

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
ANA C. VISCOMI, J.S.C.
JUDGE



MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 964
New Brunswick, New Jersey 08903-0964

May 15, 2024

Via E-MAIL

TO: ALL ASBESTOS COUNSEL

RE: GENETIC TESTING FOR MESOTHELIOMA

Dear Counsel:

A motion has been filed by defendant in the matter of Mizer v. Nissan North America seeking a sample of plaintiff's DNA to test for mesothelioma markers to address pre-disposition to a mesothelioma diagnosis; thus an alternate causation theory.

The court has previously addressed this issue. In the first instance, at no prejudice to a future plaintiff, one plaintiff consented to provide a sample. In the second instance, the court determined moving counsel was relying upon non peer-reviewed literature of what, at best, could be posited as a "theory."

Subject to a continuing development of medical science, I would like to resolve this once. I invite those of you who wish to be heard to file a motion for permissive intervention as court requested amici.

Oral argument will be scheduled but I anticipate an evidentiary hearing. The schedule for submission has been circulated, with the court's approval. The deadlines are as follows but the court may adjust these deadlines on this very important issue.

- If any members of the defense asbestos bar wish to submit briefs/papers in support of NNA's Motion to Compel, they shall do so on or before May 31, 2024;
- If any members of the plaintiffs' asbestos bar wish to submit briefs/papers in opposition to NNA's Motion to Compel, they shall do so on or before June 21, 2024;
- NNA's and NML's papers in Reply to Plaintiffs' opposition and any submissions made by members of the plaintiffs' asbestos bar shall be filed on or before July 12, 2024;
- If any members of the defense asbestos bar wish to submit briefs/papers in reply to any opposition papers submitted by plaintiffs or other members of the plaintiffs' asbestos bar, they shall do so on or before July 12, 2024;
- The return date and the hearing date for NNA's Motion to Compel is now July 19, 2024.

Some of the court's concerns include:

1. Would the DNA testing meet the requirements of a 104 hearing.
2. Can the court protect the DNA sample once it is forwarded to a laboratory for DNA testing.
3. Can the court prohibit dissemination of that DNA to other laboratories or for testing beyond what is authorized by the court.
4. Can the court compel third party laboratory to abide by a Protective Order.
5. Does the filing of a personal injury claim, to which the plaintiff's medical history is at issue, extend so far to compel DNA testing or is this too great an intrusion.
6. Can the court compel only such testing for a mesothelioma marker, if such exists, and is it ethical to do so.
7. What are the ramifications to the family of a plaintiff depending on test results and any disclosures they may need to make to obtain medical and/or life insurance.

Thank you for considering participation.

Very truly yours,

/s/ Ana C. Viscomi
ANA C. VISCOMI, J.S.C.

ACV/lj