

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

	:	Case No. 1:03-CV-17000
	:	
	:	(MDL Docket No. 1535)
	:	
IN RE: WELDING ROD PRODUCTS LIABILITY LITIGATION	:	JUDGE O'MALLEY
	:	
	:	<u>ORDER</u>
	:	

(This Order applies to “Welding Rod” cases filed originally in this Court).

Beginning in early 2003, a number of plaintiffs around the country began filing lawsuits against various manufacturers, suppliers, and distributors of welding rod products, as well as related trade associations. The common theme of these lawsuits was that exposure to fumes given off by these welding rods caused physical harm to the plaintiffs, and the defendants knew or should have known that use of the welding rods caused these injuries.

The plaintiffs in one of these cases filed a motion with the Federal Judicial Panel on Multi-District Litigation (“MDL Panel”), seeking to consolidate and centralize all related federal lawsuits, pursuant to 28 U.S.C. §1407. MDL docket no. 1535. On June 23, 2003, the MDL Panel granted the motion, consolidating and transferring all related pending federal litigation to the Northern District of Ohio and assigning oversight of the MDL proceedings to the undersigned.

Following the approval and creation of this MDL, a number of plaintiffs have filed related lawsuits directly in this forum. A review of these lawsuits reveals that, in many instances, a number of unrelated

individuals were joined as parties-plaintiff, even though their joinder is not authorized by the Federal Rules of Civil Procedure. The Court finds that, in all such cases, the plaintiffs must be severed from one another, to comport with both the Federal Rules of Civil Procedure and the Local Rules of this Court.

Accordingly, the Court hereby **ORDERS** as follows. The complaint of each individual plaintiff in each of the “multi-plaintiff” Welding Rod cases shall be **SEVERED**, pursuant to Fed. R. Civ. P. 21, thereby creating an individual case on behalf of each such plaintiff.¹ The Court does not intend for this severance to have any substantive effect on these cases. The Court directs the Clerk of the Court and each such new plaintiff to adopt the following procedure to implement the severance.

1. Each of the multi-plaintiff cases shall be **severed** such that each plaintiff (together with their associated derivative claimants) becomes a plaintiff in a new lawsuit, to which a new case number will be assigned. The first plaintiff named in the complaint shall remain in the original lawsuit, even if that plaintiff has earlier been dismissed or otherwise removed from the lawsuit. The plaintiffs named after the first-named plaintiff must file new lawsuits.
2. For each new “Welding Rod case” created in this manner, the plaintiff shall pay a civil filing fee and file a civil cover sheet. In the box on the civil cover sheet allocated for the plaintiff’s name, each new plaintiff shall also include the designation “Severed from Case No. _____.” In the box on the civil cover sheet allocated for related cases, the plaintiff shall note both the case from which the action was severed and also “Case no. 03-CV-17000, MDL No. 1535.”
3. The Clerk of Court shall enter the following language on the docket of each such newly opened “Welding Rod case”: “Refer to the Electronic Case Filing System for Case No. _____ (the original case number) and Case No. 03-CV-17000 for prior entries.”

Plaintiffs in these new “Welding Rod cases” need not serve new process or file amended complaints to reflect severance. This Order constitutes notice of severance. In addition, the Court orders that all actions affected or created by this Order shall be treated in all respects as if they were filed on the date of the

¹ The exception to this rule is that a plaintiff and his or her spouse and children (and/or other associated derivative claimant) need not be severed from each other.

corresponding original action.

Furthermore, the Court **ORDERS** that: (1) all attorneys filing related cases in the future should **avoid filing complaints joining unrelated individuals as parties-plaintiff**; and (2) all attorneys and the Clerk of Court shall comply with the procedures discussed above, if they apply to any future-filed case.

IT IS SO ORDERED.

s/Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE