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## MEMORANDUM

To: All Counsel in the NYCAL  
From: Laraine Pacheco, Special Master  
Date: 8/27/2003  
Re: Standardized Article 16 Discovery

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Attached you will find the set of Article 16 Interrogatories and Document Requests that have been approved by Judge Freedman and that now form part of the Case Management Order. You will note that, based on the suggestions and comments received from counsel, Judge Freedman substantially limited the scope of the interrogatories to what she believes is necessary. Note as well that Judge Freedman has decided that Proofs of Claim are neither privileged, confidential nor "settlement negotiations" and are discoverable and must be produced to defendants.

For the already-scheduled trials, or any case that has been assigned to a judge for trial: please use the attached separate set of interrogatories and document requests.

For the May 04 Cluster: I will promulgate shortly a revised set of plaintiff's interrogatories that incorporates these Article 16 discovery requests. Accordingly, the Article 16 discovery will be provided at the inception of a case, and prior to the plaintiff's deposition. Hopefully, this will reduce any alleged repetitiveness and avoid having to impose on plaintiffs more than once.

To the extent any plaintiffs who are waiting for the May 04 window to open have already completed the standard interrogatories, counsel for plaintiff Is directed to have those plaintiffs complete the set of Article 16 discovery attached hereto and serve as required along with the application.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X  
IN RE: NEW YORK CITY : New York City  
ASBESTOS LITIGATION : Asbestos Litigation  
 (NYCAL)  
----- X  
This Document Applies to: :  
All Cases : Index No. 40000/88  
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**DEFENDANTS' STANDARD ARTICLE 16 INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendants, pursuant to CPLR §3130 and in accordance with Section VIII (A)(1)(c) of the July 23, 2001 Amended Case Management Order (“CMO”), propound the following supplemental interrogatories to plaintiff(s) to be answered under oath within the time period specified by the CMO, and, pursuant to CPLR §3120 and in accordance with Section VIII (B)(2)(c) of the July 23, 2001 Amended Case Management Order, request that plaintiff(s) produce(s) (with copies to each defendant) such documents within the time period specified by the CMO.

These supplemental interrogatories are continuing and require you to file supplemental answers if you obtain further or different information after serving your initial answers and before trial, including in such supplemental answers the date upon and the manner in which such further or different information came to your attention.

## EXPLANATION AND DEFINITIONS

This document constitutes both supplemental interrogatories and supplemental requests for production of documents. The documents to be produced are in each instance identified by responses to the supplemental interrogatories contained herein. Hence, for the convenience of the plaintiff(s), and to prevent the need for duplicative answers, these supplemental interrogatories and this supplemental request for production of documents are being propounded concurrently.

As used in these supplemental interrogatories and supplemental document requests, the terms listed below are defined as follows. Under no circumstances should any of the terms defined below (or any instructions set forth below) be read or interpreted as a waiver of any applicable privilege under the CPLR, including but not limited to the attorney-client and work product privileges.

A. "You," "Your," "Yourself," "Plaintiff" or "Plaintiffs" means plaintiff(s) and all other persons acting or purporting to act on his or her behalf, other than his or her attorney.

B. "Defendants," unless otherwise specified, means any defendant named as a party to this action as well as any predecessors in interest to any named defendants, all other subsidiaries or divisions of any named defendants, and any Bankrupt Entity (see Rider A attached).

C. "Bankrupt Entity" means any company or other entity (including parent and subsidiary companies, predecessors and successors in interest) who is a party or non-party potential tortfeasor whose Asbestos-Containing Product or Material may have contributed in any manner to plaintiff(s)' or to plaintiff's decedent's exposure to asbestos and has filed for protection from creditors under Chapter 11 of the U.S. Bankruptcy Code. Bankrupt Entity shall include all trusts established or currently contemplated pursuant to Chapter 11 of the U.S. Bankruptcy Code, any administrative or claims processing organization established thereto, the unsecured creditors committees, the trustee in any such proceeding, and any submissions to or declarations of the bankruptcy court. Bankrupt Entity shall include all entities, without limitation, listed on Exhibit A, which list may be supplemented from time-to-time, as necessary.

D. "Claim against Bankrupt Entity" includes, but is not limited to, any actual or stayed legal action, any proof of claim, trust claim, claims resolution, arbitration claim, liquidated claim, unliquidated claim; demand for payment, for remedy, of liability; demand reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, equitable, secured or unsecured, toxic personal injury claims, personal injury trust claims, or any kind of claim for payment of which you have filed against bankrupt entities or their parent companies, successor companies or subsidiary companies.

E. "Claim against Defendants" means any legal action filed against a defendant who is not bankrupt.

F. "Asbestos-Containing Product or Material" shall mean any product or material containing asbestos without regard to whether plaintiff(s) seek(s) damages or other relief with respect to that product or material. The same definition shall apply to "Asbestos-Containing Product" and to "Asbestos-Containing Material".

G. "Document" or "Documents" means any writing of any kind, including originals and all non-identical copies, whether different from the originals by reason of any alterations or any notations made on such copies or otherwise, whether in draft or final form, whether stored in original condition or on computer, microfiche, or microfilm, including without limitation, correspondence, memoranda, e-mail, notes, desk calendars, diaries, statistics, letters, telegrams, minutes, contracts, agreements, reports, studies, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, intra-office and interoffice communications, offers; notations of any sort of conversations, telephone calls, meetings or other communications; bulletins, magazines, publications, printed matter, file folders, redwelds, notebooks, lists schedules, tables, indices, tabulations, records of expenditures, receipts, financial, statistical and computerized data, histories, time records, summaries of reports of investigations or negotiations, opinion, evaluations or recommendations of consultants, photographs, motion pictures, videotapes, digital recordings or film, computer printouts, teletypes, telexes, faxes, cables, mailgrams, invoices, vouchers, analyses, comparisons, worksheets; and all drafts, alterations, modifications, changes and amendments of any of the foregoing; tapes, tape recordings, transcripts, affidavits, graphic or aural records or representations of any kind of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control.

H. "Possession", "Custody", or "Control" includes the joint or several possession, custody or control not only by the person or persons to whom these supplemental interrogatories and requests are addressed, but also the joint or several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesperson, or otherwise. This definition does not include documents in the "possession," "custody," or "control" of plaintiff's attorney unless such documents were provided by plaintiff to his/her attorney and are not privileged.

I. "Relate", "Refer", "Pertain", and "Concern" means supports, evidences, describes, comprises, constitutes, analyze, discuss, report or comment on, inquiring about, setting forth, explaining, considering, referring to, relating to pertaining to or mentioning in whole or in part.

J. "Person" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons, or other association separately identifiable, whether or not such association has a separate juristic existence in its own right.

K. "Identify", "Identity", and "Identification," when used to refer to an entity other than a natural person, means to state its full name, the present or last known address of its principal office or place of doing business, and the type of entity (e.g., corporation, partnership, unincorporated association), including bankrupt entities.

L. "Identify", "Identity", and "Identification," when used to refer to a natural person, means to state the following:

(1) the person's full name and present or last known home address, home telephone number, business address and business telephone number;

(2) the person's present title and employer or other business affiliation;

(3) the person's home address, home telephone number, business address and business telephone number at the time of the actions at which each supplemental interrogatory is directed; and

(4) the person's employer and title at the time of the actions at which each supplemental interrogatory is directed.

M. "Identify", "Identity", and "Identification," when used to refer to a document, means to state the following:

(1) the subject of the document;

(2) the title of the document;

(3) the type of document (e.g., letter, memorandum, telegraph, chart);

(4) the date of the document, or, if the specific date thereof is unknown, the month and year or other best approximation of such date;

(5) the identity of the person or persons who wrote, contributed to, prepared or originated such document; and

(6) the present or last known location and custodian of the document.

N. "He" means he and/or she; "Him" means him and/or her; "His" means his and/or hers.

O. “Physician” includes doctors, nurses, other health care providers or practitioners of healing arts.

P. “Medical Condition” means any condition for which you are making a claim, including any asbestos-related disease, and any condition allegedly brought about by an asbestos-related disease, including but not limited to physical or mental illness, disease or injury.

### **INSTRUCTIONS**

A. With respect to each supplemental interrogatory, in addition to supplying the information asked for and/or identifying the specific documents referred to, identify all documents which were referred to in preparing your answer thereto.

B. If any document identified in an answer to a supplemental interrogatory was, but is no longer, in your possession or subject to your custody or control, or was known to you but is no longer in existence, state what disposition was made of it or what became of it.

C. If any document is withheld from production hereunder on the basis of a claim of privilege or otherwise, identify each such document and the grounds upon which its production is being withheld.

D. You are requested to furnish all information in your possession and all information available to you, not merely such information as you possess of your own personal knowledge, but also all knowledge that is available to you, your representatives, attorneys, physicians and/or other agents, by reason of inquiry, including inquiry of their representatives. Where a response to the following supplemental interrogatories sets forth information that is not based upon your own personal knowledge, but rather upon the knowledge of your representatives and other agents, you should so indicate in your response to that supplemental interrogatory.

## **SUPPLEMENTAL INTERROGATORIES**

1. State the following with regard to your asbestos-related legal action:
  - (a) Did you file an asbestos-related claim in more than one (1) jurisdiction;
  - (b) Identify all of the jurisdiction(s) where an asbestos-related claim has been filed (whether or not these claims have been dismissed or discontinued or otherwise resolved) on your behalf;
  - (c) Did you file your asbestos-related claim(s) under more than one (1) Index Number; and
  - (c) Provide all of the Index Numbers for all of your asbestos-related claim(s), including all multiple Index Numbers for claims filed in New York County.
  
2. State whether or not you have made, filed, or submitted a claim against a Bankrupt Entity or received funds in settlement from a Bankrupt Entity. If so, for each claim state the following:
  - (a) the date and place where each such claim was made;
  - (b) the name and nature of the entity with which the claim was made;
  - (c) any identifying number, such as a docket or petition number, for each claim;
  - (d) the defendant, agency, insurer, employer or other entity to or against whom the claim was made and its file number;
  - (e) the nature of the claim;
  - (f) whether you were examined by a physician and if so, the name and address of that physician;
  - (g) whether you received any compensation as a result of such claim, but not the amount.
  
3. State whether you have applied to any Bankrupt Entity or Bankruptcy Court to lift the stay as to your claim or otherwise have attempted to join a Bankrupt Entity to this action.

4. State whether you were exposed to any Bankrupt Entity's Asbestos-Containing Materials, or products either mined or manufactured, sold, distributed or used by co-workers in your presence. If so, state the following:
  - (a) As to each and every employer (including military service) you have had from the time you were first employed to the present, set forth the following, concerning Bankrupt Entities' products only:
    - i. Name of employer;
    - ii. Dates of employment;
    - iii. Asbestos-related jobsite and address where Bankrupt Entity's products were being used;
    - iv. Dates you were at the jobsite;
    - v. Job duties at the particular jobsite;
    - vi. Bankrupt Entity's asbestos-containing materials or products to which you were exposed;
    - vii. Other companies using Bankrupt Entity's asbestos-containing materials or products at the jobsite; and
    - viii. Whether you received any warnings with respect to the use of said product and the nature of those warnings.
  - (b) If you were exposed to, used, ingested or inhaled any Bankrupt Entity's Asbestos-Containing Products at any time other than in the scope of your employment, state for each such exposure:
    - i. the date, location and circumstances; and
    - ii. the type of product and the name of the manufacturer, distributor, and miner.
5. State whether you have ever seen or received any information, instruction, direction, warning, or directive, from any source whatsoever, concerning alleged dangers of exposure to asbestos or asbestos-containing products as this information relates to Bankrupt Entities, and if so, identify:
  - (a) each such warning, directive, notification, direction, instruction or information;
  - (b) the means by which such was given to you;
  - (c) the source and the date on which it was received by you; and
  - (d) your response or reaction, including any complaints made or changes in work habits.

6. Identify all persons, other than your attorneys, who provided you with any information used in answering these interrogatories, and state the particular information each person supplied.
7. Identify all entities, whether or not parties to this lawsuit, with whom you have entered into settlement agreements in connection with this lawsuit.

## **SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendants, pursuant to Section VIII (B)(2)(c) of the CMO, request that plaintiff(s) produce(s) for inspection and copying the documents and things identified below as each of the documents and things relate to Bankrupt Entities. The documents and things identified herein shall be produced for inspection and copying at such time as the answers to the supplemental interrogatories herein are filed.

You are hereby requested to produce the following documents and things:

1. All documents identified in your answers to these supplemental interrogatories.
2. All documents relating to any claim or demand ever made by plaintiff or plaintiff's decedent for damages, compensation or other benefits allegedly resulting from any illness or injury, including but not limited to, Industrial Accident Board records, social security disability claim records, federal or state employment compensation claim records, social disability records, pension claim record or any other health or accident insurance claim records as these claims relate to the Bankrupt Entities.
3. All documents in plaintiff's possession, custody or control relating in any way to the plaintiff's or plaintiff's decedent's exposure or possible exposure to asbestos, asbestos-containing products and/or asbestos-containing materials as these documents relate to the Bankrupt Entities.
4. All documents of which you have ever become aware relating in any way to warnings, potential health hazards, instructions or precautions regarding the use or handling of, or exposure to, asbestos, asbestos-containing products, and/or asbestos-containing materials as these documents relate to the Bankrupt Entities.
5. All records in plaintiff(s)' possession, custody or control relating to comments, complaints, suggestions, or proposals made to your employer or your union, by yourself or by other employees or union members regarding asbestos exposure as this request relates to Bankrupt Entities only.
6. All photographs of the plaintiff or plaintiff's decedent at work or in work clothes, and all photographs of all products or conditions complained of in the plaintiff's place of employment as this request relates to Bankrupt Entities only.
7. All Asbestos-Containing Products or product packaging of the type to which the plaintiff alleges exposure and which the plaintiff has in his possession, custody or control relating to Bankrupt Entities only.

8. All invoices, bills, statements and any other writings or records which the plaintiff contends evidence the sale of any Asbestos-Containing Products to the place of the plaintiff's or plaintiff's decedent's employment at which plaintiff claims that plaintiff or plaintiff's decedent was exposed to asbestos relating to Bankrupt Entities only. This does not include documents in the possession, custody or control of plaintiff's attorney unless such documents were provided by plaintiff to his/her attorney and are not privileged.
9. All accident or incident reports, which relate to the facts, circumstances or incidents, which form the basis of plaintiff(s)' complaint, pertaining to Bankrupt Entities only.

## **EXHIBIT A**

Bankrupt Entity includes, without limitation: UNR Industries, Inc., Johns-Manville Co., Amatex Corp., Waterman Steamship Corp., Wallace & Gale Co., Forty-Eight Insulations, Inc., PACOR, Prudential Lines, Inc., Standard Insulations, Inc., US Lines, Nicolet, Inc., Gatke Corp., Chemetron Corp., Raytech, Delaware Insulations, Celotex Corp., Hillsborough Holdings, National Gypsum Co., Standard Asbestos Mfg. & Insul., Eagle-Picher, H.K. Porter Co., Cassiar Mines, Kentile Floors, Keene Corp., American Shipbuilding, Inc., Lykes Brothers Steamship, Rock Wool Mfg., SGL Carbon, M.H. Detrick, Brunswick Fabricators, Fuller-Austin Insul., Harnischfeger Corp., Joy Technologies, Rutland Fire & Clay, Babcock & Wilcox, Pittsburgh Corning, Burns & Roe Enterprises, E.J. Bartells, Owens Corning, Armstrong World Industries, G-1 Holdings (GAF Corp.), W.R. Grace, Skinner Engine Co., USG (US Gypsum) Corp., Federal Mogul, Eastco Industrial Safety Corp., Washington Group Int'l, Inc., Bethlehem Steel, North American Refractories, Kaiser Aluminum, Plibrico Refractories, Porter-Hayden, American Club, Huxley Development Corp., Harbison-Walker Refractories Co., Continental Producers Corp., A.P. Green Indus., Shook & Fletcher, Atra Group, Inc. (Synkoloid), and ACandS, Inc; C.E. Thurston.