

Case No. _____

IN THE
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
IN TEXAS

IN RE
ASBESTOS LITIGATION

ALCOA INC.'S RESPONSE TO UNION CARBIDE'S MOTION FOR TRANSFER

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ATTORNEYS FOR DEFENDANT ALCOA, INC.

Hearing Requested

No. _____

In re:	§	JUDICIAL PANEL
	§	
ASBESTOS LITIGATION	§	ON MULTIDISTRICT
	§	
	§	LITIGATION

**ALCOA, INC.'S RESPONSE TO UNION CARBIDE'S
MOTION FOR TRANSFER**

COMES NOW, Alcoa, Inc. ("Alcoa") and files this its Response to Union Carbide's Motion for Transfer of all related asbestos-exposure cases under Rule 13 of the Texas Rules of Judicial Administration, and respectfully showing the following:

INTRODUCTION

On September 29, 2003, Union Carbide Corporation ("Union Carbide") filed a Motion to Transfer as to five (5) related asbestos-exposure cases. Union Carbide's motion was filed in conjunction with Motions for Assignment of Pretrial Judge in all nine of the Texas's administrative judicial regions. As provided under Rule 13.3(d), Alcoa responds to Union Carbide's motion that it currently lacks sufficient information at this time regarding Union Carbide's request to either agree or object to the request.

ANALYSIS & DISCUSSION

On August 29, 2003, the Supreme Court of Texas amended the Texas Rules of Judicial Administration to provide for Multidistrict Litigation under Rule 13. To facilitate the implementation of Rule 13, which only applies to cases filed on or after September 1, 2003, Rule 11 of the Texas Rules of Judicial Administration was amended. According to Rule 13 of the Texas Rules of Judicial Administration, a party to litigation may request a transfer of that case and related cases to a pretrial court. Tex. R. Jud. Admin. 13.3(a). In addition, any party to the case or related cases may file a response to the request for transfer within twenty days after

service of the request. Tex. R. Jud. Admin. 13.3(d). Although Alcoa is not presently a defendant in the five cases identified by Union Carbide, Alcoa is a defendant in over 380 asbestos-exposure cases across Texas that are related to the cases identified by Union Carbide. In addition, Alcoa has recently been served in several cases that would be subject to Rule 13.

The pretrial court provided for under Rule 13 of the Texas Rules of Judicial Administration is a new procedure in Texas. It is unclear as at this time how this vehicle can assist in the administration of all asbestos-exposure cases currently on file in Texas. Union Carbide has taken the initial stance that Rule 13 along with Rule 11 of the Texas Rules of Judicial Administration may assist in the massive asbestos-exposure litigation in Texas. However, Alcoa lacks the information necessary at this time to analyze whether such a proposal by Union Carbide is feasible and realistic. Although Rule 11 and 13 may be an effective tool to manage the asbestos-exposure cases in Texas, the court should carefully consider this action.

The reality is that there are hundreds of asbestos-exposure cases in Texas, thousands of plaintiffs, and over a hundred defendants. Because of the sheer number of cases and parties involved, the dynamics and mechanics of placing all these cases in one pretrial court needs to be carefully analyzed. In the event that the cases are transferred to several pretrial courts, the division of the cases, the coordination between courts and the effectiveness of the process needs to be considered. These questions and issues are not addressed by Union Carbide's motion nor is there a proposal as to how these cases should be transferred.

Without information as to the logistics and mechanics of sending all asbestos-exposure cases to a pretrial court or several pretrial courts, Alcoa cannot take a position on the transfer. Therefore, at this time, Alcoa is unable to either agree or object to the transfer of all asbestos-exposure cases to a pretrial court or a pretrial judge under Rules 11 and 13 of the Texas Rules of

Judicial Administration. A hearing on Union Carbide's motion appears to be prudent to address these outstanding issues, at which time all parties involved in asbestos-exposure cases can address their concerns or agreement with the process.

CONCLUSION

Alcoa lacks sufficient information regarding the proposal of sending all asbestos-exposure cases to a pretrial court or a pretrial judge under Rules 11 and 13 of the Texas Rules of Judicial Administration. Therefore, at this time, Alcoa cannot agree or object to the motion for transfer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served by hand delivery, telephonic document transfer, certified mail, return receipt requested, or regular mail to all parties in accordance with the Rules of Civil Procedure and Rule 13 of the Texas Rules of Judicial Administration on this 23rd day of October, 2003.



Richard O. Faulk

