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May 10, 2011

Laraine Pacheco, Special Master
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*Re: NYCAL – Early & Strauss Applications for
October 2011 In Extremis Cluster*

Dear Special Master Pacheco:

I am writing as defense liaison counsel to set forth defendants' objections to the applications made by plaintiffs represented by Early & Strauss for inclusion in the October 2011 In Extremis Cluster. Defendants reserve the right to make any additional objections that may appear as supplementary records are provided. Furthermore, defendants reserve the right to assert a forum objection in a number of the cases in this group – several plaintiffs are not New York County residents. Many of these same cases appear to have forum objections based upon the discovery responses, but many of the plaintiffs' depositions have not yet been taken. Specifically, no depositions have been taken in Bello, Dehkordi, Dondero, Macek, Mancini (double holdover), O'Dwyer (holdover) and Vickers. Although scheduled, the deposition has not yet taken place in Browne. Furthermore, while the deposition of Mr. Bellach was started, it was not completed before he died; many defendants did not have a chance to question him and so the deposition is not admissible. This is a holdover case.

Bello Defendants assert a medical objection to the inclusion of this case in the trial group. This is a lung cancer case. The only medical report that we have been provided (Riverview Medical Center Pathology Report dated 3/7/11) indicates that Mr. Bello had a lobectomy of the right upper lobe and pathological review showed one of ten of his lymph nodes with metastases. There is nothing to indicate that he is *in extremis*.

Browne Defendants assert a medical objection to the inclusion of this case in the trial group. This is apparently a mesothelioma case, but no medical reports have been provided.

Pea Defendants assert a forum objection to inclusion of this case in the trial group. Mr. Pea is a California resident. He has never lived in New York, but has

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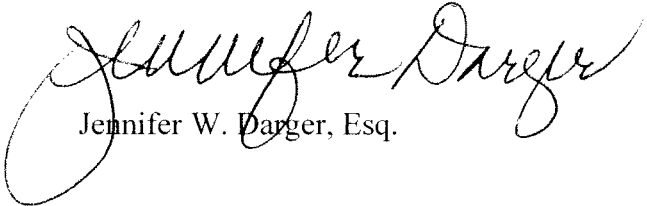
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spent his life in California, Ohio and Georgia. The only possible link is while he was on the deck crew of a ship in the Navy and the ship was at the Brooklyn Navy Yard for a matter of months. Given his overwhelming exposure outside of the state, and in jurisdictions where there are active asbestos dockets, defendants assert that this case should be refilled elsewhere.

Sauls Defendants assert a medical objection to the inclusion of this case in the trial group. This is a lung cancer case. The only medical report that we have been provided (Medical University of South Carolina Pathology Report dated 6/7/10) states: "positive for malignant cells consistent with metastatic cancer." There is nothing to indicate that he is *in extremis*. Furthermore, defendants also assert a forum objection in this case. Mr. Sauls is a South Carolina resident. All of his alleged exposure to asbestos occurred outside of New York City, with the exception of some period while he was in the Navy serving as an engine room machinest mate. The ship was at the Brooklyn Navy Yard for a very limited period of time. Given his overwhelming exposure outside of the New York City, and in jurisdictions where there are active asbestos dockets, defendants assert that this case should be refilled elsewhere.

We will continue to work with plaintiffs' counsel in an attempt to resolve these issues and look forward to discussing them with you next week.

Respectfully submitted,



Jennifer W. Darger, Esq.

JWD/pc

cc: (via e-mail)
Brian Early, Esq.
Mr. Ken Purnell