

Discovery is ongoing and this material not only was done in violation of my order of January the 7th, but it contains vital information central to the big issue in this case The big issue turns around and there's no real issue he has mesothelioma, although Dr. Oury tries to cast some doubt on that.

(R. p. 2177, line 9–p. 2179, line 8). The circuit court ultimately determined that the formal statement given by Oury was in violation of the court's protective order, and that the additional opinions from Dr. Oury that were not provided to the court nor to Plaintiff in a timely manner would not be accepted as a proffer:

The truth of the case is the defendants had nothing to do with Mr. Glenn's mesothelioma, and that opinion can only be defined if you get this expanded material that was not given to me, not given to the plaintiff at the time we talked about whether his tissue digestion studies would be allowed, which is what I ruled on, nor was it provided in ongoing discovery in the posture of having taken it at a time when they had been noticed and I had then said they were protected.

So what we're talking about now is, to me, misleading the court and disobeying the ongoing obligation per not only discovery rules but the orders that govern asbestos cases which require this kind of information be turned over. It was not turned over.

(R. p. 2210, line 22–p. 2211, line 11).

Fisher's conduct reflected a disregard for the court's authority to control the discovery process, to control its docket, and to ensure that all of the relevant facts are presented to an unbiased jury. Both Plaintiff and the circuit court were surprised by the late and unauthorized tissue digestion study and Fisher's unilateral deposition of Oury. Exclusion of this evidence was within the circuit court's discretion.

CONCLUSION

For the reasons set forth herein and in Judge Toal's Post-Trial Order, Fisher has failed to demonstrate any grounds for reversal. The Glenns therefore ask this Court to affirm the circuit court's rulings in all respects.