

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, ss.

SUPERIOR COURT

427

IN RE MASSACHUSETTS STATE
COURT ASBESTOS LITIGATION

) MASSACHUSETTS ASBESTOS
) CASES CONSOLIDATED
) DOCKET
)

PRE-TRIAL ORDER NO. 4

As a result of conferences with counsel, and after hearing, the Court concludes that it would serve the interests of justice to enter this further Pre-Trial Order which supersedes the following: (1) Pre-Trial Order No. 1, dated January 20, 1982; (2) Pre-Trial Order No. 2, dated March 22, 1982; and (3) Pre-Trial Order No. 3, dated June 7, 1983.

I. PRESENT CASES

Except as otherwise directed by the Court, this Order will be applicable to all cases, including those pending and any future cases, alleging personal injury, illness, disease, death or loss of consortium purportedly arising out of exposure to asbestos or products containing asbestos that are commenced in Suffolk, Norfolk, Middlesex, Essex, Plymouth, Bristol, Barnstable or Worcester counties (hereinafter called the "Eastern Counties").

FILED
IN THE OFFICE OF THE
CLERK OF THE COURTS
FOR THE COUNTY OF MIDDLESEX

MAR 13 1985

Edward J. Sullivan

CLERK

II. FUTURE CASES

In the event further cases are filed concerning similar factual bases and allegations, this Order will apply to all such after-filed cases, except as otherwise directed by the Court, or upon Motion, for good cause shown, by the party seeking to have this Order declared inapplicable.

Upon receipt of a complaint from an attorney representing a plaintiff, which attorney is not listed on the Asbestos Certificate of Service attached hereto as Exhibit A (which Certificate of Service is to be amended from time-to-time as necessary), Defendants' Liaison Counsel shall send a copy of this Order to said new plaintiff's counsel.

III. APPOINTMENT OF SUPERVISING JUDGE AND CONSOLIDATION OF CASES

A. The Honorable William C. O'Neil, Jr. (the "Supervising Judge") has been appointed to supervise all pre-trial proceedings, to rule on all contested motions, and to hear and to determine all questions of law arising prior to trial in all cases governed by this Order.

B. All cases governed by this Order, whether already pending or hereafter commenced, shall, except as otherwise herein provided, be subject to the jurisdictional and venue provisions of the applicable General Laws and Massachusetts Rules of Civil

Procedure. All such cases, having been properly commenced are hereby consolidated for pre-trial purposes only, within the Superior Court Department of Middlesex County, in East Cambridge, and the Clerk of the Court shall maintain both an individual docket for each case, as well as a consolidated docket for all such cases which shall be entitled Massachusetts Asbestos Cases, Consolidated Docket. The question of consolidation or transfer of some or all cases for trial is reserved.

C. The following classifications are hereby created to govern these cases:

MCD #1- Shipyard cases;

MCD #2- Indoor worksite exposure cases, including plant workers and Boston Edison employees;

MCD #3- All other worksite exposure cases including construction site cases;

MCD #4- Non-worksite exposure cases.

D. All motions assented to by all necessary parties shall be recorded on the docket as "Allowed by the Court", without the necessity of hearing and signature by the Court. The "opposition procedure" ordered by a Standing Order of the Superior Court is hereby ordered abrogated for cases covered by this Pre-Trial Order.

E. Court files on cases governed by this Order and all complaints filed hereafter which contain allegations as covered by Section I shall be forwarded by the Clerk of Court of the county where filed to the clerk's office, Superior Court of Middlesex County in East Cambridge, where the pleadings and papers on the cases will be maintained during the pre-trial stages. All pleadings and other papers filed subsequent to the Complaint shall be filed with the Clerk of Middlesex Superior Court.

F. All discovery requests and responses and other papers in the Consolidated Docket shall be considered applicable to all cases and part of each individual case file and docket. Any pleading, discovery request and response or other paper filed on behalf of any party in an asbestos case shall be filed and docketed in the individual file of the case unless the party signifies thereon, with the words Massachusetts Asbestos Cases, Consolidated Docket, that the document should be filed and docketed in the Consolidated Docket, in which event, the clerk shall file and docket the document in the Consolidated Docket.

In the event that any pleading, discovery request and response or other paper is filed in an asbestos case by a party without the Consolidated Docket

designation, and another party to the action believes that the document should be included in the Consolidated Docket, such other party may, by an appropriate written request forwarded to the clerk's office within ten (10) days of receipt of the document in question, request that the document be included in the Consolidated Docket, and it shall be so included.

G. When a case has been called for trial, each plaintiff in each such case shall, within sixty (60) days of receipt of the written notice, file and serve upon all counsel of record in each such case a document designating which portion of the file and docket of the Consolidated Docket he or she wishes to have included with the papers and docket of the individual file.

Any other party to the action wishing to include additional portions of the file and docket of the Consolidated Docket shall file and serve in like manner a written statement, setting forth such additional designation, within thirty (30) days of receipt of the plaintiff's designation.

H. If, at the time, action by the Supervising Judge is requested by any party upon any pre-trial matter, the Supervising Judge is sitting in a county other than Middlesex County, it shall be the responsibility of counsel requesting such action to

furnish copies of all relevant documents on file to the Supervising Judge at least seven (7) days prior to the date requested for hearing. It shall also be the responsibility of counsel who requests or marks up a motion to send any order of the Supervising Judge to the clerk's office in Middlesex County, East Cambridge, for appropriate filing.

IV. LIAISON COUNSEL

Appointment of Liaison Counsel to act on behalf of all plaintiffs' and defendants' counsel, after appropriate consultation where necessary, will facilitate communications among the Court and counsel, minimize duplication of effort, coordinate joint positions, and provide for the efficient progress and control of this litigation.

Liaison Counsel shall perform the following duties and have the following powers:

- (1) To receive on behalf of and distribute promptly to counsel notices and other documents from the Court;
- (2) To act as spokesmen at pre-trial or pre-hearing conferences subject to the right of each party to present individual or divergent positions where necessary;
- (3) To call meetings of counsel for the purpose of agreeing upon responses to questions and suggestions of the Court, and for the purpose of initiating proposals, suggestions, proposed order, proposed schedules, joint briefs and joint schedules, and also for the purposes of initiating or opposing

other pre-trial proceedings when appropriate;

- (4) To perform such other functions as may be expressly authorized by further Order of the Court.

In order to facilitate communications with the Court and with counsel for the plaintiffs, to minimize duplication of effort, to coordinate joint positions and to provide for the efficient progress of the litigations, defendants, under the leadership of Liaison Counsel and the defendants' Steering Committee, have met and conferred on a regular basis and will continue to do so. Each member of the Defense Group, and its counsel have acknowledged and agreed that these efforts are privileged and confidential, and the substance of any discussions, meetings, writings exchanged or other forms of joint defense effort is not to be revealed to anyone. All such efforts made by plaintiffs are similarly privileged and confidential and are not to be revealed to anyone.

A. Manufacturing Distributing Defendants' Liaison Counsel

1. The Court hereby continues its appointment of Lawrence G. Cetrulo, Esquire, Burns & Levinson, 50 Milk Street, Boston, Massachusetts 02109, (617) 451-3300, as Liaison Counsel in M.C.D. 1,2,3 and 4 for the manufacturing and distributing defendants

("defendants"), which is defined as all direct defendants, not otherwise expressly excluded by order of the Court, which are alleged to have mined, processed, manufactured, designed, tested, fashioned, packaged, distributed, delivered or sold various asbestos products or asbestos containing products and materials. Manufacturing and distributing defendants shall not include shipyard owner, labor unions, or the United States of America.

2. Defendants' Liaison Counsel is to be paid in advance, in response to periodic invoices submitted by him at least quarterly, which invoices are to be based upon his best estimates of the funds needed to defray the cost of Liaison Counsel services for the next succeeding period. Liaison Counsel shall also submit a detailed statement of the services rendered and disbursements made by him during the preceding period, along with a statement of the balance remaining from the payments received. Liaison Counsel shall apportion the billing attributable to the litigation in this Court on a pro rata basis, as hereinafter provided, and each "defense interest", as hereinafter defined, shall be liable for its proportional share.

3. Each validly joined defendant over which this Court possesses jurisdiction shall

constitute a single "defense interest" for the purposes of allocating the expenses of Defendants' Liaison Counsel in accordance with the terms of this Order; except that certain individually named defendants which are integrally related to one another -- by virtue of being predecessors and successors in interest, parent and subsidiary, sister corporations, or other similar relationships -- shall be treated as single "defense interests," and are to be charged only a single share of the costs and expenses attributable to Liaison Counsel activities. These distinctions, shall be maintained in allocating proportional shares among the "defense interests."

4. Each defense interest which is named as a party in more than 20% of the total number of cases partially consolidated under this Order shall pay a full share. Any defense interest which is a party to between 20% and 5% of the total number of cases partially consolidated under this Order shall pay a 1/4 share, and any defense interest which is a party to less than 5% of the cases shall pay only a 1/8 share. If any defense interest is a party to less than 1% of the cases, it shall pay only a 1/10 share.

5. Liaison Counsel shall inform each defendant twenty (20) days prior to a billing date that it will be included as a defense interest in the

billing and shall specify the proportionate share each defense interest shall bear. It shall then be the responsibility of any objecting defense interest to demonstrate to Liaison Counsel that it is entitled to pay less than the share allocated to it. Any unresolved objections must be submitted to the Court in accordance with paragraph "6", infra.

6. Liaison Counsel invoices shall be due and payable when submitted. Interest, at the judgment rate, shall accrue, retroactive to 30 days of submission, on all invoices remaining unpaid 60 days after submission. All objections to the amount of any invoice or to Liaison Counsel's statement of services rendered and disbursements made shall be waived, unless made to the Court within 30 days of the date of their submission.

7. If additional defendants are joined, or rejoined to the litigation, Liaison Counsel shall promptly submit to them invoices reflecting their appropriate share of anticipated Liaison Counsel services, and, where a particular benefit is received from past Liaison Counsel services such additional payment deemed appropriate by the existing defendants. Any such payment shall be made to Liaison Counsel and shall be utilized to reduce the shares to be charged

to existing defendants in the next succeeding billing period.

8. Individual defense interests, as defined in paragraph "3" hereinabove, not their counsel, are responsible for payment to Liaison Counsel; although defendants may pay through their individual counsel.

9. The approval of a settlement or entry of judgment in any of these related civil actions will not operate to discharge unpaid Liaison Counsel invoices.

B. Plaintiffs' Liaison Counsel

Edward T. Dangel, III, Esquire of Dangel and Sherry, P.C., Suite 1000, 265 Franklin Street, Boston, MA is hereby appointed as Liaison Counsel for all plaintiffs' counsel in M.C.D. 1,2,3 and 4. A Discovery Committee consisting of Edward T. Dangel, III, Esquire, and Albert P. Zabin, Esquire, as members are appointed to supervise and conduct generally applicable discovery. Payment of Liaison Counsel for services and monies disbursed shall be by submission of bills to other counsel for plaintiffs.

V. PLEADINGS

A. New actions shall be commenced and service accomplished in the usual manner prescribed by the Massachusetts Rules of Civil Procedure and the laws of

the Commonwealth of Massachusetts. All complaints, whether presently pending or hereafter filed, shall join only claims related by survivorship, loss of consortium or society, claims of secondary exposure (e.g., claims of family members of a primary plaintiff, where it is alleged that injury was caused by asbestos carried into the home on the clothing of the primary plaintiff) or claims upon which good cause for joinder can be shown (e.g., claims of unrelated plaintiffs which contain essentially identical allegations as to exposure site, duration and dates of exposure, and pathological result).

All presently pending complaints which join plaintiffs or claims contrary to this standard shall be severed and filed as separate amended complaints, without the requirement that additional filing fees be paid or additional service of process be made where filing fees have been paid and service of process has already been accomplished in accordance with the Massachusetts Rules of Civil Procedure. The model complaint procedure set forth in subparagraph (F) below may be used for the purpose of severing plaintiffs' claims in presently filed complaints.

Except as otherwise provided by the Massachusetts Rules of Civil Procedure, proof of service of all pleadings and other papers required to be served shall

be sufficient if it contains a written statement of counsel that service was made on Liaison Counsel and on all parties to this action in accordance with the list of counsel then on file with the clerk.

B. At the time a new action is commenced, plaintiff's counsel shall file the items listed in subsections (b) through (d) below with the Complaint and shall serve upon Defendants' Liaison Counsel the following:

(a) A copy of the Complaint;

(b) A list of names and addresses of all treating physicians, diagnosing physicians and any other medical personnel by whom the plaintiff or the plaintiff's decedent has been seen in connection with an alleged asbestos-related disease; the names and addresses of any hospitals, clinics or other facilities at which the plaintiff or the plaintiff's decedent has been a patient in connection with an alleged asbestos-related disease; and the name and address of each physician by whom, and each hospital at which, the plaintiff or the plaintiff's decedent was treated, diagnosed or seen in connection with an alleged asbestos-related disease;

(c) A list of the jobsites or locations at which plaintiff alleges he was exposed to asbestos-

(d) A duly executed authorization Form SSA-L137 (6-80) [Department of Health and Human Services, Social Security Administration] running to the Defendants' Liaison Counsel or to his designee, enabling the defendants to obtain detailed earnings information regarding the plaintiff.

(e) As an alternative to paragraph (d) above, the plaintiff may supply the Social Security records directly to defendants' counsel.

With regard to all previously-filed cases, the plaintiffs shall provide the authorizations described in paragraph (b) within thirty (30) days of the entry of Pre-Trial Order No. 4, and will supply the information specified in paragraphs (c) and (d) within sixty (60) days of the entry of Pre-Trial Order No. 4.

If any plaintiff desires to amend a complaint to add a defendant, the information set forth in paragraphs (b) through (d) (as to those defendants who are sought to be added) must be filed within thirty (30) days of the filing of the Motion to Amend the Complaint, and in no event may such Motion be heard prior to the filing of said information.

C. The complaints should contain, to the maximum extent possible, and counsel are encouraged to plead, standard allegations which are generally applicable to all claims of a similar nature, and

shall contain separate claims on behalf of each individual claimant. A good faith effort shall be made to set forth in all complaints dates and locations of exposure, the date of manifestation of alleged injuries and plaintiffs' employer(s) on the date(s) of exposure.

D. Each defendant may, within sixty (60) days after service or such other time as may be agreed to between plaintiff and defendant, serve an Acknowledgement of Service in the form attached to this Order. Upon the filing of such Acknowledgements of Service, the defendant will be deemed to have denied all material allegations contained in the plaintiff's complaint and to have raised each of the affirmative defenses contained in that defendant's standard set. The filing of the Acknowledgement of Service shall not constitute a waiver of defendant's right to challenge any defect in process or service of process and by filing said Acknowledgement of Service the defendant shall be deemed to have fulfilled the requirements of Massachusetts Rules of Civil Procedure, Rule 12.

Defendants are encouraged to file a standard set of affirmative defenses in the consolidated docket.

Nothing herein shall preclude defendants from filing individual answers, if they so choose.

However, filing such individual answers is not encouraged. In light of the delays that frequently occur between service of process and the receipt of complaints by Massachusetts defense counsel, plaintiffs' counsel shall grant liberal extensions of time to file the Acknowledgement of Service or answer.

E. Plaintiffs may, without leave of the Court, amend complaints to add claims based on survivorship, loss of consortium or society, or secondary exposure, to sever claims which do not meet the standards for joinder of Paragraph V(A), or to join other claims where the parties agree that good cause for joinder exists.

Plaintiffs may add or delete defendants from their Complaints without leave of Court within 60 days of the entry of Pre-Trial Order No. 4. Thereafter, all amendments to join defendants may be made only with leave of Court and pursuant to all applicable Massachusetts Rules of Civil Procedure.

Service of any amendments by mail on Massachusetts counsel for a defendant shall be considered service on that defendant, except if the amendment provides for the addition of parties defendant to a case or cases, in which event the requirements of Massachusetts Rules of Civil Procedure 4 and 15 shall apply. Such amendments shall

incorporate by reference the allegations of the complaint on file where appropriate.

When a complaint is amended so as to add new plaintiffs or new defendants, all previously named defendants shall be deemed to have answered as set forth in paragraph D. Other amendments to the pleadings shall be pursuant to Federal Rule of Civil Procedure 15. A defendant which has previously answered as set forth in the preceding paragraph is not required to file any further responsive pleading to any amended complaint.

In the event that any plaintiff's claim is severed from a complaint, the resulting amended complaints shall relate back to the date of the filing of the original complaint as to such claim. All other issues concerning the relation back of amendments will be controlled by the governing law.

F. In lieu of filing separate cross-claims, defendants may adopt in whole or in part the Model Cross-Claim of defendants annexed hereto by so indicating in the second paragraph of their Acknowledgement of Service in accordance with the form attached. Unless otherwise stated, such cross-claims shall be deemed to be stated against all defendants and after-joined defendants. Defendants which choose not to raise cross-claims shall so indicate in their

Acknowledgement of Service in accordance with the form attached.

All defendants will be deemed to have denied all material allegations raised in any cross-claim filed and to have incorporated any standard set of defenses to cross-claim that they may file. Defendants shall not file individual answers to cross-claims. Nothing herein shall preclude a defendant from filing cross-claims against other defendants that state claims not made in the Model Cross-Claims of defendants.

For purposes of this section "defendant" shall refer only to the manufacturing and distributing defendants and not to such third parties as the United States, Bethlehem Steel Corporation, General Dynamics Corporation or a union or union officials.

G. If any defendant desires to implead a third party in a particular case, it may do so without leave of Court within:

- (1) three months after service by Plaintiff's Answers to Defendants' First Set of Interrogatories; or
- (2) twelve months after the date of service of the complaint on the particular defendant,

whichever date is latest. Any impleader after those dates shall be pursuant to Massachusetts Rules of Civil Procedure, Rule 14. Copies of all third-party pleadings shall be served on all counsel of record.

When serving the third-party pleadings on a newly impleaded party, a copy of this Order shall be attached and attention drawn to it.

H. All pleadings in this litigation made after this date may be filed originally in standard formats in the consolidated docket. Thereafter, with respect to both pending and after-filed cases, any party may file as a pleading a single document referencing its applicable standard pleading and setting forth for incorporation therein any new allegation or defense peculiar to that individual case.

I. Plaintiffs shall dismiss any particular defendant against whom they do not intend to offer evidence at the trial tending to establish the defendant's liability at least thirty (30) days before the scheduled trial. The dismissal of any defendant pursuant to this paragraph shall not form the basis of a violation under Massachusetts Rules of Civil Procedure, Rule 11. Furthermore, if plaintiffs do not voluntarily dismiss pursuant to this paragraph, the failure to so dismiss pursuant to this paragraph will not be used to form a basis for determination that a violation of Massachusetts Rules of Civil Procedure, Rule 11 exists.

VI. INTERROGATORIESA. Interrogatories to Plaintiffs

1. The requirements of Rule 33 of the Massachusetts Rules of Civil Procedure limiting interrogatories to thirty (30) shall not apply to the cases covered by this Order.

Counsel for the defendants have previously filed a first standard set of interrogatories. In addition, they have filed a second standard set of interrogatories. Objections to these sets of interrogatories will be filed by the plaintiffs by April 5, 1985 and will be heard by me in Middlesex County as soon thereafter as can be conveniently scheduled by the Court.

After a hearing is held upon the plaintiffs' objections, I will attach my Rulings on the said objections to a copy of defendants' standard sets of interrogatories.

Thereafter, Defendants' Liaison Counsel is ordered to file forthwith one consolidated standard set of interrogatories purging those interrogatories which plaintiffs are not required to answer as a result of my Rulings.

Plaintiffs are ordered to answer directly and completely the remaining interrogatories. Any objections by counsel to my Rulings must be filed in

writing 14 days from the date of entry of said Rulings.

Notwithstanding that the two previously filed standard sets of interrogatories request information concerning the individual plaintiff's witnesses, the defendants may file a further standard set of interrogatories to elicit discoverable information concerning the plaintiffs' expert witnesses, pursuant to Massachusetts Rules of Civil Procedure 26 and 33.

Finally, by June 1, 1985 the defendants may file non-repetitive trial interrogatories limited to sixty (60) in number, including subparts, which are to be answered no later than thirty (30) days before trial.

2. General answers to defendants' consolidated standard set of interrogatories shall be filed in the consolidated docket no later than sixty days from the date of entry of my Rulings and Orders on plaintiffs' objections to defendants' interrogatories. In so far as the interrogatories require answers to particular cases only, the answers shall be filed each month after this Order is entered, 10 cases at a time on a first filed basis. In answering interrogatories relating to particular cases, cross-referencing to general answers filed in the consolidated docket is encouraged.

3. After the consolidated standard set of interrogatories referred to above are answered, any defendant may file supplemental, non-repetitive interrogatories which are relevant to the defendant's preparation of its defense in any case, as it deems appropriate. Defense counsel are admonished to exercise the utmost good faith in determining the necessity for such further interrogatories, and to grant plaintiffs' counsel liberal extensions of time to answer supplemental interrogatories.

4. As filed, the defendants' consolidated standard set of interrogatories will be deemed to apply to all pending and after-filed cases, without the necessity of further filing and service of such interrogatories in individual cases. However, in the case of a new plaintiff not represented by an attorney who has previously appeared for some other plaintiff, Defendants' Liaison Counsel will serve a copy of the interrogatories on such counsel.

Interrogatory answers in after-filed cases shall be due one hundred twenty (120) days after filing of the complaints, or the receipt of the interrogatories from Defendants' Liaison Counsel, subject to further agreement between Defendants' Liaison Counsel and the particular plaintiff's counsel on a reasonable schedule for the filing of such answers.

B. Interrogatories to Defendants

1. The requirements of Rule 33 of the Massachusetts Rules of Civil Procedure limiting interrogatories to thirty (30) shall not apply to the cases covered by this Order.

Counsel for the plaintiffs have previously filed a first standard set of interrogatories. In addition, they have filed a second standard set of interrogatories. Objections to these sets of interrogatories will be filed by the defendants by April 5, 1985 and will be heard by me in Middlesex County as soon thereafter as can be conveniently scheduled by the Court.

After a hearing is held upon the defendants' objections, I will attach my Rulings on the said objections to a copy of plaintiff's standard sets of interrogatories.

Thereafter Plaintiffs' Liaison Counsel is ordered to file forthwith one consolidated standard set of interrogatories purging those interrogatories which defendants are not required to answer as a result of my Rulings.

Defendants are ordered to answer directly and completely the remaining interrogatories. Any objections by counsel to my Rulings must be filed in

writing 14 days from the date of entry of said Rulings.

The consolidated standard set of interrogatories and defendants' answers thereto and all previously filed answers to plaintiff's standard sets of interrogatories shall apply to all pending and after-filed cases. In the event that a defendant, not previously named in these actions, is named by a plaintiff, that plaintiff's counsel will so inform Plaintiffs' Liaison Counsel who will serve a set of the standard interrogatories on such defendant.

In addition, by June 1, 1985, the plaintiffs file non-repetitive trial interrogatories limited to sixty (60) in number including subparts which are to be answered no later than thirty (30) days before trial.

2. General answers to plaintiffs' consolidated standard set of interrogatories shall be filed in the consolidated docket no later than sixty (60) days from the date of entry of my Rulings and Orders on defendants' objections to plaintiffs' interrogatories. Insofar as the interrogatories require answers relevant to particular cases only, the answers shall be filed each month after this Order is entered, 10 cases at a time on a first filed basis. In answering interrogatories relating to particular cases,

cross-referencing to general answers filed in the consolidated docket is encouraged.

3. After the consolidated standard set of interrogatories referred to above are answered, plaintiffs' counsel may serve upon any defendant supplemental, non-repetitive interrogatories which are relevant to plaintiff's preparation of cases for trial in any case, as they deem appropriate. Plaintiffs' counsel are admonished to exercise the utmost good faith in determining the necessity for such further interrogatories, and to grant defendants' counsel liberal extensions of time to answer any supplemental interrogatories.

VII. DOCUMENT REQUESTS

A. General Guidelines

1. Except as provided herein, the provisions of Massachusetts Rules of Civil Procedure 34 and 30(b)(5) will govern all requests for documents. The requesting party shall specify a reasonable time, place, and manner for making the inspection.

2. If objection is made to a request based on burdensomeness, the objecting party is encouraged to describe the burden with reasonable particularity including the location and nature of the documents and all other relevant information. If an objection is based on privilege, the objecting party is encouraged

to identify the privilege claimed and the basis upon which the claim is founded, and provide a reasonably particular description of the nature of each group or documents. The objection, if directed to the time, place and manner of inspection, shall state a counter-proposal for such matters.

3. Counsel are directed to exercise the utmost good faith in making requests for production and in responding to requests.

4. Objections based upon excessive burden must be briefed as to:

- a. Nature of the burden, with a description;
- b. Actions taken by a party to determine the extent and nature of the burden;
- c. Location of the records;
- d. Suggestions for alternate means of production, and suggestions as to conditions as to alternate means of production.

5. Any objection based upon privilege must be briefed as to the detailed reasons that a claim of privilege exists.

B. Defendants' Requests for Documents

1. Counsel for the defendants are directed to consult among themselves and develop standard documents requests for the plaintiffs. Once filed, the defendants' standard requests will be deemed to

apply to all pending and after-filed cases, without the necessity of further filing and service of the requests in individual cases, except that Defendants' Liaison Counsel shall serve a set of the standard document requests upon a plaintiff's counsel who has not previously appeared on behalf of some other plaintiff. Responses to the defendants' standard document in after-filed cases shall be due sixty (60) days after the filing of the complaints, subject to further agreement between Defendants' Liaison Counsel and the particular plaintiff's counsel on a reasonable schedule for the filing of responses.

Responses to any other document requests for the defendants shall be pursuant to Massachusetts Rules of Civil Procedure 34, subject to agreement between counsel on reasonable extensions.

2. Each plaintiff shall produce documents within sixty (60) days after a document response is filed, subject to agreement between Defendants' Liaison Counsel and the particular plaintiff's counsel on a reasonable schedule for production. Each plaintiff shall serve one set of the requested documents on Defendants' Liaison Counsel, who will permit other defendants' counsel to inspect and copy such documents as they desire. If any of the requested documents (to which the plaintiffs do not reasonably

object) are not in plaintiffs' possession, custody or control, the plaintiffs shall obtain and provide defendants with such documents or, at their option, with the necessary authorization to obtain such records from other persons.

3. After the plaintiffs have responded to the defendants' request for production of documents, counsel for the defendants may serve upon plaintiffs supplemental requests for production.

4. In responding to defendants' document requests, the plaintiffs shall identify which of defendants' requests the documents produced are intended to satisfy.

5. The plaintiffs shall state whether their search for the requested documents is complete. If the search is incomplete, the plaintiffs will produce any additional documents as soon as they are located, but in no event later than ninety (90) days before trial.

6. If a plaintiff fails to respond to a request for production by providing the requested documents the provisions of Massachusetts Rules of Civil Procedure 37(a)(4) shall apply.

C. Plaintiffs' Requests for Documents

1. Counsel for the plaintiffs are directed to consult among themselves and develop comprehensive

standard documents requests for the defendants pursuant to the Massachusetts Rules of Civil Procedure, Rule 34, taking due care to avoid duplicative requests. Responses to the plaintiffs' comprehensive standard document requests shall be due sixty (60) days after the filing of the requests, subject to further agreement between Plaintiffs' Liaison Counsel and the particular defendant's counsel on a reasonable schedule for the filing of responses.

2. Each defendant shall produce documents pursuant to plaintiffs' comprehensive standard document request within sixty (60) days after a document response is filed, subject to agreement about the specific time and place between Plaintiffs' Liaison Counsel and the particular defendant's counsel and on reasonable schedule for production. Each defendant will produce documents by serving one set of the requested document on Plaintiffs' Liaison Counsel, who will permit other plaintiffs' counsel to inspect and copy such documents as they desire.

3. The time for filing written responses to and making production in response to plaintiffs' document requests, shall be governed by Rule 34 of the Massachusetts Rules of Civil Procedure, subject to further agreement between plaintiffs' counsel and defendants' counsel on reasonable extensions of time.

4. In responding to plaintiffs' documents requests, the defendants shall identify which of plaintiffs' requests the documents produced are intended to satisfy.

5. After the defendants have responded to the plaintiff's request for production of documents, counsel may serve upon any defendants supplemental, nonrepetitive requests for production.

6. The defendants shall state whether their search for the requested documents is complete. If the search for the requested documents is incomplete, the defendants will produce any additional documents as soon as they are located, but in no event later than ninety (90) days before trial.

7. If a defendant fails to respond to a request for production by providing the requested documents the provisions of Massachusetts Rules of Civil Procedure 34(a)(4) shall apply.

VIII. REQUESTS FOR ADMISSION

Requests for Admissions are permitted in the asbestos cases covered by the Pre-Trial Order and shall be governed by Massachusetts Rule of Civil Procedure 36.

IX. DEPOSITIONS

A. All depositions of parties will be held in the Boston area, unless otherwise ordered by the Court

or agreed to by Liaison Counsel. The parties also shall make a reasonable effort to arrange for depositions in the Boston area of any witnesses. Each party and witness shall have available at the deposition all documents requested pursuant to Massachusetts Rules of Civil Procedure 30(b)(5). Parties shall make documents available for inspection at a reasonable time and place prior to the beginning of the deposition, but no later than twenty-four (24) hours before the deposition begins or at such other time as may be agreed upon by Liaison Counsel.

B. All counsel should avoid unnecessary and repetitive questioning of witnesses. Unless all parties otherwise agree, all objections, except as to the form of the question, and all motions to strike any answer or any part of an answer, shall be reserved to the time of trial and the parties should not assert any objections based on relevancy, materiality or other grounds except those stated in Paragraph IX(C). For all depositions of parties or employees of parties in these proceedings, unless otherwise directed by the Court, the parties stipulate that the filing of any deposition is waived; the deponent will be given thirty (30) days to read and sign his/her deposition; any corrections made by the witness will be made on a separate sheet or sheets of paper, and each paper will

be signed by the witness; and the deposition may be signed before any notary public. At the request of the examining party, any objection as to form shall be clearly stated, with the reason given, to enable the questioner to amend or change the question to correct any possible error as to form. The witness shall then answer the question over the objection.

C. The witness shall answer each question posed, even if an objection has been stated, unless a recognized claim of privilege is asserted. Counsel shall not direct the witness not to answer on any other ground. During the questioning of a witness, and while a question is pending, no counsel shall confer with any witness. Nothing herein shall prevent any party from seeking a protective order as described in Massachusetts Rules of Civil Procedure, Rule 26(c)(7).

D. All counsel may attend any deposition noticed in the consolidated docket. In particular, any third-party defendants may attend and cross-examine at depositions noticed in the consolidated docket.

E. Questioning by plaintiffs' counsel shall begin with interrogation by counsel as agreed upon by all plaintiffs' counsel, or, in the absence of agreement, by counsel designated by the Discovery Com-

mittee, followed by interrogation by other plaintiffs' counsel as agreed, or, in the absence of agreement, as decided upon by the Discovery Committee. Questioning by defendants' counsel shall begin with interrogation by Defendants' Liaison Counsel as agreed upon by all defendants' counsel, followed by interrogation by other defendants' counsel, in an order agreed among defendants' counsel or as decided by Defendants' Liaison Counsel where such agreement cannot be reached. When the deponent is a present or former official or employee of a defendant, that defendant's counsel shall examine first, followed by Defendants' Liaison Counsel and other defendants' counsel in the order described above.

A notice of deposition of a witness who is not a party shall designate the areas of expected interrogation by the noticing counsel. If any other counsel desires to interrogate a witness on different matters, such counsel shall file a cross-notice of deposition and designate the areas of reasonably expected interrogation. Such areas shall be considered direct examination by that party, and as to such areas, the cost of deposition shall be borne by that party. This shall be without prejudice to any party's right of examination as set forth in the next paragraph.

The scope of cross-examination at depositions shall not be limited to the scope of direct examination; but the scope of re-direct examination shall be limited to that of cross-examination, and the scope of re-cross examination shall be limited to that of re-direct examination. Individual counsel are directed to limit their questions so as to avoid repetitive and unnecessary interrogation in areas reasonably explored by Liaison Counsel.

F. With the exception of a deposition of a witness who is or was employed by one of the defendants, objections by defendants shall be made in the first instance by Defendants' Liaison Counsel. For depositions of a witness who is or was employed by one of the defendants, objections in the first instance shall be made by the attorney representing such defendant. Such objections, in both of these circumstances, shall be considered as objections made on behalf of all defendants. Counsel representing other defendants may note their individual objections when Defendants' Liaison Counsel or the individual defendant's counsel decide not to object to a question. Objections shall be made by individual defendants, and not by Liaison Counsel, when examination is conducted by counsel for co-defendants rather than counsel for plaintiffs.

G. All depositions shall be conducted with due regard for physical and emotional condition, health and disability of the deponent.

A plaintiff is a "terminally-ill plaintiff" or is "in extremis" for purposes of this Order if reliance on the provisions of Section X of Pre-Trial Order No. 4 for videotape depositions would create a substantial risk that the videotape deposition could never be held, because of the declining health of the plaintiff and because of the lack of any reasonable likelihood of improvement in the plaintiff's condition which would make a meaningful videotape deposition possible.

Where the deponent is "terminally ill" or is "in extremis" (as these terms have been herein defined), there shall be filed together with the notice of deposition, a detailed medical affidavit indicating, with specificity, the following: (1) the deponent's present diagnosis; (2) prognosis; (3) prescribed medication, if any, that would in any way affect the deponent's mental faculties; and, (4) an opinion as to the deponent's present physical and mental ability to understand and to respond to questioning and to withstand a thorough and sifting cross-examination.

With regard to depositions of "terminally-ill" or "in extremis" plaintiffs which have been noticed by

the plaintiff, in cases where interrogatories have not been served upon and/or answered by the plaintiff, the provision contained in Paragraph X(B) of this Order allowing videotape depositions of "terminally-ill" or "in extremis" plaintiffs to be taken no sooner than two days after the taking of the deponent's "discovery deposition" by stenographic means, shall be inapplicable, unless:

(1) The "discovery deposition" Notice is filed at least ten (10) working days prior to its proposed commencement;

(2) Notice of the deposition is accompanied by: (a) copies of the plaintiff's medical records which are in his or her counsel's possession; (b) written authorization to review plaintiff's hospital medical records, wherever they may be found; and, (c) a list of all repositories of plaintiff's medical records of which plaintiff's counsel is aware; and,

(3) Plaintiff provides answers to defendants' interrogatories to the extent indicated below within four working days of the filing of the deposition notice.

As used in Section IX(G)(3) of Pre-Trial Order No. 4, defendants' interrogatories need be answered

only to the extent that said interrogatories call for the disclosure of the following information:

- (1) Personal identification data of the plaintiff;
- (2) Physical or mental conditions which may have contributed to or accelerated the development of the injuries for which the plaintiff seeks damages;
- (3) Names and locations of medical treatment facilities in which the plaintiff was confined, treated or examined, along with associated dates;
- (4) The nature and extent of any permanent disabilities or residual effects;
- (5) Identification and location of physicians who diagnosed the plaintiff as having pleuritis, asbestosis or other pulmonary diseases, along with associated dates and medical institutions;
- (6) Identification of employers and descriptions of time, place, and nature of employment, including compensation and equivalent data for periods of self-employment;
- (7) Descriptions of the plaintiff's contact with asbestos or asbestos products; and,
- (8) Details of absences from work for periods of in excess of 30 days, related to health or a physical condition.

Interrogatories served pursuant to this Section may be formally answered in the usual format, or the information sought may be supplied through the affidavit of the plaintiff or his counsel. The affidavits or interrogatory answers may contain the qualification that they are true and complete to the best of the knowledge of the person signing the same.

Absent compliance with the above procedures, videotape depositions of "terminally-ill" or "in extremis" plaintiffs as described in this Section will not take place within 15 days after the taking of a stenographic "discovery deposition."

H. Any party may conduct multi-jurisdictional depositions, either within or without the designated eastern counties, in connection with other asbestos litigation, with respect to the categories of witnesses which follow. At least twenty-one (21) days notice shall be given by the party noticing any such depositions, unless otherwise ordered by the Court. In the event that a party feels that the circumstances surrounding the taking of a multi-jurisdictional deposition were such as to prejudice that party's ability to fairly participate and obtain an adequate deposition, the Court, upon motion, will consider remedial measures, including the taking of additional depositions. The witnesses to which this section applies are:

- (1) Any witness having charge of records of associations, trade, organizations, Worker's Compensation Commissions, insurance company records, or any other group or entity whose records contain documents, or whose personnel have knowledge of facts or evidence common to all pending asbestos cases;
- (2) state of the art experts;

- (3) corporate officials of the defendants;
and
- (4) government officials who possess
knowledge of facts or evidence relevant
to all asbestos cases and not merely
individual claims.

I. A notice of deposition of a witness who is not a party shall designate the areas of expected interrogatories by the notice counsel. If any other counsel desires to interrogate a witness on different matters, such counsel shall file a cross-notice of deposition and designate the areas of reasonably expected interrogation. Such areas shall be considered direct examination by that party, and as to such areas, the cost of deposition shall be borne by that party. This shall be without prejudice to any party's right of examination as set forth in the next paragraph.

X. VIDEOTAPE DEPOSITIONS

A. Videotape depositions may be taken by any party upon service of proper notice of depositions, for any use permitted by the Massachusetts Rules of Civil Procedure.

B. Videotaped depositions of deponents who have not been previously deposed and who are not "terminally ill" or "in extremis" as those terms have been herein defined may not be taken sooner than fifteen (15) days after the date of the taking of the

witness' deposition by stenographic method ("discovery deposition"). Videotape depositions of deponents who have been previously deposed in cases not covered by this order may be taken the day following the completion of the discovery deposition, if such discovery deposition was requested.

Videotape depositions of "terminally ill" or "in extremis" patients may be taken no sooner than two (2) days after the date of the taking of the witness' discovery deposition.

C. The following are procedures and guidelines for conducting videotape depositions:

- (1) A conventional stenographic transcript of the deposition shall be made and all counsel may order a copy;
- (2) The cameraman and person making the videotape recording shall take an oath to record the proceedings accurately and shall certify the correctness and completeness of the recording;
- (3) The camera shall focus on each interrogating counsel for an introduction at the beginning of his or her examination. Thereafter the camera shall focus exclusively on the witness and any demonstrative materials about which the witness is testifying.
- (4) Other matters of staging and photographic techniques shall be determined by the party conducting the deposition. If suggestions regarding such matters by opposing parties are not heeded, the parties may place their objections on the record;

- (5) The videotape shall run continuously throughout the deposition from beginning to end;
- (6) The party conducting the videotape deposition shall prepare a log index that includes the subject matter being explored, cross-referenced to the digital reading on the digital counter of the videotape equipment, a list of exhibits, and the names of all persons present at the depositions, conditioned on whether technical obstacles arise as to the accomplishment of these requirements.
- (7) The party conducting the videotape deposition shall bear the expense;
- (8) Unless the parties otherwise agree, all objections to the admissibility of testimony from a videotaped deposition, except as to the form of questions, and all motions to strike any answer or any part of an answer, shall be reserved until the time of trial. Any understanding concerning objections shall be stated on the record. The parties will submit all objections to the Court for rulings prior to trial. The provisions of the discovery rules of the Massachusetts Rules of Civil Procedure shall govern the use of the written transcript of the deposition.
- (9) No part of a videotape shall be released or made available in any way to any member of the public prior to entry of an order of the Court, upon notice to all counsel with right to object.

XI. USE OF DISCOVERY AND DEPOSITIONS FROM OTHER CASES

A. Various employees of parties, former employees of parties and other witnesses have been deposed in other cases involving alleged asbestos-related personal injuries. In addition, there has

been extensive document discovery conducted in other cases involving alleged asbestos-related personal injuries. To avoid undue expense and duplication, and unnecessary imposition upon witnesses, each defendant and third-party defendant who has not already done so shall file, within thirty days from the date hereof, a list of all depositions taken of its present or former officials and employees in any asbestos case in which the defendant was a party, the caption and docket number of the case, the jurisdiction where the case was pending, and the dates of each deposition. Each defendant and third-party defendant shall make such depositions available to other counsel. Counsel for any party may inspect or have copied, at his expense at any reasonable cost, any transcript and exhibits which he does not already have in his possession, custody or control. The provisions of Massachusetts Rules of Civil Procedure 37 shall apply to the requirements of this section.

B. Any party seeking to use any portion of a prior deposition as substantive evidence at trial shall provide to Liaison Counsel no later than ninety (90) days before a scheduled trial date a marked copy of the transcript showing the testimony sought to be used and a designation of which parties against whom each deposition is sought to be admitted in evidence,

together with the specific issue on which the deposition will be offered as evidence. Each party will then review the deposition and advise opposing counsel whether there is any objection to use of the proffered portions of the deposition in lieu of a new deposition of the witness. If there is no objection, plaintiffs' counsel and defendants' counsel shall file a stipulation stating that the selected portions of the deposition can be used as if noticed and taken in any of the consolidated cases. If there is an objection, the Court will determine, on motion of the party seeking to use it, whether the deposition may be used in this litigation in lieu of a new deposition of the witness. If any portion of such prior deposition is introduced as evidence at trial, the party introducing such evidence shall not oppose a proper jury instruction that limits the applicability of such evidence to the parties against whom it was introduced.

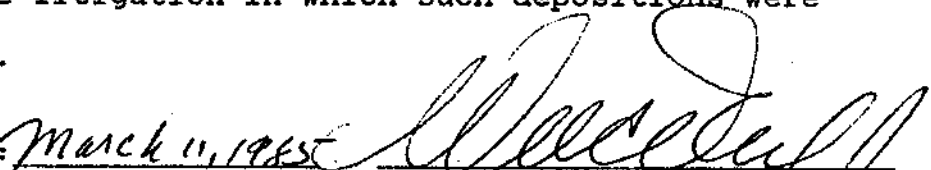
C. The standards of review for determining use at trial of the prior deposition shall be the existing rules of evidence and may include showings of good cause, relevance, economy of efforts by the Court and counsel, and no substantial prejudice to the party opposing its use, and the factors set forth in Paragraph XI(D). The burden of persuasion shall rest with

the parties seeking to use at trial deposition testimony taken in a case outside of this litigation.

D. In determining whether prior depositions may be used, the Court may in its discretion consider the following factors, among others: (1) the identity of the deponent; (2) the date of the deposition; (3) the nature of the pending case, and particularly, the place of employment, illness, product exposure, and duration of exposure to the plaintiff to asbestos products; (4) the purposes for which the deposition was taken; (5) the deponent's area and extent of corporate responsibility, if any; (6) the deponent's knowledge, at the date of the deposition, of the matters about which he was interrogated; (7) the deponent's knowledge, at the present time, of matters about which he was or is likely to be interrogated; (8) the adequacy of the opportunity for cross-examination, particularly in light of the date, nature, and purposes of the prior deposition; (9) the issues for which evidentiary use of the deposition is sought in this litigation; (10) the degree of prejudice to the party opposing use of the prior deposition; and (11) the extent of compliance with the procedural requirements of the jurisdiction where the deposition was taken.

E. If such prior depositions are approved for use at trial, an appropriate limiting instruction shall be given with respect to defendants who were not represented at the depositions or who were not parties to the litigation in which such depositions were taken.

DATED: March 11, 1985


William C. O'Neil, Jr.
Justice of the Superior Court

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

IN RE MASSACHUSETTS STATE COURT ASBESTOS LITIGATION CONSOLIDATION OF
CASES
(ALL CASES)

MODEL CROSS-CLAIM OF DEFENDANTS

1. The plaintiff employee, or the representative of his/her estate, seeks recovery for injury to the employee's health caused by alleged exposure to asbestos products during the employee's employment.

2. In some instances the plaintiff spouse seeks recovery for loss of consortium as a result of the employee's injuries.

3. In some instances the plaintiff child(ren) of plaintiff employee and spouse seek(s) recovery for loss of parental society as a result of the employee's injuries.

4. Cross-claimant herein is a corporation organized in a state other than Massachusetts.

5. Plaintiffs have alleged that all other named defendants (hereinafter "co-defendants") at all relevant times processed, manufactured, packaged, distributed, supplied, and sold for use various asbestos containing products.

6. The plaintiff(s) has/have alleged that cross-claimant and the co-defendants were negligent in that they wrongfully processed, manufactured, packaged, distributed, delivered, supplied and sold various asbestos containing products and materials and failed to render proper, adequate and correct warnings, advice, instruction and information.

7. The plaintiff(s) has/have further alleged that cross-claimant and the co-defendants expressly and/or impliedly warranted that said asbestos materials and products were of merchantable quality, fit and safe for the purposes for which they were mined, processed, manufactured, fashioned, packaged, inspected, tested, distributed, sold, intended and used, and that cross-claimant and the co-defendants breached said warranties in that said asbestos materials and products were not of merchantable quality, fit and safe for the purposes for which they were mined, processed, manufactured, fashioned, packaged, inspected, tested, distributed, sold, intended and used.

8. The plaintiff(s) has/have further alleged that cross-claimant and the co-defendants distributed, supplied, sold and placed asbestos products into the stream of commerce in a defective, dangerous and unsafe condition.

9. The plaintiff(s) has/have further alleged that the said acts and failures to act constituted gross negligence and wanton, willful and malicious misconduct, a reckless indifference to the rights of the plaintiff and a reckless disregard for the consequences cross-claimant and co-defendants knew or should have known would result.

10. The plaintiff(s) has/have further alleged that said asbestos containing products were sold or used by the plaintiff employee's employer and that the plaintiff employee was ultimately exposed to such products to his detriment.

11. Cross-claimant denies that it is liable to the plaintiff(s), as is set forth in its model and individual answers. If, however, the plaintiff(s) are found to be entitled to recover judgment against cross-claimant would be entitled to recover by way of contribution against the co-defendants since they would be joint tortfeasors with regard to plaintiff's damages.

WHEREFORE, the cross-claimant seeks judgment against the said co-defendants for contribution for the sums cross-claimant may be required to pay the plaintiffs, together with costs.

CROSS-CLAIMANT DEMANDS A TRIAL BY JURY

COMMONWEALTH OF MASSACHUSETTS

_____)	
Plaintiffs)	
)	Civil Action # _____
v.)	
)	
_____)	
Defendants)	

ACKNOWLEDGEMENT OF SERVICE

Defendant _____ hereby acknowledges receipt of a summons and a copy of plaintiff's complaint in this action.

- Defendant
- a) adopts the Model Cross-Claim Defendants.
 - b) does not adopt the Model Cross-Claim of Defendants.
 - c) adopts Model Cross-Claim of _____.*

Defendant demands a trial by jury on all issues brought by or against defendant in this action.

Respectfully submitted,

Defendant _____

Dated: _____ By its attorneys,

*Circle appropriate letter.

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, SS.

SUPERIOR COURT
CIVIL ACTION


368

IN RE:
MASSACHUSETTS
ASBESTOS
LITIGATION

CONSOLIDATED DOCKET

ORDER
(Amending Pre-trial Order No. 4)

It is hereby ORDERED that Pre-trial Order No. 4 be amended in the several respects specifically set forth in the "Joint Motion of Manufacturing and Distributing Defendants and Plaintiffs to Amend Pre-Trial Order No. 4 Regarding Inactive Asbestos Docket", which motion was allowed by the court (Morse, C.J.) by letter dated September 4, 1986, to the Clerk Magistrate of Middlesex Superior Court.


Chief Justice of the Superior Court

Dated: September 12, 1986

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, ss.

SUPERIOR COURT

IN RE:	MASSACHUSETTS STATE) COURT ASBESTOS) LITIGATION)	CONSOLIDATED) DOCKET)
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JOINT MOTION OF MANUFACTURING AND
DISTRIBUTING DEFENDANTS AND PLAINTIFFS
TO AMEND PRE-TRIAL ORDER NO. 4
REGARDING INACTIVE ASBESTOS DOCKET

The manufacturing and distributing defendants and the plaintiffs, by their Liaison Counsel hereby move the Court for an Order amending Pretrial Order No. 4 as hereinafter provided:

1. Pretrial Order No. 4 shall be amended by adding Paragraph XII, which shall provide as follows:

XII. INACTIVE ASBESTOS DOCKET

In addition to the consolidated docket there shall be a separate docket, which shall include: (1) those cases voluntarily dismissed pursuant to the terms of a Stipulation Regarding Voluntary Dismissal of Cases Upon Certain Conditions to be executed by the Plaintiffs and the Defendants (copy is attached hereto, marked Exhibit A) and (2) those claims initiated by the Notice of Claim Procedure, as provided in Paragraph XIII of this Order. Said separate docket shall be called the "Inactive Asbestos Docket" and shall be maintained by the Asbestos Docket Clerk.

2. Pre-trial Order No. 4 shall be amended by adding Paragraph XIII, which shall provide as follows:

XIII. NOTICE OF CLAIM PROCEDURE

A plaintiff may file an Affidavit of Notice of Claim with the Asbestos Docket Clerk who shall record it in the "Inactive Asbestos Docket", separate from the consolidated docket. No filing fee shall be paid.

The Affidavit of Notice of Claim shall contain the following information: (1) the names, addresses Social Security numbers and marital status of the plaintiffs; (2) a brief statement concerning the occupation and exposure history of the plaintiff; (3) a statement concerning the nature of the asbestos-related injury, disease or condition which the plaintiff alleges he or she has suffered; (4) the names of all entities with respect to which the plaintiff is giving notice of claim (hereinafter referred to as "Notice of Claim Defendants"); and (5) the name and address of each person served and the date of service.

Within 30 days of the filing of the Affidavit of Notice of Claim, the plaintiff shall serve a copy of the Affidavit of Notice of Claim upon each Notice of Claim Defendant by first class mail, postage prepaid and upon Defendants' Liaison Counsel.

Each Defendant shall file, with the Asbestos Docket Clerk, a designation of who is to be served with a copy of the Affidavit of Notice of Claim pursuant to the immediately preceding paragraph. The Asbestos Docket Clerk shall maintain these designations in the "Inactive Asbestos Docket." Service of an Affidavit of Notice of Claim upon the individual designated shall constitute sufficient notice pursuant to this section.

The filing of an Affidavit of Notice of Claim shall toll all applicable statutes of limitation regarding any claims of the plaintiff, his or her spouse, his or her children, his or her dependants or their estates, arising from the asbestos-related injury, disease or condition stated in the Affidavit of Notice of Claim except for claims based on wrongful death. Said tolling shall apply only with respect to The Notice of Claim Defendants.

Any claim initiated by the filing of an Affidavit of Notice of Claim shall be exempt from the discovery provisions of this Order.

A claim may be removed from the "Inactive Asbestos Docket" by the filing of a complaint in the office of the Clerk as provided by Mass. R. Civ. P. 3. Service of the complaint shall be accomplished in the usual manner as provided in the Massachusetts Rules of Civil Procedure.

In the event that a complaint is filed and in the event that a verdict is rendered or judgment is made for the plaintiff, interest on the amount of damages shall be calculated from the date of the filing of the complaint, not from the date of the filing of the Affidavit of Notice of Claim.

The signing of this Motion constitutes the consent of each defendant to the Affidavit of Notice of Claim procedure set forth in paragraphs XII and XIII of the proposed amendment to Pre-Trial Order No. 4 and to the tolling of the statutes of limitations in accordance with paragraph XIII of the proposed amendment to Pre-Trial Order No. 4.

XIV. INACTIVE ASBESTOS DOCKET-FORMS

A. VOLUNTARY DISMISSAL AND TRANSFER

A statement requesting voluntary dismissal of plaintiff's claims, filed pursuant to the Stipulation Regarding Voluntary Dismissal of Cases Upon Certain Conditions referred to in Paragraph XII above, shall be entitled "Statement Requesting Transfer to the Inactive Asbestos Docket" and shall be submitted in the form set forth in Exhibit B.

B. DIRECT PLACEMENT OF PREVIOUSLY UNFILED CLAIMS ONTO THE INACTIVE ASBESTOS DOCKET

A plaintiff filing an Affidavit of Notice of Claim pursuant to the Notice of Claim Procedure in Paragraph XIII above shall submit said Affidavit in the form set forth in Exhibit C.

Respectfully submitted,

THE DEFENDANTS,

By their Liaison Counsel,

Lawrence G. Cetrulo
BURNS & LEVINSON
50 Milk Street
Boston, MA 02109
(617) 451-3300

Albert P. Zabin
SCHNEIDER, REILLY, ZABIN &
COSTELLO, P.C.
One Center Plaza
Boston, MA 02108
(617) 227-7500

DATED: July 8, 1986

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, ss.

SUPERIOR COURT

IN RE:	MASSACHUSETTS)	CONSOLIDATED
	ASBESTOS)	DOCKET
	LITIGATION)	

STIPULATION REGARDING VOLUNTARY DISMISSAL
OF CASES UPON CERTAIN CONDITIONS

The plaintiffs, by their Liaison Counsel, and the manufacturing and distributing defendants, by their counsel and individually, hereby stipulate that the cases pending in the Massachusetts State Court Asbestos Litigation, Consolidated Docket may be voluntarily dismissed upon certain conditions as hereinafter provided:

1. Any plaintiff who has a case pending in the Massachusetts Asbestos Litigation, Consolidated Docket may file a statement requesting voluntary dismissal of his or her claim or claims under Mass. R. Civ. P. 41(a)(2), which claims shall be dismissed upon the following conditions:

a. The dismissal of any individual case shall be as to all plaintiffs named therein, shall be as to all defendants named therein who have signed this

Stipulation, shall apply to all claims made therein, shall be without prejudice, and shall be without costs to any party.

b. The dismissal shall toll all applicable statutes of limitation regarding any claim for an asbestos-related pleural or parenchymal condition, disease or injury and/or the claims for injury or disease alleged in plaintiff's or plaintiffs' complaint or amended complaint (hereinafter referred to as "complaint"), except for claims based upon wrongful death. Said tolling shall apply only with respect to those defendants named in the complaint dismissed. Any defendant sought to be added to such a case after it has been refiled shall be added only pursuant to Mass. R. Civ. P. 15 and after an appropriate ruling by the Court.

If the complaint does not allege a specific injury or disease, the statement requesting voluntary dismissal shall state the specific nature of the plaintiff's alleged asbestos-related pleural or parenchymal condition, disease, or injury. All statute of limitations defenses that could have been asserted at the time the statement requesting voluntary dismissal was filed and all statute of limitations defenses as to an injury or disease different from that alleged in the complaint or statement

requesting voluntary dismissal are preserved and are not tolled by the filing of a statement requesting voluntary dismissal pursuant to this Stipulation.

c. No complaint may be dismissed pursuant to this Stipulation after it has been placed on a trial list or assigned a trial date.

d. In the event that the complaint is refiled and in the event that a verdict is rendered or judgment is made for the plaintiff, interest on the amount of the damages shall be calculated from the date of the refiling of the complaint, not from the date on which the complaint was originally filed.

e. Plaintiff or Plaintiffs may refile his, her or their complaint once as a matter of course without leave of Court.

f. The refiling of the complaint shall be accomplished by the filing of a pleading entitled "Notice of Refiling of Complaint" and shall bear the individual docket number originally assigned to the complaint. A copy of the notice shall be served on defendants' Liaison Counsel and Counsel of record for the defendants in the original action. There shall be no fee for refiling a complaint.

g. Upon the refiling of the complaint, the parties shall be allowed a period of one (1) year in

which to complete discovery and thereafter the case shall be placed on the first available trial calendar.

2. As used in this Stipulation, the term "manufacturing and distributing defendants" shall include those defendants listed on Exhibit "A" attached hereto.

3. The signing of this Stipulation constitutes the consent of each signing defendant to a voluntary dismissal by any plaintiff who files a statement requesting voluntary dismissal pursuant to paragraph one above and to the tolling of the applicable statutes of limitations pursuant to paragraph 1(b) above.

DATED:

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, ss.

SUPERIOR COURT

Plaintiffs)

v.)

Defendants)

STATEMENT REQUESTING TRANSFER TO
THE INACTIVE ASBESTOS DOCKET

Pursuant to Paragraph XII of Pretrial Order No. 4, as amended, and the Stipulation Regarding Voluntary Dismissal of Cases Upon Certain Conditions, which Stipulation was approved by this Court on _____, all plaintiffs herein request a transfer of this case to this Court's Inactive Asbestos Docket and submit the following information:

1. Plaintiffs' Names and Addresses and Social Security Numbers:
2. Date of Filing of Original Complaint:
3. Specific Nature of the Alleged Asbestos-related Pleural or Parenchymal Condition, Disease, or Injury:
4. This case presently names the following defendants:
5. This case has not been placed on a trial list or assigned a trial date; and

6. All plaintiffs herein have consented to the filing of this Statement.

Plaintiff's Attorney: Name
Addresses
Telephone Number

Dated:

06/26/86

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, copies of the foregoing to Liaison Counsel and to all parties to this action in accordance with the list of counsel on file with the clerk.

Lawrence G. Cetrulo

Lawrence G. Cetrulo
BURNS & LEVINSON
50 Milk Street
Boston, MA 02109
(617) 451-3300

Dated: 6/27/86

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, SS.

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

IN RE: MASSACHUSETTS STATE COURT)
ASBESTOS LITIGATION) MASSACHUSETTS
) ASBESTOS CASES
) CONSOLIDATED DOCKET

PRETRIAL ORDER NO. 5

(Case Management and Discovery)

As a result of conferences with counsel and the Special Master and in order to provide an efficient and self-executing process for case management and discovery, the Court hereby enters the following Pretrial Order No. 5. This Order is designed to structure this complex, multi-party litigation as it has matured and changed in terms of the nature of the parties and legal and factual issues, to secure the just, speedy and inexpensive determination of each individual case.

I. EFFECT OF ORDER

Except as otherwise directed by the Court, this Order will be applicable to all pending and future cases in the Massachusetts State Court Asbestos Personal Injury Litigation, provided, however, that this Order shall not apply to Trial Lists for months prior to January, 1994.

To the extent the provisions of this Order are inconsistent with or contrary to any prior Orders of this Court, the provisions of this Order shall supersede any such inconsistent or contrary provisions.

The time standards set forth in this Order may be extended only by order of the Court or the Special Master, or by agreement of the parties, provided that any such agreement shall be subscribed to in writing by all parties affected by the agreement and approved by the Court or Special Master.

Any findings, rulings or recommendations of the Special Master pursuant to this Order shall be subject to review by the Court, but such findings, rulings or recommendations shall stand unless overruled by the Court.

II. PLAINTIFFS' LIAISON COUNSEL AND DEFENDANTS' LIAISON COUNSEL

The Court appoints David McMorris, Esq., Thornton, Early & Naumes, 60 State Street, Boston, MA, as liaison counsel for all plaintiffs pursuant to the provisions of Paragraph IV(B) of Pretrial Order No. 4. Plaintiffs' Liaison Counsel shall be paid for services rendered in accordance with the provisions of that Paragraph.

The Court continues the appointment of Lawrence Cetrulo, Esq., Peabody & Arnold, 50 Rowes Wharf, Boston, MA, as liaison counsel for all defendants pursuant to the provisions of Paragraph IV(A) of Pretrial Order No. 4. Defendants' Liaison Counsel shall be paid for services rendered in accordance with the provisions of that Paragraph.

III. PLAINTIFFS' DISCOVERY OF DEFENDANTS

A. Plaintiffs' Standard Discovery Requests

1. Revised Interrogatories and Requests for Production of Documents. Counsel for the plaintiffs are directed to consult among themselves and the Special Master and to revise the Standard Interrogatories and the Standard Requests for Production of Documents to Defendants which are presently in use to reflect the changing nature of the asbestos litigation and the diversity of defendants now involved in the litigation (hereafter "Plaintiffs' Revised Interrogatories and Requests for Production"). Plaintiffs' Revised Interrogatories and Requests for Production shall be drafted with reasonable specificity, avoiding broad, generic requests for information and avoiding duplicative interrogatories or requests. Plaintiffs' Revised Interrogatories or Requests for Production shall include separate sections that are specifically tailored for each type of defendant (manufacturer, distributor, seller, broker, etc.). For those defendants that qualify for more than one defendant category, the defendant shall fully respond to all applicable interrogatories and requests for production. Any defendant who has previously responded to interrogatories or requests for production of documents in accordance with Paragraphs VI (B) and VII (C) of Pretrial Order No. 4 may respond to the Plaintiffs' Revised Interrogatories and Requests for Production by specific citation and incorporation by reference of such prior responses. If such prior responses are not fully responsive to the Plaintiff's Revised Interrogatories and Requests for Production, then in addition to such specific citation and incorporation by reference, the defendant shall provide all additional information or documents required to make each such response complete.

2. Length. The requirements of Rule 33 of the Massachusetts Rules of Civil Procedure limiting interrogatories to thirty shall not apply to the revised interrogatories, but the revised interrogatories shall be reasonable in number.

3. Filing and Objections. Plaintiffs' Liaison Counsel shall file with the Court, the Special Master and Defendants' Liaison Counsel one set of Revised Interrogatories and Revised

Requests for Production. Within 30 days of such filing, any defendant may file objections to the general form or content of the Revised Interrogatories or Revised Requests for Production, which shall be ruled on by the Special Master or Court. Any objection to the general form and content of the Revised Interrogatories or Revised Requests for Production of Documents that is not raised at this time shall be considered waived. After the Special Master or Court has ruled on the defendants' objections, the Revised Interrogatories and the Revised Requests for Production may be served upon any defendant.

4. Responses. Each defendant shall, subject to Paragraph III (A) (1) herein, serve answers to Plaintiffs' Revised Interrogatories and responses to Plaintiffs' Revised Requests for Production within 90 days after service of those documents. Defendants shall directly and completely answer all interrogatories and respond to all requests for production, unless they have an objection to the discovery request that has not previously been raised before and ruled on by the Special Master or the Court, in which case they shall state that objection.

B. Additional Discovery Due From Defendants

Within 30 days of the entry of this Order, Plaintiffs' Liaison Counsel, after consultation with other plaintiffs' counsel, may serve on any defendant a demand that, to the extent such information is available, it (1) segregate from its national sales records those documents which reflect sales to the New England states, and (2) provide the names and current or last known addresses of its employees, present or former, who supervised the sale of asbestos products in New England. Any defendant who has previously been ordered by a court of competent jurisdiction to undertake such activities and who has not already complied with said order shall comply fully with the demand of Plaintiffs' Liaison Counsel within 30 days of its receipt. Any defendant who has not previously been so ordered by a court of competent jurisdiction shall either comply fully with the demand of Plaintiffs' Liaison Counsel within 30 days of its receipt

or file an objection with the Special Master stating the grounds upon which the defendant opposes the demand. The parties shall thereafter comply with the Special Master's rulings on any such objection. Any disputes regarding a defendant's compliance with this Paragraph shall be resolved in accordance with the procedures set forth in Paragraph D. below.

C. Defendant's Responses to Plaintiff's Disclosure Form

Within 60 days of its receipt of a Plaintiff's Disclosure Form as required under Part IV, below, each defendant shall either admit or deny the plaintiff's allegations, contained in Part V of said form, relative to the presence of the defendant's asbestos products or the defendant's agents or employees at each jobsite or other exposure site. Such allegations shall be deemed admitted unless the defendant serves on the plaintiff a written statement signed under the pains and penalties of perjury specifically denying the allegations or setting forth in detail why the defendant cannot truthfully admit or deny the allegation. A denial shall fairly meet the substance of the allegation, and when good faith requires that a defendant qualify its answer or deny only a part of the allegation, it shall specify so much of the allegation as is true and qualify or deny the remainder. A defendant may not give lack of information or knowledge as a reason for failure to admit or deny unless it states that it has made a reasonable inquiry and that the information known or readily obtainable by it is insufficient to enable it to admit or deny. Any disputes regarding a defendant's compliance with this Paragraph shall be resolved in accordance with the procedures set forth in Paragraph D, below. This Paragraph shall be construed harmoniously with Massachusetts Rule of Civil Procedure 36, second paragraph.

D. Procedure for Resolving Discovery Disputes

The principles which shall guide the parties, counsel, the Special Master and the Court are: (1) information should be freely exchanged; and (2) the parties should resolve discovery disputes unaided.

Within 60 days after a defendant responds to Plaintiffs' Revised Discovery Requests, a plaintiff may inform the defendant of any perceived inadequacy in the defendant's discovery responses.

If a plaintiff informs a defendant of a perceived inadequacy in its discovery responses, counsel for each of the parties shall, within 20 days of such notice, confer in good faith to resolve the dispute or to narrow the areas of disagreement to the fullest extent possible. If the dispute cannot be resolved, plaintiff may file a motion to compel a further answer or response with the Special Master within 14 days of the conference. Any such motion shall be accompanied by an affidavit by plaintiff's counsel attesting to the fact that the parties have conferred in good faith in an effort to resolve or narrow the issues in dispute. The defendant served with such a motion shall respond thereto within 14 days. If necessary, the Special Master may conduct a hearing on the motion. The Special Master shall make findings on each issue raised in the motion and may direct the parties to act in accordance with those findings. The Special Master may also recommend that costs or other appropriate sanctions be imposed on one or more of the parties. The parties shall have 30 days in which to comply fully with the directives of the Special Master, subject to enlargement or limitation by the Special Master in special circumstances.

IV. DEFENDANTS' DISCOVERY OF PLAINTIFFS

A. Plaintiffs' Disclosure Forms

I. Execution and Service. Within one year of filing a Complaint (after the entry of this Order), each plaintiff shall serve on each named defendant a completed and executed

Plaintiff's Disclosure Form in the form attached hereto as Appendix A, or in a form substantially similar to and including all the information requested in Appendix A. In addition, each plaintiff shall produce to each named defendant copies of those documents set forth in Section VI of Appendix A at the time the Form is served. The plaintiff's provision of the Plaintiff's Disclosure Form and documents required under this Paragraph shall be in lieu of the disclosures previously required under subsections (b) through (d) of Paragraph V (B) of Pretrial Order No. 4. A Plaintiff's Disclosure Form with accompanying documents shall be served upon any new defendant sought to be added to a case by the plaintiff's motion to amend the Complaint. With regard to any case in which the Complaint was filed prior to the entry of this Order, such Form must be served in accordance with the provisions of Paragraph IV D. below, or else the case shall be dismissed. A plaintiff's responses to a Plaintiff's Disclosure Form may be used at trial in the same manner as answers to interrogatories pursuant to Paragraph (b) of Rule 33 of the Massachusetts Rules of Civil Procedure.

2. Effect. Any defendant named in a Complaint but not identified in the Plaintiff's Disclosure Form shall, by operation of this paragraph, be deemed dismissed from the case without prejudice and without costs to any party; provided that any previously filed Cross-Claim pending against such a defendant shall not likewise be subject to dismissal on that basis. A plaintiff's claim against any defendant so dismissed may be revived only if the Court later approves, on good cause shown, a motion filed by the plaintiff to amend the Complaint to add that defendant. If a motion to amend a Complaint to add a defendant is filed after the case has been placed on a trial list, the Court shall consider whether allowance of the motion would necessitate a delay in the proceedings in order to permit the added defendant to prepare for trial. If the Court allows the motion and it concludes that such a delay in the proceedings will be required, either the entire case will be removed from the trial list, or the claim added by the amendment will be severed from the case and removed from the trial list.

B. Interrogatories and Requests for Production to Plaintiffs

1. Revised Interrogatories and Requests for Production. Counsel for the defendants are directed to consult among themselves and the Special Master to revise the Standard Interrogatories and the Standard Requests for Production of Documents to Plaintiffs which are now in use (hereafter "Defendants Revised Interrogatories and Requests for Production"). Defendants' Revised Interrogatories and Requests for Production shall be drafted with reasonable specificity, avoiding broad, generic requests for information and avoiding duplicative interrogatories or requests.

2. Length. The requirements of Rule 33 of the Massachusetts Rules of Civil Procedure limiting interrogatories to thirty shall not apply to the revised interrogatories, but the revised interrogatories shall be reasonable in number.

3. Filing and Objections. Defendants' Liaison Counsel shall file with the Court, the Special Master and Plaintiffs' Liaison Counsel one set of Revised Interrogatories and Revised Requests for Production. Within 30 days of such filing, any plaintiff may file objections to the general form or content of the Revised Interrogatories or Revised Requests for Production, which shall be ruled on by the Special Master. Any objection to the general form and content of the Revised Interrogatories or Revised Requests for Production of Documents that is not raised at this time shall be considered waived. After the Special Master has ruled on the plaintiffs' objections, the Revised Interrogatories and Revised Requests for Production shall be completed and executed by each plaintiff as provided below.

4. Responses. With regard to any case in which the Complaint is filed after the entry of this Order, each plaintiff shall directly and completely respond to the Defendants' Revised

Interrogatories and Requests for Production within 180 days of the filing of the Complaint, unless he has an objection to the discovery request that has not previously been raised before and ruled on by the Special Master or the Court, in which case he shall state that objection. In any case where the plaintiff seeks advancement on the trial docket due to exigent health circumstances, such plaintiff shall certify that he or she has already complied with all standard discovery requests, including the Plaintiff's Disclosure Form, Defendants' Revised Interrogatories and Defendants' Requests for Production. With regard to any case in which the Complaint was filed prior to the entry of this Order, responses to the Defendants' Revised Interrogatories and Requests for Production must be served in accordance with the provisions of Paragraph IV D. below, or else the case shall be dismissed.

C. Procedure For Resolving Discovery Disputes

The principles which shall guide the parties, counsel, the Special Master and the Court are: (1) information should be freely exchanged; and (2) the parties should resolve discovery disputes unaided.

Within 30 days after a plaintiff responds to Defendants' Revised Discovery Requests, a defendant may inform the plaintiff of any perceived inadequacies in plaintiff's discovery responses.

If a defendant informs a responding plaintiff of a perceived inadequacy with the plaintiff's discovery responses, counsel for each of the parties shall, within 20 days of such notice, confer in good faith to resolve the dispute or to narrow the areas of disagreement to the fullest extent possible. If the dispute cannot be resolved, defendant may file a motion to compel a further answer or response with the Special Master within 14 days of the conference. Any such motion shall be accompanied by an affidavit by defendant's counsel certifying that the parties have conferred in good faith in an effort to resolve or narrow the issues in dispute. The plaintiff served with such a motion shall respond thereto within 14 days. If necessary, the Special Master

may conduct a hearing on the motion. The Special Master shall make findings on each issue raised in the motion and may direct the parties to act in accordance with those findings. The Special Master may also recommend that costs or other appropriate sanctions be imposed on one or more of the parties. The parties shall have 30 days in which to comply fully with the directives of the Special Master, subject to enlargement or limitation by the Special Master in special circumstances.

D. Plaintiff's Discovery in Existing Cases

The following procedures shall govern the plaintiffs' provision of Plaintiff's Disclosure Forms and responses to Defendants' Revised Discovery Requests in all cases in which the Complaint was filed prior to the entry of this Order. Commencing on the first day of the month following the Special Master's rulings on the plaintiffs' objections pursuant to Paragraph IV(B) (3), above, defendants' liaison counsel shall provide each plaintiff's counsel with a list of the ten oldest cases appearing on the Consolidated Docket in which plaintiff's counsel represents the plaintiff. On the first day of each successive month, defendants' liaison counsel shall provide each plaintiffs' counsel with a list of the ten next oldest cases so appearing, until such time as all cases in which the Complaint was filed prior to the entry of this Order have been so listed. No such cases shall be listed under this Paragraph prior to one year from the date of the filing of the Complaint.

No later than the last day of each month in which such lists are provided, plaintiffs' counsel shall respond for each case appearing on such list by:

1. Serving upon each defendant in the case a completed and executed Plaintiff's Disclosure Form and responses to Defendants' Revised Discovery Requests, provided that the plaintiff shall not be obliged to file responses to Defendants' Revised Discovery Requests if he had already filed responses to the Defendants' Interrogatories and Requests

for Production of Documents prior to the entry of this Order. Disputes regarding such prior responses to Defendants' Interrogatories and Request for Production of Documents may be resolved in accordance with the procedures set forth in Paragraph IV (C), above:

2. Transferring the case to the inactive asbestos docket, as provided in Paragraph VI, below, provided that service of the Plaintiff's Disclosure Form and plaintiff's responses to Defendants' Revised Discovery Requests shall be required to be served within 180 days of the refiling of a Complaint in any case so transferred: or

3. Informing the Court and defendants' liaison counsel that the case has been dismissed or otherwise resolved.

In lieu of the above, the following procedures shall apply to all cases which appear on trial lists for the calendar year 1994. Plaintiff's counsel must serve on each defendant no later than 150 days before the first day of the trial month (or such greater or lesser time as the Court may order) a Plaintiff's Disclosure Form and responses to Defendants' Interrogatories and Requests for Production of Documents for each case appearing on the list. Any disputes regarding the requirements of this paragraph and the preceding two paragraphs may be submitted to the Special Master after the parties have conferred in a good faith attempt to resolve the dispute or narrow the issues in disagreement.

**V. DISCOVERY DEPOSITIONS BY PLAINTIFFS OF
VARIOUS CORPORATE, PRIVATE AND PUBLIC ENTITIES**

Plaintiffs' Liaison Counsel may conduct within the Consolidated Docket depositions of representatives of various corporate, private and public entities pursuant to Rule 30(b)(6) of the Massachusetts Rules of Civil Procedure for the purpose of discovering whether persons were

exposed to asbestos fibers and asbestos-containing products at sites owned, operated or maintained by those entities, and identifying the names of the manufacturers, sellers, installers or other users of such fibers and products. Any disputes regarding the scope and conduct of such depositions shall be submitted to and resolved by the Special Master.

VI. INACTIVE ASBESTOS DOCKET

The procedures relative to voluntary dismissal of cases, tolling of statutes of limitation, and refiling of complaints, as set forth in the September 12, 1986 amendment to Pretrial Order No. 4 and the joint motion and stipulation of the parties incorporated therein, are hereby confirmed. Such procedures shall remain fully in effect in the Massachusetts asbestos personal injury litigation, except that the following revisions shall apply after the entry of this Order:

1. Transfer of Cases From Trial Lists to the Inactive Docket.

Cases appearing on a trial list may be transferred to the inactive docket, but only by leave of the Court, upon recommendation of the Special Master.

2. Certification by Plaintiff's Counsel

Whenever, after the filing of a complaint, plaintiff's counsel seeks to transfer a case to the inactive docket, he or she must certify within the Statement Requesting Transfer to the Inactive Asbestos Docket that the transfer is not being sought solely for the purpose of delaying the trial.

VII. MISCELLANEOUS ISSUES

A. Amendment of Complaints to Add Wrongful Death Claims

In addition to amendments relating to matters stated in Paragraph V(E) of Pretrial Order No. 4, plaintiffs may, without leave of the Court, amend complaints to add claims of wrongful death which are alleged to have occurred after the filing of the complaint and as a result of exposure to asbestos.

B. Depositions of "Terminally-Ill" or "In Extremis"

Plaintiffs

Unless otherwise agreed by all parties or ordered by the Court or the Special Master, no deposition of a plaintiff who is "terminally ill" or "in extremis," as defined in Paragraph IX(G) of Pretrial Order No. 4, shall be conducted in continuous session for more than two hours. Any disputes regarding the conduct of depositions of "terminally ill" or "in extremis" plaintiffs shall be submitted to and resolved by the Special Master.

C. Reports on Depositions of Defendants' Employees

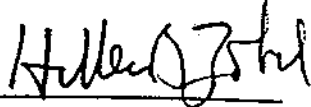
At the request of Plaintiffs' Liaison Counsel, a defendant shall report the names of every present or former employee who has been deposed or have given trial testimony in an asbestos personal injury or property damage case, the dates of the deposition or trial testimony, and the caption and docket number of the case, the jurisdiction in which the deposition or trial testimony was taken, and the name and address of the Court Reporter, if known. No defendant shall be obliged to provide or update such a report more than once every six months.

D. Video Depositions of Expert Witnesses

In lieu of live testimony, the parties may present the testimony of any expert witness at trial by way of video deposition. The qualifications of any expert whose testimony is presented

in that fashion shall be presented in the form of a written curriculum vitae. Any such video deposition must be edited by the video technician to eliminate any unnecessary delays in the presentation of the testimony and should be limited in time in accordance with the fair and expeditious introduction of the evidence.

DATED: 11/3/93


Hiller B. Zobel,
Associate Justice
Superior Court

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, ss.

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

Plaintiff
v.
_____ et al.
Defendants.

CIVIL ACTION
NO. _____

PLAINTIFF'S DISCLOSURE FORM

Attorney for Plaintiff
[Address, etc.]

I. IDENTIFICATION OF PLAINTIFF /DEPENDENTS

Plaintiff Information	
Name:	
Social Security No.:	
Address:	
Date of Birth:	
Sex:	
Marital Status:	

Spousal Information	
Name:	
Address:	
Date of Birth:	Date of Marriage:

Dependents	
Names:	
Dates of Birth:	
Relationship:	

Death Case Information	
Date of Death:	
Residence at Death:	
Cause of Death:	
Autopsy:	

II. ASBESTOS-RELATED CONDITIONS

Condition/Location/Description (including symptoms)
Physician and Hospital, if applicable (name, address)
Date of Onset of Symptoms:
Date of Diagnosis:

Condition/Location/Description (including symptoms)
Physician and Hospital, if applicable (name, address)
Date of Onset of Symptoms:
Date of Diagnosis:

Condition/Location/Description (including symptoms)
Physician and Hospital, if applicable)
Date of Onset of Symptoms:
Date of Diagnosis:

III. SMOKING HISTORY

Was the claimant ever a smoker?

Type of products smoked: Cigarettes _____ Cigars _____ Pipe _____

Please document smoking history over time:

TOBACCO PRODUCT	QUANTITY PER DAY	BRAND NAME (FILTERED/NON-FILTERED)	FROM (YEAR)	TO (YEAR)
CIGARETTES	_____ packs			
CIGARETTES	_____ packs			
CIGAR				
PIPE				

IV. EMPLOYMENT AND DISABILITY INFORMATION

Is plaintiff currently employed?

If yes, state whether fulltime or parttime and provide employers name and describe employment.

Is plaintiff retired?

If yes, date and reason for retirement:

Is plaintiff looking for employment?

Is or was plaintiff disabled?

If yes, state:

- (a) Whether total or partial:
- (b) Nature and extent of disability:
- (c) Cause(s) of disability:
- (d) Date(s) of disability:

V. PLAINTIFF'S PRODUCT IDENTIFICATION/EXPOSURE SHEET

INSTRUCTIONS: This Section V. (Plaintiff's Product Identification/Exposure Sheet) is to be completed separately for each jobsite or other exposure site and for each separate employer or time period of exposure for the same site, as necessary. As indicated below, specific information is to be provided separately for each product exposure. Use additional sheets as necessary where numerous product exposures are alleged at a single site.

Name:	Civil Action No.:
Employer (if applicable):	
Jobsite or Other Exposure Site (address):	Duties at Exposure Site:
New Construction or Repair (if applicable):	

Product Exposure 1 at above site:

Defendant:	Defendant Status (manufacturer, installer)
Product Type:	Brand Name:
Product Identification Evidence (Describe or attach documents, name and address of witnesses, etc.)	
Specific Location(s) of Exposure:	Dates of Exposure:
Exposure Evidence (Describe specific facts and circumstances establishing the nature, extent and duration of exposure to above product, e.g. whether plaintiff personally used the product and, if not, the evidence establishing the nexus between plaintiff and product exposure including reference to documents and expected co-worker testimony.)	

Product Exposure 2 at above site:

Defendant:	Defendant Status (manufacturer, installer)
Product Type:	Brand Name:
Product Identification Evidence (Describe or attach documents, name and address of witnesses, etc.)	
Specific Location(s) of Exposure:	Dates of Exposure:
Exposure Evidence (Describe specific facts and circumstances establishing the nature, extent and duration of exposure to above product, e.g. whether plaintiff personally used the product and, if not, the evidence establishing the nexus between plaintiff and product exposure including reference to documents and expected co-worker testimony.)	

Product Exposure 3 at above site:

Defendant:	Defendant Status (manufacturer, installer)
Product Type:	Brand Name:
Product Identification Evidence (Describe or attach documents, name and address of witnesses, etc.)	
Specific Location(s) of Exposure:	Dates of Exposure:
Exposure Evidence (Describe specific facts and circumstances establishing the nature, extent and duration of exposure to above product, e.g. whether plaintiff personally used the product and, if not, the evidence establishing the nexus between plaintiff and product exposure including reference to documents and expected co-worker testimony.)	

VI. PRODUCTION OF DOCUMENTS

- A. All medical records in plaintiff's or plaintiff's attorney's possession relating to plaintiff's asbestos-related condition(s).

- B. Duly executed authorizations to obtain plaintiff's medical records and other materials including x-rays and pathology.

- C. A duly executed authorization Form SSA 7050-F3 (Department of Health and Human Services, Social Security Administration) or, if available, a print-out from the Social Security Administration showing detailed earnings information for plaintiff.

This Plaintiff's Disclosure Form is signed under the pains and penalties of perjury this
_____ day of _____, 199__.

Plaintiff

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, SS.

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

IN RE: MASSACHUSETTS STATE COURT
ASBESTOS LITIGATION

)
) MASSACHUSETTS
) ASBESTOS CASES
) CONSOLIDATED DOCKET

PRETRIAL ORDER NO. 6

(Pretrial Preparation)

As a result of conferences with counsel and the Special Master and in order to provide an efficient and self-executing process for the determination of future trial lists and for pretrial preparation, the Court hereby enters the following Pretrial Order No. 6.

I. EFFECT OF ORDER

Except as otherwise directed by the Court, this Order will be applicable to all pending and future cases in the Massachusetts State Court Asbestos Personal Injury Litigation, provided, however, that this Order shall not apply to Trial Lists for months prior to January, 1994.

To the extent the provisions of this Order are inconsistent with or contrary to any prior Orders of this Court, the provisions of this Order shall supersede any such inconsistent or contrary provisions.

The time standards set forth in this Order may be extended only by order of the Court or the Special Master, or by agreement by the parties, provided that any such agreement shall be subscribed to in writing by all parties affected by the agreement and approved by the Court or Special Master.

Any findings, rulings or recommendations of the Special Master pursuant to this Order shall be subject to review by the Court, but such findings, rulings or recommendations shall stand unless overruled by the Court.

II. ESTABLISHMENT OF TRIAL MONTHS AND TRIAL LISTS

A. Establishment of Trial Months

After consultation with the Special Master and counsel, the Court shall determine the number of trial months for the upcoming year, designate when those trial months shall occur and determine the number of cases that shall appear on the trial list for each such month. On recommendation of the Special Master, the Court shall also designate the dates within each trial month upon which cases will be tried and the order in which the trials shall occur. The trial schedule shall be subject to change by the Court in order to meet unforeseen circumstances, and cases may be assigned to trial before additional trial judges in order to effectuate the efficient administration of justice.

B. Designation of Trial Lists and Cases to be Prepared for Trial

Unless otherwise directed by the Court, the Special Master shall, after consultation with the Court and counsel, designate the cases that shall appear on the trial list for each trial month, the order in which those cases shall appear, and the specific cases on the list which shall be

prepared by the parties for trial. The Special Master shall make those determinations based on the chronological order of the case filings, the disease mix involved in the cases on the trial list and the disease mix for the litigation as a whole, the exigent condition of the plaintiffs' health, grouping of cases by plaintiffs' counsel, defendant or case type, or such other factors as the Special Master finds will promote the fair and efficient resolution of cases by settlement or trial.

The primary objective to be served in the designation of trial lists in the near future is to eliminate the backlog of asbestos personal injury cases to the point where cases shall be reached for trial or otherwise fully resolved within three years of the filing of the complaint. Toward that end, cases that have been pending for more than three years will be given priority,

regardless of other factors. However, cases involving plaintiffs who are terminally ill or in extremis may also be advanced on the trial list, if such advancement is consistent with the principles of equity and fairness.

The Court expects that as of January 1 of every year, no asbestos personal injury case shall remain without an entered judgment except those cases commenced within the preceding three years. Failure to meet this expectation will result in substantial modification of the current Pretrial Orders.

In order to meet the Court's objectives on case dispositions and to provide for the fair and expeditious resolution of cases in the Consolidated Docket, it is contemplated that trial lists, each consisting of approximately fifty cases, shall be designated for four months in each calendar year. It is further contemplated that six cases on each such list shall be designated for intensive preparation and trial. This schedule may be altered if deemed necessary by the Court to meet the Court's case disposition objectives. Prior to implementing any such change, the Court shall consider whether any related changes should also be made in the pretrial preparation procedures and time standards set forth in this Order.

The Special Master shall issue the proposed trial list at least 180 days prior to the first day of the trial month for which the list applies. The Special Master shall designate the specific cases on the list which shall be prepared by the parties for trial at least 170 days prior to the first

day of the trial month. Any case appearing on a trial list that has not been designated for trial will not be called for trial during the trial month unless the Court or Special Master first notifies the parties of the change in designation of the case and determines that there is an adequate period for pretrial preparation between the date of such notice and the date upon which the case shall be tried.

If a motion to amend a Complaint to add a defendant is filed after a case has been placed on a trial list, the Court shall consider whether allowance of the motion would necessitate a delay in the proceedings in order to permit the added defendant to prepare for trial. If the Court allows the motion, on good cause shown, and it concludes that such a delay in the proceedings will be required, either the entire case will be removed from the trial list, or the claim added by the amendment will be severed from the case and removed from the trial list.

C. Pretrial Preparation Schedule

1. Plaintiffs' counsel may dismiss any case appearing on the trial list at any time up to 170 days before the first day of the trial month. Counsel may transfer such cases to the inactive asbestos docket only by leave of the Court or the Special Master. Any case so dismissed or transferred may only be replaced by another case to be added to the trial list pursuant to the directions of the Court or the Special Master.

2. With respect to each of the cases on the trial list that have been designated by the Special Master for trial preparation, each plaintiff and defendant may conduct discovery on the issues of product identification and exposure at any time up to 90 days before the first day of the trial month, including plaintiff and co-worker depositions and Rule 30 (b) (6) depositions of identified defendants. Discovery on the issues of product identification and exposure shall be closed for those cases as of 90 days before the first day of the trial month unless, at the request of a party, the Court or Special Master permits an extension of the product identification and

exposure discovery deadline for good cause shown. Any party requesting such an extension shall specify the grounds upon which the extension is sought and the additional discovery that the party proposes to conduct during the extension. Any such extension granted by the Court or Special Master shall specify the parties affected by the extension, the discovery to be permitted during the extension, and the deadline for completion of that discovery. If the Court or Special Master finds that a plaintiff intentionally delayed supplementation of the Plaintiff Disclosure Form in order to prejudice the defendants' ability to conduct discovery under this Paragraph, then in lieu of such an extension, the Court or Special Master may make such order as justice requires, including, but not limited to, removal of the case from the trial list, dismissal and monetary sanctions..

3. No later than 90 days before the first day of the trial month, the plaintiff in each of the cases on the trial list that have been designated by the Special Master for trial preparation shall file a motion to dismiss those defendants against whom the plaintiff does not intend to proceed.

4. No later than 90 days before the first day of the trial month, the plaintiff in each of the cases on the trial list that have been designated by the Special Master for trial preparation may supplement the Plaintiff Disclosure Form with respect to product identification, defendant status and exposure. Thereafter, a plaintiff may not proffer any evidence to support a claim as to product identification, defendant status or exposure which has not been included in his Plaintiff Disclosure Form except by leave of the Court, on good cause shown, based upon the following findings:

- a. receipt of new information not previously in the plaintiff's ken;
- b. prior due diligence by plaintiff in attempting to discover the new information;
- and
- c. substantial prejudice to the plaintiff from denial of the amendment;

or unless the plaintiff can demonstrate:

- d. prior non-disclosure of the information due to fraud, misrepresentation, misconduct or material failure to comply with discovery requests by an adverse party.

5. With respect to each of the cases on the trial list that have been designated by the Special Master for trial preparation, any defendant may, no later than 75 days before the first day of the trial month, file with the Court and the Special Master and serve upon the plaintiff a motion for summary judgment. Oppositions to such motions shall be filed and served by the plaintiffs within 10 days thereafter. The Special Master, if he deems necessary, shall hold a hearing on said motions and shall make recommended rulings to the Court. Motions for summary judgment based on information discovered less than 75 days before the first day of the trial month may, in the Court's discretion, be considered and ruled upon before the first day of the trial month.

6. With respect to each of the cases on the trial list that have been designated by the Special Master for trial preparation, the following pretrial preparation schedule shall apply:

- a. No later than 150 days before the first day of the trial month, plaintiff's counsel shall provide to defendants' liaison counsel a signed copy of three (3) authorization forms allowing defendants' counsel to obtain written medical and other relevant records. Each defendant's counsel shall provide to plaintiff's counsel copies of all documents, records and exhibits that the defendants have obtained through the use of any authorization forms received from the plaintiff, as soon as they are received by the defendant. Defendants are under a continuing obligation to supplement this information. Plaintiff

may supplement his exhibit list in response to information received from the defendants pursuant to this provision after the date for identifying exhibits. Plaintiffs are likewise under a continuing obligation to supplement requests for production of documents by providing defendants with copies of medical and other relevant records as they are received. Defendants may supplement their exhibit lists in response to information so received from the plaintiff after the date for identifying exhibits.

- b. No later than 150 days before the first day of the trial month, all parties shall respond or supplement any previous responses, as required, to standard discovery requests relevant to these cases, including interrogatories and requests for production of documents.

- c. No later than 105 days before the first day of the trial month, plaintiff shall furnish defendants' counsel with all pathology samples and reports, and all x-rays, CT scans and other diagnostic test results in plaintiff's possession. All such materials shall be returned to the plaintiff no later than 60 days before the first day of the trial month. No later than 105 days before the first day of the trial month, plaintiff shall file lists of the names and addresses of the expert witnesses whose testimony plaintiff will offer at trial, together with a Rule 26(b) disclosure statement. There will be no depositions of expert witnesses except as necessary and upon issues with regard to which the witnesses have not previously been deposed or testified in the pending case or in any other asbestos case, state or federal, anywhere in the United States, so long as plaintiff provides defendants with a transcript or transcripts of the witnesses' prior testimony and certifies that the witnesses' testimony at trial will be consistent with such prior recorded testimony. Any such depositions

shall be limited to issues upon which the expert will testify in the pending case, and they must be conducted no later than 20 days before the first day of the trial month.

- d. No later than 60 days before the first day of the trial month, defendants shall file a list of the names and addresses of the expert witnesses whose testimony they will offer at trial, together with a Rule 26(b) disclosure statement. There will be no depositions of expert witnesses except as necessary and upon issues with regard to which the witnesses have not previously been deposed or testified in the pending case or in any other asbestos case, state or federal, anywhere in the United States, so long as defendants provide plaintiff, and all other defendants who request same, with a transcript or transcripts of the witnesses' prior testimony and certify that the witnesses' testimony at trial will be consistent with such prior recorded testimony. Any such depositions shall be limited to issues upon which the expert will testify in the pending case, and they must be conducted no later than 10 days before the first day of the trial month.
- e. Any expert witness' deposition may proceed, without leave of the Court or the Special Master, by video, provided that the witness' qualifications shall be proffered only by written curriculum vitae, marked as an exhibit.
- f. No later than 60 days before the first day of the trial month, all depositions of witnesses under Rule 30(b)(6) of the Massachusetts Rules of Civil Procedure on issues other than product identification, defendant status and exposure shall be completed. No such depositions may be conducted after that date.

unless leave is granted by the Court or the Special Master for good cause shown.

- g. No later than 60 days before the first day of the trial month, plaintiff shall file lists of the names and addresses of the lay witnesses whose testimony plaintiff will offer at trial, accompanied by a short statement of the anticipated testimony of each witness and the dates on which each witness will be made available for deposition; provided that witnesses previously deposed under the provisions of Paragraph II (C)(2) may not be deposed again under this Paragraph. Such depositions shall be conducted with all reasonable dispatch and no later than 30 days before the first day of the trial month. Unless otherwise ordered by the Court or Special Master, plaintiff need not make a lay witness available for deposition, so long as plaintiff provides defendants with a transcript or transcripts of the witness' prior testimony and certifies that the witness' testimony at trial will be consistent with such prior recorded testimony. Any party may seek the assistance of the Special Master if problems arise relating to depositions of lay witnesses.
- h. No later than 40 days before the first day of the trial month, defendants shall file lists of the names and addresses of the lay witnesses whose testimony they will offer at trial, accompanied by a short statement of the anticipated testimony of each witness and of the dates for which each witness will be made available for deposition; provided that witnesses previously deposed under the provisions of Paragraph II (C)(2) may not be deposed again under this Paragraph. Such depositions shall be conducted with all reasonable dispatch and no later than 10 days before the first day of the trial month. Unless otherwise ordered by the Court or the Special Master, defendants need

not make a lay witness available for deposition, so long as defendants provide plaintiff, and other defendants who request same, with a transcript or transcripts of the witness' prior testimony and certify that the witness' testimony at trial will be consistent with such prior recorded testimony. Any party may seek the assistance of the Special Master if problems arise relating to the deposition of lay witnesses.


- i. No later than 30 days before the first day of the trial month, plaintiff will provide the defendants with a list of the exhibits plaintiff will offer at trial and the defendant(s) against which each exhibit will be offered.
- j. No later than 30 days before the first day of the trial month, plaintiff will provide the defendants with lists of the deposition testimony which plaintiff will offer at trial. Plaintiff shall designate the pages and lines to be read and the defendant(s) against which each portion of testimony will be offered no later than 10 days before the first day of the trial month.
- k. No later than 20 days before the first day of the trial month, defendants will provide plaintiff with lists of the exhibits they will offer at trial.
- l. No later than 20 days before the first day of the trial month defendants will provide plaintiff with lists of the deposition testimony which they will offer as part of their case-in-chief at trial. Defendants shall designate the pages and lines to be read no later than 10 days before the first day of the trial month. Defendants will designate the deposition testimony they will offer in response to deposition testimony actually introduced at trial by plaintiff at least twenty-four (24) hours prior to the introduction of such testimony and the plaintiff

shall give at least forty eight (48) hours notice of the proposed introduction of such testimony.

- m. No later than 10 days before the first day of the trial month, the parties shall meet to agree upon the pre-marking of exhibits and use of depositions, and they shall file with the Court a joint list of exhibits and designations of deposition testimony to be offered into evidence. Those exhibits or depositions challenged by the opposing party shall be set aside for discussion prior to trial.

- n. No later than 5 days before the first day of the trial month, the parties shall file any motions in limine, as well as any proposed questions to be asked on jury voir dire or as special jury questions. Any motion in limine pertaining to deposition text shall be accompanied by copies of the appropriate transcript pages. The Court will ordinarily decide such motions without argument.

DATED: 11/3/93



Hiller B. Zobel
Associate Justice
Superior Court

COMMONWEALTH OF MASSACHUSETTS

EASTERN COUNTIES, SS.

SUPERIOR COURT

**IN RE: MASSACHUSETTS STATE COURT
ASBESTOS LITIGATION**

**MASSACHUSETTS
ASBESTOS
CONSOLIDATED
DOCKET**

PRETRIAL ORDER NO. 8

**ORDER AUTHORIZING ELECTRONIC
SERVICE OF COURT FILED DOCUMENTS**

I. INTRODUCTION

Except as noted below, this Order shall apply to all pending and future cases in the Massachusetts State Court Asbestos Personal Injury Litigation. To the extent that the provisions of this Order are inconsistent with any prior Orders of this Court, the provisions of this Order shall supersede inconsistent provisions of prior orders.

This Order shall apply to all documents (including any exhibits or attachments to said documents) that parties to the Massachusetts Asbestos Litigation are required by Massachusetts Rules of Civil Procedure or any applicable Pretrial Order to serve on counsel of record, except that it shall not apply to service of summonses and complaints, which shall continue to be served by traditional means pursuant to Mass. R.Civ. P. 4. Use of the Verilaw system is mandatory for all parties in the Massachusetts Asbestos Litigation. In addition, nothing in this Order shall have any effect on the process by which documents are filed with the Court. The parties must continue to file all documents in paper form with the Court according to the applicable Rules and Pretrial Orders. This Order is not intended to affect the substantive rights of any party with respect to any document.

II. PROCESS FOR SERVICE OF DOCUMENTS

1. Verilaw Technologies, Inc. (“Verilaw”) shall make available to the Court and to the parties in this litigation a system for providing electronic service, storage and delivery of documents (“the system”).

2. A party seeking to effectuate service of a document covered by this Order, shall send the document to Verilaw by one of following three means of delivery: (1) electronic transfer via the Internet to Verilaw (the document being either a word-processing file or a scanned image of the document); (2) fax transmission; or (3) via overnight mail or U.S. mail addressed to Verilaw. The cost per document (including exhibits) for service via Verilaw shall be \$12.00 if electronic transfer method is used, except that each document posted to the Special Master Review Queue or Court Review Queue (the procedure for which is set forth in Section V below) shall cost \$2.00. Verilaw will charge an additional fee of \$.30 per page if the document is faxed or mailed to Verilaw for upload.

3. Regardless of transmission method, all document service must be initiated on the website by a registered user. Verilaw shall then convert all documents into Adobe Portable Document Format and make them available to parties on an Internet website maintained by Verilaw (“the Website”).

4. Verilaw shall post all documents to the Website according to the following timetable:

- (a) Electronic documents shall be posted to the Website within one (1) hour of receipt of such document from a registered user;
- (b) Faxed documents shall be posted to the Website within six (6) business hours of receipt from a registered user; and

- (c) Mailed paper copy documents shall be posted to the Website within twenty-four (24) hours of receipt of the overnight mail package.

5. Loss of internet connectivity on the part of a user shall not extend any service or filing deadlines. For any day or partial day that the Verilaw system is out of service, deadlines applicable to service of documents pursuant to this order shall be extended by one full day. In the event that a user loses internet connectivity for more than a day, that user may serve opposing counsel and liaison counsel by traditional means, and upload the document to Verilaw once internet connectivity is reestablished. Alternatively, the user may transmit the document to Verilaw through non-internet means.

6. Verilaw shall maintain a “Single Case” docket for service in an individual case, and an “All Cases Docket” (also known as “Consolidated Docket”) for documents (e.g., Standard Affirmative Defenses) filed on the Massachusetts Asbestos Litigation Consolidated Docket. Case-specific documents shall be posted to the “Single Case” docket, not the “All Cases Docket.”

7. Documents posted on Verilaw need not contain visual representations of the filing attorneys’ signatures. Where it is not possible for the attorney to insert an original signature, attorneys shall (in place of a signature and where the signature would normally appear) place the following declaration: “Original Signature on File.” Original documents filed with the Court must contain original signatures.

8. Under this order, counsel shall be exempt from the requirement of serving signature pages to Disclosure Forms and/or Answers to Interrogatories via the Verilaw system. However, once the Disclosure Form and/or Answers to Interrogatories are signed, counsel shall

notify all counsel of record that a copy of the signature page is available upon request, and shall provide a copy to any requesting attorney within five business days of the request.

9. Access to the Verilaw system shall be limited to registered users. Registered users shall consist of authorized Court personnel and counsel of record or their designees within their law firms. Verilaw shall provide each registered user with a username and password to access the system. Verilaw personnel shall perform all administrative functions for the system, except that registered users may use the “Case Management” function to adjust their mappings (i.e. add or delete registered users who receive electronic notification in any given case).

10. Any document electronically served pursuant to this Order shall be deemed served as of the date and time it is transmitted to Verilaw. Any document transmitted to the system shall certify in the Certificate of Service that a true and correct copy was electronically served to counsel of record via Verilaw.

11. Instructions for use of Verilaw shall be posted on the Verilaw Main Menu, which is displayed each time a user logs onto Verilaw.

12. Unless ordered by the Court, no documents that are filed under seal (“sealed documents”) shall be served via the system. Rather, service of sealed documents shall be made via traditional means and pursuant to Court Rules, including Trial Court Uniform Rule VIII.

III. INITIAL SERVICE OF PROCESS

13. The Court encourages each party to utilize Verilaw to effectuate service of process and complaints in lieu of the method specified in Mass.R.Civ.P. 4. Parties who agree to be served with process electronically shall file with the Court and serve upon all counsel a notice to that effect. If a party does not do so, that party shall continue to receive service of process by traditional means.

IV. ADDITION OF NEW CASES OR NEW PARTIES TO THE SYSTEM

14(a). For each new case filed on or after this Order, Plaintiffs' counsel shall within forty-eight hours of filing the complaint 1) contact Verilaw to initiate the electronic case docket or initiate it directly on the system, and 2) contact Verilaw to map to the case docket all defendants (who have a registered user) named in the case.

14(b). When a party serves a motion or pleading seeking to add new parties to a case, the serving party shall within forty-eight hours request that Verilaw map to the case docket all parties (who have a registered user) sought to be added. If a party sought to be added does not have a registered user, the moving party shall serve the motion by traditional means. Defense Liaison Counsel shall maintain and make available to all requesting parties a list identifying a designated registered user for each active defendant in the Massachusetts Asbestos Litigation. Defense counsel must designate one user within their law firm who will be responsible for receiving service on behalf of their defendant. Defense counsel will be responsible to map any additional users that they wish to receive service by utilizing the Case Management functions on the Verilaw system.

15. When a new party to the Massachusetts Asbestos Litigation is named or added in a case, the party seeking to name or add the new party shall serve a copy of this order upon the new party. New parties shall, within 20 days of receipt of service, contact Defendants' Liaison Counsel to request a Verilaw account be established on their behalf and to designate a registered user to receive service on behalf of the new defendant. All subsequent service to that party shall be made electronically in accordance with the provisions above.

V. MOTION PRACTICE PROCEDURES

16. Motion practice shall be modified as follows:

A. Moving parties may incorporate a motion and supporting memorandum into one document;

B. With respect to discovery motions, the Certificate of Compliance with Superior Court Rule 9C shall be included in the motion itself; and

C. With respect to summary judgment motions, the statement of material facts and statement of legal elements may be incorporated into the motion, and the responses thereto may be incorporated into the opposition, if any.

D. All oppositions, Affidavit of Compliance and List of Papers Filed pursuant to Rule 9A must be threaded with an original motion on Verilaw. To thread a document with a motion, the user must locate the last document threaded to the motion, and choose the “Respond” option beside the document. The user will then be prompted to upload the document, which will then be threaded to the original motion. The burden of properly threading an opposition shall be on the party opposing the motion. The burden of properly threading an Affidavit of Compliance or List of Papers Filed shall be on the moving party.

17. The Rule 9A process begins when the moving party serves its motion electronically via Verilaw to the appropriate docket. The remainder of the process will depend on whether or not the motion is opposed:

A. Unopposed Motions

If no opposition is received within the time permitted by Rule 9A or Massachusetts Asbestos Litigation Pre-Trial Order, the following procedures apply:

1. Unopposed motions do not receive Special Master review.
2. The moving party shall do the following:

- A. File the original motion and Affidavit of Compliance pursuant to Rule 9A with the Middlesex Superior Court.
 - B. Post the Affidavit of Compliance (which shall be threaded to the original motion) to the Court Review Queue. This will prompt the Court to issue a ruling.
3. When the Court rules on the motion, the Verilaw system will automatically thread the ruling with the original motion. Parties to the case will be advised of the ruling via e-file notification.

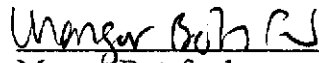
B. Opposed Motions

If a motion is opposed within the time period prescribed by Rule 9A or Massachusetts Asbestos Litigation Pre-trial Order, the following procedures apply:

1. Opposed motions require Special Master review and recommendations.
2. To obtain the Special Master's recommendation, the moving party shall do the following:
 - A. Send to the Special Master hard copies of the motion, the oppositions received, and the List of Papers Filed pursuant to Rule 9A.
 - B. Post the List of Papers Filed (which shall be threaded to the original motion) to the Special Master Review Queue. This will prompt the Special Master to issue a recommendation.
3. When the Special Master issues a recommendation, Verilaw will automatically thread the recommendation with the original motion. Parties to the case will be advised of the recommendation via e-file notification.

4. To secure Court review, the moving party shall do the following:
 - A. File the original motion, all oppositions, the Special Master's Recommendation and the List of Papers Filed pursuant to Rule 9A with the Middlesex Superior Court.
 - B. Send a courtesy copy of all these documents to the Judge's chambers at Suffolk Superior Court.
 - C. Post the List of Papers Filed (which shall be threaded to the original motion) to the Court Review Queue. This will prompt the Court to issue a ruling.
5. When the Court rules on the motion, Verilaw will automatically thread the ruling to the original motion. Parties to the case will be advised of the ruling via e-file notification.
18. All orders issued via Verilaw shall constitute the order of the Court.

SO ORDERED THIS 23 day of August, 2004.



Margot Botsford
Justice of the Superior Court