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An Overview of Lone Pine Orders in Toxic Tort Litigation

By requiring plaintiffs to produce early in discovery the specifics of their claims, judicial resources are preserved and contentions sharpened

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LONE PINE orders are a type of case management order requiring plaintiffs in toxic tort lawsuits to produce early in the discovery process basic evidence supporting a prima facie case. Cases in which defendants can persuade a court to enter a Lone Pine order typically have multiple plaintiffs and occasionally multiple defendants. The orders generally require plaintiffs to identify their injuries and produce some evidence of causation. As a result, these orders help courts organize claims and focus on key issues early in litigation. Courts may rely on either their inherent authority to control their dockets or applicable rules of civil procedure to issue these case management orders.

While most jurisdictions have not considered Lone Pine orders, their use appears to be spreading as plaintiffs' attorneys continue to push the edge of the class action envelope with new and unproven claims.

HOW THEY BEGAN

Lone Pine orders take their name from a 1986 case in the Appellate Division of the New Jersey Superior Court, styled *Lore v. Lone Pine Corp.*,[1] involving multiple plaintiffs suing 464 defendants. The plaintiffs alleged personal injuries and property damage from a landfill. In order to streamline the proceedings, the court entered a case management order requiring the plaintiffs to provide certain basic information regarding their claims.

With respect to their personal injury claims, each plaintiff was required to provide (1) the facts of his or her exposure to the alleged toxic substances at or from the Lone Pine landfill, and (2) reports of treating physicians and medical or other experts supporting each individual plaintiff's claim of injury and causation by the substances. The court also required each plaintiff to provide in support of claims for diminution of property value: (1) his or her address and (2) reports of a real property or other expert supporting the claim for diminution in value. When the plaintiffs failed to produce the information required by the case management order, the court dismissed all of their claims with prejudice.

WHAT THEY REQUIRE

A typical Lone Pine order requires a plaintiff to provide an affidavit by a date certain stating: (1) the identity and amount of each chemical to which the plaintiff was exposed; (2) the precise disease or illness from which the plaintiff suffers; and (3) the evidence supporting the theory that expo-

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1. No. L-33606-85, 1986 WL 637507 (N.J.Super., Law Div., November 18, 1986) (unpublished) (not reported in A.2d). Reported at 1 Tox. Law Rptr. (BNA) 726.

sure to the defendant's chemicals caused the injury in question.[2] Other evidence can be required by the order. For example, as in *Cottle v. Superior Court (Oxnard Shores Co.),*[3] the dates of the exposure to the substance, the method of exposure (that is, inhalation, dermal or ingestion), and affidavits from medical experts supporting causation were required.

Many Lone Pine orders require expert opinions on causation. For example, in an Oklahoma case, the trial court in Tulsa County entered an order requiring the plaintiffs to provide statements identifying each injury, illness or condition that they claimed more likely than not was caused by exposure to any chemical.[4] The case against a utility company involved more than 150 office workers in Tulsa who alleged exposure to polychlorinated biphenols (PCBs) that escaped from an underground transformer.

Each plaintiff was ordered to provide a narrative statement, with an affidavit of a physician or other expert, that included:

- Identification of each relevant injury, illness or condition suffered;
- The underlying facts or data relied on to forming an opinion that he or she was exposed to PCBs and related chemicals at a level or dose which was sufficient to cause injury or illness;
- Identification of the precise exposure route—that is, inhalation, skin contact, ingestion—by which he or she was exposed to the listed chemicals;
- Specification of the precise chemicals which more probably than not caused each injury, illness or condition;
- For each illness, injury or condition, specification of the scientific and medical basis for the opinion, including a specific reference to the particular scientific or literature forming the basis of the opinion; and
- A differential diagnosis establishing that the physician or expert formed an opinion that more probably than not the plaintiff's illnesses did not have some etiology other than exposure to PCBs or related chemicals.

Plaintiffs who claimed that their physical injuries were caused by their fear of exposure to the chemicals in question also had to identify themselves as such.

The Lone Pine order in this case resembles an expert witness's affidavit opposing a motion for summary judgment. A court ordering this sort of information to be produced early in the discovery process provides a tremendous advantage to defendants wishing to dispose of frivolous claims quickly.

Ideally, Lone Pine orders allow courts to dispose of cases by dismissing plaintiffs' claims with prejudice when they fail to comply with the case management order. However, as a practical matter, a motion for summary judgment frequently must be filed to force the court to rule.[5]

ADVANTAGES

Lone Pine orders are an extremely useful tool for both courts and defense litigators in toxic tort litigation.

First and foremost, to quote the Fifth Circuit, "Lone Pine orders are designed to handle the complex issues and potential burdens on defendants and courts in mass tort litigation."[6] They allow a court to manage an unwieldy discovery docket by en-

2. John T. Burnett, *Lone Pine Orders: A Wolf in Sheep's Clothing for Environmental & Toxic Tort Litigation,* 14 J. LAND USE & ENVTL. L. 53, 54 (1998) (citing Hembree v. Litton Indus. Inc., No. B-C-90-6, at 9.18 (W.D. N.C., August 16, 1990).

3. 5 Cal.Rptr.2d 882 (Cal.App. 1992) (denying application for writ of mandate where plaintiffs failed to comply with court's case management order in case involving development built on site previously used to store hazardous waste).

4. William A. Ruskin, *Prove It or Lose It: Defending Against Mass Tort Claims Using Lone Pine Orders,* 26 AM. J. TRIAL ADVOC. 599, 608 (2003), (citing Wilson v. Public Service Co. of Oklahoma, No. CJ-96-564 (Tulsa Cty. Dist. Ct. 1997).

5. *See, e.g.,* Martinez v. City of San Antonio, 40 S.W.3d 587, 590 (Tex. App.—San Antonio 2001, pet. denied) (affirming trial court's granting summary judgment to defendants where plaintiffs filed expert affidavits that did not meet Texas reliability standards for expert testimony).

6. Acuna v. Brown & Root Inc., 200 F.3d 335, 340 (5th Cir. 2000).

abling it to enter a single detailed order requiring each plaintiff to produce statements of fact and affidavits from experts to support claims at the beginning of the case.

They also help eliminate frivolous claims quickly. By requiring plaintiffs to produce prima facie evidence supporting their causes of action, both the court and the defendants learn at the beginning of the case whether the plaintiffs' claims have merit. This increases efficiency in the civil justice system. By requiring the plaintiffs to produce basic information, defendants avoid spending millions of dollars in discovery to separate the wheat from the chaff. Defendants can argue that it is inequitable to force them to spend their resources defending against claims in the toxic tort setting before the plaintiffs produce evidence showing that they are injured and the defendant may be culpable.

Some commentators have criticized Lone Pine orders as giving defendants a premature summary judgment by requiring the plaintiffs to produce their evidence before the defendants move for summary judgment or the parties complete discovery.[7] The criticism is that case management orders and their administration lack the uniformity of enforcement provided by the rules of civil procedure for summary judgment motions. In spite of these protestations, to the contrary, Lone Pine orders are not premature, court-created, standard-less motions for summary judgment. Rather, they are a tool that helps define key issues in a case at the beginning of the discovery process.

While this accelerated discovery is unconventional, it is frequently necessary in the toxic tort setting because of the number of plaintiffs. Defendants can argue that forcing them to engage in costly discovery before being able to dispose of the meritless claims does nothing but increase the plaintiff's attorneys' ability to extort settlements. In fact, the court in *Lone Pine* supported its order of dismissal by stating it was not willing to continue the case "with the hope that the defendants eventually will capitulate and give a sum of money to satisfy plaintiffs and their attorney without having been put to the test of proving their cause of action."

By forcing plaintiffs to bring forth evidence of causation early in the proceedings, Lone Pine orders also aid defense counsel in evaluating cases for settlement. If plaintiffs can produce credible medical causation affidavits, then defendants can assign a value to the case more accurately.

Another advantage to Lone Pine orders is that they effectively convert discovery disputes between the parties into disputes between the plaintiffs' attorneys and judges.[8] Courts prefer that parties resolve discovery disputes on their own, but they will enforce their case management orders when those orders are disregarded. In other words, Lone Pine orders can be used to make the court, rather than defense counsel, responsible for wringing discovery on causation and other basic issues from plaintiffs.

AUTHORITY TO ENTER

Federal district courts and courts in states that have modeled their rules on the Federal Rules of Civil Procedure have the authority to enter Lone Pine orders pursuant to the wide discretion afforded judges to manage discovery under Federal Rule 16 (Pretrial Conferences; Scheduling; Management).[9] Rule 16(c)(12) specifically states that a court at a pretrial conference may take appropriate action with respect to "the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems."

The Fifth Circuit has stated that Lone Pine orders essentially require "information which plaintiffs should have had

7. Burnett, *supra* note 2, at 54.

8. *See, e.g.,* Atwood v. Warner Elec. Brake & Clutch Co., 605 N.E.2d 1032 (Ill.App. 1992) (affirming trial court's barring of claims by plaintiffs who had failed after six years of discovery to certify their medical or personal injuries or to identify substances allegedly causing their injuries).

9. Acuna, 200 F.3d at 340; Schelske v. Creative Nail Design Inc., 933 P.2d 799, 802 (Mont. 1996).

before filing their claims," pointing out that Federal Rule 11(b)(3) (Representations to Court) requires that "the allegations and other factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."[10]

Some courts base their authority to enter Lone Pine or equivalent orders on the inherent authority to control their dockets. For instance, a New York court in *In re Love Canal Actions* stated, "A court may invoke its inherent authority to deal with cases before it . . . in any appropriate manner, even in the absence of any direct grant of legislative or administrative power" and "Every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its resourcefulness in crafting appropriate remedies in the absence of express authority."[11]

A California court has stated, "California courts have broad and power to control matters before them. . . . Furthermore, courts have inherent equity, supervisory and administrative powers, as well as inherent powers to control litigation before them. Inherent powers of the court are derived from the state constitution and are not confined by or dependant on statute."[12]

California courts also may rely on Section 68070 of the California Government Code, which states, "Every court may make rules for its own government . . . not inconsistent with law or with the rules adopted and prescribed by the Judicial Council." And Section 187 of the California Code of Civil Procedure states that a court may adopt in exercising its jurisdiction "any suitable process or mode of proceeding . . . which may appear most conformable to the spirit of the code."

In the *Cottle* case, the court also was able to rely on the state's Trial Court Delay Reduction Act (Section 68600 of the California Government Code), which gave certain counties—in this case, Ventura County—what the court described as "wide latitude in developing their own rules and procedures to reduce litigation delays that have reached 'scandalous proportions' in some counties." The court went on to state, referring to a local court rule, "The management of the trial court's delay reduction program is an area within the court's discretion and will not be disturbed unless it appears that the exercise of the discretion was a clear abuse or a miscarriage of justice."[13]

There is statutory authority in New York as well for the entry of Lone Pine orders. Section 602(a) of the New York Civil Practice Law and Rules provides that the court "may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." And in the *Love Canal* case, the court noted that, similarly to Rule 11(b) of the Federal Rules of Civil Procedure, "New York requires attorneys in all actions to investigate the legal and factual basis for an action before commencing litigation."[14]

The Illinois Appellate Court in *Atwood v. Warner Electric Brake & Clutch Co.* stated that the Illinois Supreme Court rules supported the issuance of Lone Pine-like case management orders:

> Under the supreme court rules, trial courts have broad powers to supervise the discovery process. The rules make it clear discovery procedures were designed to be flexible and adaptable to the infinite variety of cases and circumstances appearing in the trial court. Moreover, the increasing complexity and volume of litigation involves frequent recourse to discovery procedures. In a case such as this, where the issues are as numerous and complex as the parties are plentiful, it is important to grant the trial court flexibility in managing the discovery process.
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> Supreme Court Rule 201 gives a trial court the authority to supervise all or any

10. Acuna, 200 F.3d at 340.

11. 547 N.Y.S.2d 174, 177 (N.Y.Sup.Ct. Niagara Cty. 1989), citing, respectively, Bankers Trust Co. v. Braten, 420 N.Y.S.2d 584 (N.Y.Sup.Ct. New York Cty. (1979) and 14 AM. JUR. *Courts* § 171; 21 C.J.S. *Courts* § 14).

12. Cottle, 5 Cal.Rptr. 882, 886-87, internal citations omitted.

13. *Id.* at 889, citing Youngworth v. Stark, 283 Cal.Rptr. 668 (Cal.App. 1991).

14. 547 N.Y.S.2d at 177, citing 22 N.Y.C.R.R. § 130.1.

part of any discovery procedure. In addition, Rule 201 grants a trial court the authority to sequence discovery for the convenience of the parties and witnesses and in the interests of justice. Rule 201 also provides that the trial of a case shall not be delayed to permit discovery unless due diligence is shown.[15]

There is ample statutory and common law jurisprudence to support a court's authority to enter a Lone Pine order. This does not appear to be an issue in most jurisdictions that have considered it. However, one New Jersey case, discussed below, states that there is no authority for a court to issue a Lone Pine order.

USE OR CONSIDERATION OF LONE PINE ORDERS

Courts from several jurisdictions, examined below, have discussed Lone Pine orders, but these orders have been used outside these jurisdictions. One journal article discusses an order from an unpublished Oklahoma state court case.[16] Another article cites an unpublished opinion from North Carolina.[17] It is likely that courts in other states have used Lone Pine orders without a published or unpublished opinion. Defense counsel should consult with local counsel to see if this type of case management order has been used in a given jurisdiction.

A note of caution is in order regarding the ability to procure Lone Pine orders. Some courts have entered orders only after a state or federal agency has issued a report that either provides much of the information called for in the order or undercuts the plaintiffs' claims for personal injuries.

The latter occurred in *Cottle,* in which the plaintiffs sought damages for a myriad of physical injuries and ailments allegedly caused by oil industry hazardous wastes and other byproducts on the site of which their residential properties were located. The California Department of Health Services issued a report prior to the court entering its case management plan concluding, "The waste materials do not pose any significant threat to the health of the residents living at the Dunes subdivision . . . or to the environment." The report essentially stated that the plaintiffs had no case.

In the *Lone Pine* case itself, the Environmental Protection Agency issued a record of decision summarizing 16 studies on the Lone Pine landfill prior to the court entering its case management order. The decision "evaluated all the information available on the Lone Pine problem and the resulting pollution location." Hence, the EPA had already given the plaintiffs much of the information they would need to proceed.

In these two instances, the courts had a disinterested party influencing its decision whether to enter a Lone Pine order.

A. Federal Courts

Acuna v. Brown & Root Inc.[18] is the leading case from the federal courts on Lone Pine orders. In *Acuna,* 1,600 plaintiffs sued multiple uranium mining and processing companies for personal injuries and property damage. The U.S. District Court for the Western District of Texas had entered a Lone Pine order requiring each test plaintiff to submit a physician's and affidavit detailing injuries, the substances he or she was exposed to, the source of the substances, the dates of exposure, the method of exposure, and the scientific and medical bases for the experts' opinions. When the plaintiffs failed to comply, their cases were dismissed. The Fifth Circuit held that the use of a Lone Pine order was within the trial court's discretion and affirmed the dismissal of the plaintiffs' claims.

The Ninth Circuit has not specifically addressed Lone Pine orders, but it affirmed summary judgment in *Cldar v. Burlington Northern Railroad Co.* on Daubert grounds in a case in which the district court had entered a Lone Pine order.[19] The plaintiffs

15. 605 N.E.2d 1032, 1036-37 (Ill.App. 1992), internal citations omitted.
16. Ruskin, *supra* note 4, at 608-09.
17. Burnett, *supra* note 2, at 54.
18. 200 F.3d 335 (5th Cir. 2000), *cert. denied,* 530 U.S. 1229 (2000).
19. 29 F.3d 499 (9th Cir. 1994).

sued under the Federal Employee Liability Act, alleging they were injured after being exposed to chemicals while working for the railroad. The district court had entered a Lone Pine order requiring each test plaintiff to submit a physician's affidavit detailing injury, the chemical that caused it and the scientific basis for the physician's opinion. It granted the defendant's motion for summary judgment after the plaintiffs submitted affidavits that failed to establish causation.[20]

Entering Lone Pine orders in the federal district courts is within the discretion of the presiding judge. Considering the abuse of discretion standard that is used to review discovery orders, the decision to enter or refuse to enter a Lone Pine order will rarely, if ever, be overturned on appeal.

B. Texas

Texas courts have used Lone Pine orders frequently.[21] In *In re Mohawk Rubber Co.* one court went so far as to grant a conditional writ of mandamus if the trial court did not issue a Lone Pine order.[22] In *Mohawk Rubber,* 205 plaintiffs alleged that they were injured by rubber products manufactured by the defendants and fumes from machines used in the manufacturing process. The defendants sought a Lone Pine order requiring the plaintiffs to produce evidence on causation. The trial court refused to enter the order and denied defendants' motion for summary judgment. The defendants then sought a writ of mandamus. The Texas Court of Appeals found that the trial court's scheduling order failed to require production of evidence on causation, and it therefore conditionally granted the petition for writ of mandamus directing the trial court to enter a Lone Pine order.

Texas is the jurisdiction with the most favorable case law on Lone Pine orders. Defense attorneys in every toxic tort case in Texas should seek that order. If the court refuses, the defense should consider applying for a writ of mandamus.

C. California

The leading case in California is *Cottle,* discussed above. It is a good case to argue for the entry of a Lone Pine order in that it clearly states that California courts have authority to enter such orders. What limits the utility of Cottle is that the court did not enter its order until the California Department of Health Services effectively had stated that plaintiffs' claims were without merit. State agencies are rarely so helpful.

D. New York

A New York trial court entered a Lone Pine order in *In re Love Canal Actions,* mentioned above. That case involved hundreds of plaintiffs claiming injuries from the Love Canal landfill. The court entered the order only after the plaintiffs refused to produce evidence of causation for several years. The defendants sought an order requiring each plaintiff to provide:

> (a) *Exposure.* Evidentiary documentation, showing the factual basis, including street addresses for each plaintiff's exposure to a chemical at or form the old Love Canal landfill.
>
> (b) *Injury.* Reports of physicians and other medical experts documenting the existence of each injury claimed to have been caused by exposure to chemicals from the old Love Canal landfill.
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> (c) *Causal Relationship.* Reports or affi-

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20. 1991-WL 315487 (D. Mont.), *sub nom.* Eggar v. Burlington Northern R.R. Co. (not reported in F.Supp.).

21. *See, e.g.,* Bates v. Schneider Nat'l Carriers Inc., 95 S.W.3d 309 (Tex.App.—Houston [1st Dist.] 2002, pet. granted) (reversing and remanding summary judgment where question on running of statute of limitations turned on whether nuisance was temporary or permanent); Martinez v. City of San Antonio, 40 S.W.3d 587 (Tex.App.—San Antonio 2001, pet. denied) (affirming summary judgment for defendant where plaintiffs failed to produce evidence on causation); In re Jobe Concrete Products Inc., 2001 WL 1555656 (Tex.App.—El Paso, orig. proceeding) (not designated for publication) (granting mandamus relief where trial court refused to sever claims of multiple plaintiffs in case alleging personal injuries and property damage from defendant's concrete production).

22. 982 S.W.2d 494, 499 (Tex.App.—Texarkana 1998, orig. proceeding).

davits of a physician or other qualified expert demonstrating that each injury of a plaintiff was, in fact, caused by the plaintiff's exposure to chemicals at or from the old Love Canal landfill.

The order itself required each plaintiff to provide the "following documentation to defendants":

> (a) Facts, including street addresses for each plaintiff's exposure to a chemical at or from the old Love Canal landfill,
>
> (b) Reports of treating physicians and medical or other experts, supporting each individual's claim of injury and causation thereof by exposure to chemicals from the old Love Canal landfill.[23]

Unfortunately, the *Love Canal* case is of limited precedential value because it was a decision and opinion at the trial court level. It is, however, an example of a New York state court using a Lone Pine order.

E. Illinois

In *Atwood,* discussed above, more than a hundred plaintiffs filed suit against eight defendants alleging injuries from long-term exposure to trichloroethylene after a county health department found high concentrations of the chemical in a community's groundwater. After the plaintiffs had failed to produce evidence of their injuries for several years, the trial court entered this order:

> IT IS HEREBY ORDERED that on or before July 5, 1990[,] each individual plaintiff and his or her attorney shall certify that:
>
> (a) each plaintiff has been examined by each medical professional that the plaintiff, his or her attorney and/or his or her retained medical professional[s], consulting or otherwise, deem necessary to evaluate each individual plaintiff's medical, or personal injury, [sic] claims causally related to this case;
>
> (b) each plaintiff has identified all of his or her medical, or personal injury, [sic] claims causally related to this case by way of the expert reports;
>
> (c) each plaintiff is ready to be deposed.
>
> It is further ordered that any medical, or personal injury, [sic] claim that is not fully identified in these reports[,] including, [sic] but not limited to, the prognosis of any injury or disease, and which is not identified as being causally related to exposure materials which are the subject of these cases shall be barred.[24]

The court did not refer to the above as a Lone Pine order; nevertheless, it is one. The court ordered each plaintiff to produce a separate certification. After several extensions, the court granted the defendants' motions for summary judgment against those plaintiffs' claims that were listed in their complaints but not in their certifications. It also entered summary judgment against those plaintiffs who failed to support their certifications with the requisite medical reports.

While the court did not use the term "Lone Pine order," that was the type of order the judge entered in an attempt to force recalcitrant plaintiffs to produce evidence of their injuries and causation. This case can be relied on when arguing for Lone Pine orders in Illinois. Remember, one of the best aspects of this case from a defense counsel's perspective is that it converts a normal discovery dispute into a dispute between the court and plaintiffs.

F. New Jersey

The most important case on Lone Pine orders from New Jersey is that which gives them their names: *Lore v. Lone Pine Corp.,* discussed above. However, there is another opinion to keep in mind when seeking a Lone Pine order in the Garden State. A New Jersey court stated in *In re Gems Landfill* that there is "no constitutional basis or rule of court" to support Lone Pine orders.[25] Like the court in *Lone Pine,* this was a New Jersey Superior Court. Hence, it should not be presumed that New Jersey courts are more favorably disposed to Lone Pine orders than other states merely because the orders originated there.

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23. 547 N.Y.S.2d at 174 and 179.
24. 605 N.E.2d at 1035-36 (grammar notations in original).
25. Ruskin, *supra* note 4, at 602, citing In re Gems Landfill, 1 TOXIC TORTS REP. (BNA) 1393, 1394 (N.J. Super. Ct., May 13, 1987).

G. Wisconsin

One Wisconsin case has discussed Lone Pine orders, but the facts and procedural posture of the case are very unusual. In *Kinnick v. Schierl,* the defendants in a toxic tort case sought contribution from a property owner for contamination claims brought by his neighbors.[26] The trial court had entered summary judgment on the cross-claims when the defendants failed to produce expert reports stating that chemicals from the cross-defendants' land contaminated his neighbors' underground water. On appeal, the defendants argued that the trial court committed error by granting summary judgment with seven months left before trial while simultaneously refusing to enter a Lone Pine order.

The Wisconsin Court of Appeals affirmed the summary judgment, noting that the entry of such an order was within the discretion of the trial court. Although the court in *Kinnick* did not enter one, defense counsel arguably can cite the case for the proposition that the entry of a Lone Pine order is within the discretion of the trial court.

H. Montana

In *Schelske v. Creative Nail Design Inc.,* a beautician sued in product liability the manufacturers of several products used in her salon that allegedly injured her.[27] The trial court entered a case management order after the preliminary pretrial hearing requiring the plaintiff to produce (1) a list of products, (2) the circumstances of the alleged exposure, (3) an identification of each specific chemical that allegedly caused harm, and (4) a physician's opinion of a causal connection between exposure and injury. The case management order required that the physician's affidavit (1) list all injuries, illnesses and conditions suffered by plaintiff; (2) specify the chemical that caused each illness; and (3) state the scientific bases for the physician's opinion.

When the plaintiff failed to comply with the case management order, the trial court entered summary judgment. The Montana Supreme Court affirmed.

Schelske is an unusual case for the use a Lone Pine order because it involved a single plaintiff in a product liability action. The Montana Supreme Court also does not refer to the order in question as a Lone Pine order. Nevertheless, the case management order entered in *Schelske* was a Lone Pine order.

CONCLUSION

Lone Pine orders are effective tools for organizing discovery in toxic tort cases. Procedurally they benefit defendants by forcing plaintiffs to prove that they have a legitimate claim at the beginning of the case. Whether a defense counsel can procure such an order will turn on the inclination of the presiding judge. Because pretrial discovery orders will be reviewed on an abuse of discretion standard, there is little recourse, outside of Texas, against a judge who refuses to enter an order. But this lack of recourse cuts both ways. If the court enters a Lone Pine order, the plaintiffs will be not be able to escape their burden. In any event, Lone Pine orders are a tool with which every toxic tort lawyer should be familiar.

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26. 541 N.W.2d 803, 805 (Wis.App. 1994).
27. 933 P.2d 799 (Mont. 1997).