



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

MEMORANDUM ORDER

Appellate case names: *Massachusetts Bay Insurance Company named as Fictitious Party Hanover Insurance Group (On Behalf of Massachusetts Bay Insurance Company) v. Newbern Brown Adkins, et al.*;

Larry Adkins, Personal Representative of the Estate of Newbern Brown Adkins, et al. v. Lincoln Electric Company, et al.;

Dorothy Wilson, as Personal Representative for the Estate of Arlie Richard Able, et al. v. Lincoln Electric Company, et al.

Appellate case numbers: 01-18-00993-CV; 01-18-01064-CV; 01-18-01071-CV

Trial court case numbers: 2017-67350-ASB; 2017-67350-A; 2017-67246-A

Trial court: 11th District Court of Harris County, Texas

The Court heard oral argument on the above-captioned cases on June 30, 2020, via Zoom. The Court **orders** that the parties submit post-argument briefing with citations to authority, including citations to any applicable legislative history, on the following questions:

- (1) What quantum of proof is necessary under Civil Practice and Remedies Code section 90.010(a)(3) to demonstrate that a claimant asserting an asbestos-related injury “has been diagnosed with malignant mesothelioma [or] other malignant asbestos-related cancer.” *See* TEX. CIV. PRAC. & REM. CODE ANN. § 90.010(a)(3).
- (2) Whether the MDL court is required to make a specific written finding that the claimant has a diagnosis of malignant mesothelioma or other malignant asbestos-related cancer.
- (3) What is the appropriate standard of review of the MDL court’s denial of the plaintiffs’ motions to remand their cases to the respective original trial courts. Additionally, what is the appropriate standard of review of the MDL court’s determination concerning whether the plaintiffs have established that they have the required “diagnosis” under section 90.010(a)(3).

The parties’ post-argument briefs shall be filed in this Court within **ten business days** of the date of this order.

It is so ORDERED.

Judge's signature: Evelyn V. Keyes

Acting individually Acting for the Court

Panel consists of: Justices Keyes, Kelly, and Landau

Date: July 2, 2020