

CAUSE NO. 19114*BH02

TOMMY WAYNE WEEKS and JAIME
PENA and GRACIELA PENNA

VS.

CROWN CORK AND SEAL COMPANY,
INC., ET AL§ IN THE DISTRICT COURT OF
§
§
§ BRAZORIA COUNTY, TEXAS
§
§
§ 23rd JUDICIAL DISTRICT

**UNITED STATES STEEL CORPORATION'S
RESPONSE TO PLAINTIFF'S MOTION TO DENY UNITED STATES STEEL
CORPORATION'S MOTION FOR PROTECTION AND MOTION TO QUASH THE
DEPOSITION OF JAIME PENNA AND MOTION TO ALLOW THE ADMISSIBILITY
FOR PURPOSES OF TRIAL THE JUNE 13, 2002 DISCOVERY DEPOSITION AND
JUNE 14, 2002 VIDEOTAPED DEPOSITION OF JAIME PENNA AS TO ALL
DEFENDANTS**

COMES NOW UNITED STATES STEEL CORPORATION (hereinafter "US Steel"), and file this its Response to Plaintiff's Motion to Deny US Steel's Motion for Protection and Motion to Quash the Deposition of Jaime Pena and Motion to Allow the Admissibility for Purposes of Trial the June 13, 2002 Discovery Deposition and June 14, 2002 Videotaped Deposition of Jaime Pena as to All Defendants, and would respectfully show unto the Court the following:

I.

This case involves alleged asbestos-related claims filed by Jaime Pena (hereinafter "Plaintiff") against approximately thirty-one (31) defendants, including US Steel, asserting claims based upon harm allegedly caused by exposure to asbestos fibers. As relates to US Steel, Plaintiff alleges his exposure to asbestos-containing products occurred on United States Steel's premises while employed as a laborer by J.M. Foster, Inc.

II.

On June 13, 2002, defense counsel conducted a discovery deposition of Jaime Pena.

Additionally, Jaime Pena's deposition was taken by his counsel on June 14, 2002. Subsequently, Plaintiff's counsel noticed the continuation of Jaime Pena's discovery deposition for October 25, 2002. On October 18, 2002, US Steel filed a timely Motion for Protection and Motion to Quash the Deposition of Jaime Pena.

III.

Plaintiff alleges that Defendant US Steel is attempting to limit Plaintiff and other co-defendant's rights to discovery, which is not the case in this matter. Any further examination of the plaintiff by his own counsel would be unreasonably cumulative, causing unnecessary burden and expense. Counsel for plaintiff unilaterally noticed the continuation of Jaime Pena's discovery deposition for October 25, 2002. First, if plaintiff's counsel noticed their own client's deposition, then that would not constitute a discovery deposition. Additionally, Plaintiff has already taken Jaime Pena's deposition to perpetuate his testimony and should not be allowed to conduct another deposition pertaining to the same issues already addressed. Procedurally, Plaintiff should have merely offered the continuation of Jaime Pena's deposition and allowed any defendant the right to notice such deposition, if desired. US Steel is by no means attempting to limit the right of any co-defendant to conduct reasonable discovery. Furthermore, it should be noted that no co-defendant filed a cross-notice of the continuation of Jaime Pena's discovery deposition for October 25, 2002. Additionally, US Steel is not attempting to limit the right of Plaintiff to discovery, as Plaintiff has already had an opportunity to depose Jaime Pena and any further examination on the same issues would be an undue burden and cumulative.

Texas Rule of Civil Procedure 192.4 gives the court power to limit discovery if it determines that the discovery is cumulative, obtainable from a more convenient source, or the burden or expense of the discovery outweighs its benefits. Tex. R. Civ. Proc. 192.4; *see, e.g., In re Colonial Pipeline*

Co., 968 S.W.2d 938, 941-942 (Tex. 1998)(scope of discovery is largely within the trial court's discretion). Specifically, Rule 192.4 provides the following:

The discovery methods permitted by these rules should be limited by the court if it determines, on motion or on its own initiative and on reasonable notice, that :

- (a) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or
- (b) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Tex. R. Civ. Proc. 192.4

This rule is a directive to the trial court to limit discovery when either subsection is satisfied. *In Re: Leticia Arras*, 24 S.W.3d 862, 864 (Tex. App.-El Paso 2000, orig. proceeding). In this case, Jaime Pena has already given over seven hours of testimony, including perpetuation of his testimony by Plaintiff's own counsel. As previously noted, defense counsel conducted a discovery deposition on June 13, 2002. Furthermore, Plaintiff's deposition was taken by Plaintiff's counsel on June 14, 2002. Plaintiff has already testified regarding his knowledge of any claims against US Steel. Counsel for Plaintiff wishes to depose their client yet again, which would result in cumulative testimony, causing unnecessary burden and expense.

The determination of whether a deposition should be taken is within the sound discretion of the trial court. *Thompson v. Dart*, 746 S.W.2d 821, 828 (Tex.App.-San Antonio 1998, no writ). Furthermore, the trial court has broad powers and discretion to control the time, place, and manner of taking depositions. *Id.* Additionally, a trial judge may exercise some discretion in the granting of a protective order and in controlling the nature and form of discovery. *In Re Amaya*, 34 S.W.3d 354, 356-357 (Tex. App. -- Waco 2001, orig. proceeding); Tex. R. Civ. P. 192.6. US Steel asks the court to exercise its discretion and protect Defendant, US Steel, from any further depositions of Jaime Pena. In the alternative, US Steel moves that the court enter an order limiting Plaintiff's further

examination. Specifically, US Steel moves the Court to enter an order prohibiting any further cumulative examination regarding US Steel and/or its premises and limiting Plaintiff's further examination, if any, to new, non-cumulative testimony regarding health issues which have arisen since the last deposition. *see, e.g., Walker v. Packer*, 827 S.W.2d 833, 843 (Tex. 1992)(discovery that compels production of patently irrelevant or duplicative documents can constitute harassment). Therefore, US Steel re-urges its previously filed Motion for Protection and Motion to Quash the Deposition of Jaime Pena.

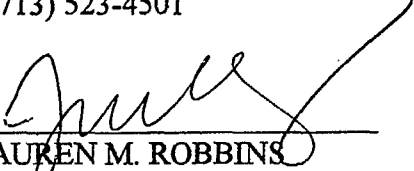
IV.

Plaintiff's Motion to Allow the Admissibility for Purposes of Trial the June 13, 2002 Discovery Deposition and June 14, 2002 Videotaped Deposition of Jaime Pena as to All Defendants is premature. This case is scheduled for trial on February 24, 3004. Any preliminary determinations of admissibility should be addressed closer to the time of trial. Should the court allow the admissibility of the above-referenced depositions, US Steel requests that said depositions be admitted subject to the objections lodged at the time of each respective deposition.

WHEREFORE, Defendant, US Steel, respectfully re-urges its Motion for Protection and Motion to Quash the Deposition of Jaime Pena. Moreover, US Steel moves that Plaintiff Jaime Pena's deposition be permanently quashed and that US Steel be protected from further depositions of Jaime Pena. In the alternative, US Steel moves that the court enter an order limiting Plaintiff's further examination. Additionally, US prays that the Court deny Plaintiff's Motion to Allow the Admissibility for Purposes of Trial the June 13, 2002 Discovery Deposition and June 14, 2002 Videotaped Deposition of Jaime Pena as to All Defendants, and rule on such motion at a time closer to the date of trial. Defendant also prays for such other and further relief to which this Defendant may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to counsel for Plaintiffs by Federal Express and facsimile, and to all other counsel of record by regular mail, on this 14th day of November, 2002.


Lauren M. Robbins

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CROWN CORK AND SEAL COMPANY, INC.,	§	
ET AL	§	23 rd JUDICIAL DISTRICT

ORDER

On this day came on for hearing Defendant, United States Steel Corporation's Motion to Quash the deposition of Jaime Pena noticed for October 25, 2002 at 10:00 a.m. The Court, having considered said Motion and having heard arguments of counsel, is of the opinion that said Motion is meritorious and should be GRANTED. It is therefore,

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Quash be, and the same is hereby GRANTED, and the above-referenced deposition set for October 25, 2002 is quashed. It is further,

ORDERED ADJUDGED and DECREED that Defendant's Motion for Protection be, and the same is hereby GRANTED, and the above-referenced deposition shall not go forward.

SIGNED this _____ day of _____, 2002.

JUDGE PRESIDING