

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE



PRISCILLA R. DIETKER, et al.,)

Plaintiffs,)

vs.)

FORD MOTOR COMPANY, et al.,)

Defendants,)

Case No. 03CV-218799

Division: Five

ORDER AND FINDINGS OF DISCOVERY COMMISSIONER

On December 5, 2005 the Commissioner at Sections III (2) of his order ordered defendant Ford Motor Company to produce what has been commonly referred to throughout the litigation as a (Mesothelioma Death List) and associated documents kept in connection therewith tracking mesothelioma deaths of Ford employees.

Upon reviewing the associated documents Ford's Counsel has raised on behalf of the employees and their families and/or estates a doctor/patient confidentiality objection because the associated files contained medical information and records pertaining to the deceased employees.

Ford has requested that the Commissioner issue a protective order prohibiting the disclosure of any medical information and or/ records contained in the employee's files maintained in connection with the "Death List".

To determine the validity of Ford's concerns the Commissioner has conducted an in camera review of the files in question to determine if they in fact contain privileged medical records and information that should not be divulged to plaintiff's counsel.

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In conducting the in camera review the Commissioner was guided by the standard of review set forth in the case of *State of Missouri ex rel. Hayter v. Griffin*, 785 S.W 2d 590 (Mo.App 1990). The decision sets forth the prevailing view in Missouri that not all medical information is protected from disclosure by the doctor/patient privilege, but only information acquired by the physician for the purposes of prescribing and treatment.

Three notebooks were produced for review by the Commissioner entitled "Mortality Mesothelioma Case Studies" containing file information of 52 deceased former Ford employees. The Commissioner finds that the notebooks contained both medical and non-medical information. For purposes of identifying what information is discoverable and shall be provided to plaintiff's counsel the Commissioner has identified each deceased employee individually and identified the discoverable information by reference to a description of the information with its bates numbers:

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IT IS THEREFORE ORDERED that after a thorough review of the documents in question and a determination by the Commissioner that said documents are not subject to the physician/patient privilege against disclosure that defendant Ford Motor Company shall provide to counsel for plaintiff copies of the forgoing enumerated documents forthwith for use by plaintiff in the instant suit. Upon completion of the instant litigation, in the event the parties cannot agree on the final disposition of said documents, application can be made to the Commissioner for a ruling in that regard.

IT IS HEREBY ORDERED.

Dated: _____

William T. Bernard, Commissioner