

# The Law Office of Laraine Pacheco

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## MEMORANDUM

To: All Counsel  
From: Laraine Pacheco, Special Master  
Date: December 10, 2003  
Re: Discovery Issues: Responses to Interrogatories, Medical Authorizations

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Over the past several years I have intervened in numerous discovery disputes, the most common being those related to standard interrogatories. On my last trip to New York, I met with representatives of each plaintiff's firm and liaison counsel to try to work out some of the issues surrounding defendants' interrogatories served on plaintiffs. I have had discussions with many defendants regarding problems arising from their unacceptable responses to standard interrogatories dealing with everything from responsiveness to timeliness.

Some of you do a superb job in responding to this basic discovery. But with hundreds of defendants and attorneys involved, there is a great deal of variation in the quality of the materials provided.

As a threshold matter, let me remind you that the interrogatories were **NEGOTIATED AND AGREED UPON** by the parties to the litigation and they are **COURT-ORDERED**. Therefore, it is not up to individual plaintiffs or defendants to decide whether they are going to answer a particular question as asked. **YOU ARE ORDERED TO DO SO**. For that reason, there is no reason for the numerous objections made to each question. The court order approving the interrogatories renders them unobjectionable. **In sum, every question must be answered substantively and completely and without objection.**

The following summarizes some of the major points of these discussions, which do little more than reiterate everyone's longstanding obligations under the CMO. The only thing that is new here is my renewed effort to get everyone's compliance.

## **Plaintiff's Response to Defendants' Interrogatories**

Must give complete work history, even if there is no claim of exposure at a particular worksite.

Must give complete medical history, not just treaters/facilities for asbestos-related diseases

Must give concise statement (a few words) describing why plaintiff saw a treater or was at a facility—not just “see medical records” or “authorizations provided”

Answer current set of interrogatories (standard and product ID) and use approved form of Chart A, not hybrid charts that combine categories, omit others

**Interrogatory #17: Generic answers are not enough. The Interrogatory 17 answer must be case-specific and tied to Chart A—giving any specific recollections re: packaging, labeling for each product listed on Chart A. If plaintiff can testify about it at his/her deposition, it should be in the interrogatory answer.**

**Chart A: Give product ID for each jobsite/ship/etc. Do not lump together all jobsites for a particular employer if plaintiff is able to put products/equipment at a particular site/on a particular ship. Do not indicate “see above” if product ID is not identical for the second site.**

Smoking/household smoking questions must be answered in all cases. “Not applicable” is not an acceptable answer.

The Standard Request to Produce must be answered. Documents must be identified and produced. Plaintiffs may not defer to trial exhibit lists to be served at future date.

Plaintiffs should be asked questions on intake designed to determine whether they have a medical or employment file/folder at home.

Interrogatories already served in M2004 cases that do not comply with these principles must be supplemented BEFORE depositions.

Product ID interrogatories must be served in each individual case; standard interrogatories must be provided to new defendants by plaintiff. Plaintiffs are not obligated to re-serve defendants who have been previously sued in NYCAL with the standard liability interrogatories. Standard answers should be filed under index number 40000

To the extent tailored versions have not already been approved, plaintiffs should coordinate to tailor standard product ID interrogatories to fit defendants who are not product manufacturers so as not to draw “not applicable” answers.

Note: Article 16 interrogatories go beyond Proofs of Claim and must be answered even if no Proof of Claim is filed.

Wrongful death interrogatories (for FIFO cases) will be amended to incorporate Article 16 discovery, as was done with personal injury interrogatories. Until then, plaintiffs should answer the standard third set and supplemental Article 16 discovery.

### **Record Trak**

When authorizations are sent to Record Trak, a copy of the transmittal letter identifying the enclosures must be sent to liaison counsel. Letter should “cc” Special Master, but **SHOULD NOT BE SENT TO HER**

All authorizations must comply with HIPAA. If plaintiff has been treated at an institution known to require its own institution-specific HIPAA authorization (see list already provided by Record Trak), such authorizations must be provided up front.

Notice of death must be sent promptly to all defendants.

Plaintiffs should coordinate with liaison to remedy promptly all “Hold for client action” problems noted on Record Trak reports.

To the extent plaintiffs obtain medical records independently, defendants are entitled to compare those in plaintiffs possession with those provided by Record Trak to make sure everyone has the same materials. We suggest that plaintiff keep an extra set on file in case a defendant needs to make such comparison. And, of course, the opportunity to compare is reciprocal.

Keep the Special Master apprised by email of all Record Trak deficiencies.

## **Defendant's Response to Plaintiff's Interrogatories**

Not all defendants have provided the Attachment 1's outlining each of the products they manufactured that contained asbestos. **That must be done.**

**A substantive response must be made to EACH interrogatory** – even if the answer is “Do not know.”.

Where the standard responses are very old and the company is still operational, those responses should be updated. All defendants are obligated to supplement their responses on an ongoing basis where new information is discovered, new documents located or additional testimony is available.

All responses should be updated with respect to deposition/trial transcripts available.

**Some defendants have only responded to the standard interrogatories regarding a particular case or regarding particular products and do not comply with the CMO to disclose the inventory of products or equipment that was manufactured or sold. Answer the interrogatories as they are written, not as you wish they had been written.**

There is a deadline for responding to interrogatories. **DO NOT IGNORE THE DEADLINE.** If you need additional time, request it.

Plaintiffs should maintain a proper proof of service in the event there is a dispute as to whether the interrogatories were served. Defendants should also keep records of having responded to the interrogatories and served their answers on plaintiffs.

## Documents

Both plaintiffs and defendants interrogatories call for the production of documents at the time of the response – **not at time of trial, not on the day of the deposition**. It is incumbent on all parties to the litigation to produce the responsive documents in any manner acceptable under the CMO or CPLR. The manner in which documents may be produced will depend on the manner in which they are kept. Every effort should be made to keep transactional costs at a minimum.

**Note: when serving their discovery demands on new defendants, I suggest that plaintiffs attach a copy of this memo.**

## Disputes

I trust that all parties will adhere to these guidelines. To the extent there is a dispute, the complaining party should advise me by email **with a copy to opposing counsel**.