the requesting party. If the DVD(s) containing the virtual slides

is (are) to be sent, the requesting party will provide the name, address, telephone number, and facsimile number to whom the DVD(s) containing the virtual slides is (are) to be sent, the requesting party's preferred carrier and the account information. Any method of delivery must provide for a signed receipt. The cost of each virtual slide will be \$25.00, to be paid to Baylor College of Medicine by the requesting party within 30 (thirty) days from the date the DVD(s) containing the virtual slide(s) is (are) released by Baylor. Baylor will produce one or more DVD's containing the virtual slide(s), pathology report(s) in its possession, if applicable and authorized, and an inventory of pathology material(s), if applicable and authorized, within five (5) business days of receiving the written request from the requesting party, if the requested material(s) are located in the Department of Pathology at One Baylor Plaza. If the pathology materials are located off-site, Baylor shall have seven (7) business days to produce the DVD(s) containing the virtual slide(s), pathology report(s) in its possession, if applicable and authorized, and an inventory of pathology material(s), if applicable and authorized. If the pathology material(s) is (are) not in its possession, Baylor shall so inform the requesting party, in writing, via facsimile, within seven days (7) business days of receiving the written request from the requesting party.

5. If the requesting party determines that it requires the original glass slide(s), re-cut(s) from the tissue and/or tumor block(s), block(s) containing tissue and/or tumor, and/or wet tissue(s), the requesting party will notify Baylor in writing, by certified mail to the Custodian of Records, Baylor College of Medicine, Department of Pathology, One Baylor Plaza, BCM 315-Room 286A, Houston, TX 77030 and by regular mail to Thomas M. Wheeler, M.D., Baylor College of Medicine, Department of Pathology, One Baylor Plaza, Room T-203 (MC B315), Houston, TX 77030. The requesting party shall identify which original glass slide(s), re-cut(s), from the tissue and/or tumor

block(s) containing tissue and/or tumor, and/or wet tissue(s) it is requesting. The requesting party will specify whether it will pick up the identified original pathology material(s) from Baylor or whether the identified original pathology material(s) is (are) to be sent to the requesting party at the expense of the requesting party. If the original pathology material(s) is (are) to be sent, the requesting party will provide the name, address, telephone number, and facsimile number to whom the original pathology material(s) is (are) to be sent, the requesting party's preferred carrier and the account information. Any method of delivery must provide for a signed receipt. Baylor will either produce the identified original pathology material(s) within five (5) business days or it will notify the requesting counsel, in writing, via facsimile, which identified original pathology material(s) it will not produce and the reason(s) it declines to produce said items.

6. If Baylor declines to produce the identified original pathology material(s), the requesting party may then file a motion to compel production of the identified original pathology material(s) in the Texas Asbestos MDL Court. In accordance with the standing procedures of the MDL Texas Asbestos Docket, the requesting party shall give three (3) business days notice of any hearing. Notice of the hearing will be sent via facsimile to Brenda Hart, J.D., Privacy Compliance Officer, and James Banfield, J.D., Director of Risk Management at (713) 798-4423 and Joanna Walker Raynes, The Raynes Law Firm, at (713) 850-9401.

7. If, after any hearing, Baylor is ordered to produce any original pathology material(s), the requesting party is responsible for specifying in the written order compelling production whether it will pick up the original pathology material(s) from Baylor or whether the original pathology material(s) is (are) to be sent to the requesting party at the expense of the requesting party. If the original pathology material(s) is (are) to be sent, the requesting party will provide in the order

compelling production the name, address, telephone number, and facsimile number to whom the original pathology material(s) is (are) to be sent. If any original pathology material(s) Baylor is ordered to produce are to be sent to the requesting party via a carrier, unless Baylor's counsel attending the hearing is otherwise advised by the requesting party in writing the day of the hearing, the carrier identified and the account number provided in the requesting party's original request for pathology material(s) will be used to deliver any original pathology material(s) Baylor is ordered to produce. Any method of delivery must provide for a signed receipt. Baylor will produce the original pathology material(s) within five (5) business days of being notified that the order has been signed. If Baylor's counsel is not present at the hearing where the order is signed, the requesting party shall notify Baylor that the order has been signed by providing a copy of the signed order via facsimile to Brenda Hart, J.D., Privacy Compliance Officer, and James Banfield, J.D., Director of Risk Management at (713) 798-4423 and Joanna Walker Raynes, The Raynes Law Firm, at (713) 850-9401.

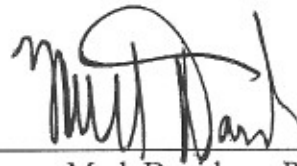
8. If any original pathology material(s) is (are) produced by Baylor, the requesting party will return any remaining pathology material(s) to the Custodian of Records, Baylor College of Medicine, Department of Pathology, One Baylor Plaza, BCM 315-Room 286A, Houston, TX 77030 within 120 days of receipt by the requesting party. This deadline may be extended by Rule 11 agreement or upon motion and order. Any request for a Rule 11 agreement concerning an extension of the deadline to return any remaining pathology materials shall be sent via facsimile to Joanna Walker Raynes, The Raynes Law Firm at (713) 850-9401.

9. Baylor College of Medicine and its employees, agents, and staff are released from all possible liability associated with and all potential causes of action arising from the release and/or production

of pathology and/or pathology-related materials pursuant to this standing order and/or any other order requiring the production of original pathology material(s) signed by the presiding judge of the Texas Asbestos MDL Court.

10. This standing order shall remain in effect for six (6) months from the date it is signed. Thirty (30) days prior to this standing order expiring, the MDL Liaison Committee and Baylor College of Medicine shall notify the Texas Asbestos MDL Court whether they will request that this order be made permanent or whether they will submit a modified order for the Court's signature. If at any time, the movant or any party affected by this standing order believes that it works an undue hardship or injustice, the movant or affected party may move for modification of this standing order.

Signed this 13<sup>th</sup> day of August, 2010.

A handwritten signature in black ink, appearing to read "Mark Davidson", written over a horizontal line.

Mark Davidson, Presiding Judge