

SUPREME COURT OF THE STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

FILED
JAN 26 2000

ERIE COUNTY
CLERK'S OFFICE

In re EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION

EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION
MASTER FILE

This Document Applies to All Cases

CASE MANAGEMENT
ORDER NUMBER 8

Master Index Number: H95716

I. Applicability of This Order

This Order applies to all pretrial procedures involving all asbestos personal injury and wrongful death cases now or hereafter commenced in the Supreme Court of State of New York, Eighth Judicial District, except as otherwise directed by the Court upon motion and for cause shown by the party seeking to have this Order declared inapplicable. This Order supersedes all previous case management orders and amendments entered in the asbestos litigation pending in the Eighth Judicial District.

II. Purpose of This Order

It is in the interest of justice to encourage and bring about the fair, expeditious and inexpensive resolution of these cases. This Case Management Plan ("CMP") is established in an effort to achieve this goal, to allow the parties to obtain reasonably necessary documents and information without imposing undue burdens, and to permit the parties to evaluate these cases, reach early settlements, and prepare unsettled cases for trial. The essential components of the

CMP include, to the extent feasible:

- A. Standardization of pleadings and discovery so that the parties can obtain the necessary information to evaluate cases for settlement or to prepare them for trial at minimum cost;
- B. Conducting early pretrial conferences to explore settlement opportunities, resolve pretrial management problems and establish discovery cut-off dates;
- C. Grouping, ordering, and firm scheduling of cases for pretrial procedures and trial; and
- D. Coordination of discovery, the use and compensation of Liaison Counsel, and other orders as necessary to avoid duplication, contain costs and expedite disposition through settlement or trial.

III. Index Numbers and Filing Procedures

A. Index Numbers and Files:

A master file, known as the Eighth Judicial District Asbestos Litigation ("EJDAL") Master File and designated as Erie County Index Number H95716, has been established in the Erie County Clerk's Office for all asbestos cases commenced in the Eighth Judicial District. Entries on the EJDAL Master File are and shall be applicable to each asbestos personal injury and wrongful death case ("asbestos action") commenced in the Eighth Judicial District.

The original of this Order shall be filed by the Erie County Clerk in the EJDAL Master File and a copy of this Order shall be deemed to be part of the record of each asbestos case commenced in the Eighth Judicial District.

All asbestos actions now or hereafter commenced in the EJDAL as multi-plaintiff actions are hereby severed and shall proceed as individual plaintiff (or plaintiff and spouse) actions pursuant to the terms of this Order.

B. Captions of Cases:

Every document filed in the EJDAL which has general application to all asbestos actions shall bear a caption similar to the caption of this Order.

C. Filing of Papers:

1. When a paper has general application to all asbestos actions, the caption shall bear Erie County Index Number H95716 and the Erie County Clerk shall file such a paper in the EJDAL Master File. No further copies of the paper need to be filed. Any document so filed shall be deemed to have been filed in each action to which this Order applies and shall constitute part of the record of each such action.

2. When a paper is applicable only to an individual asbestos action, the attorney submitting such paper for filing shall supply to the Clerk of the County in which the action is venued a cover sheet containing the caption, name and index number to which the paper is applicable. The County Clerk shall file such paper in the individual file for the action under the appropriate index number. The Erie County Clerk shall not file such a paper in the EJDAL Master File.

3. When a paper to be filed is applicable to two or more but less than all of the asbestos actions, the caption of the paper shall state the titles and the index numbers of each action to which that paper is applicable. The Clerk of the Counties in which the actions so identified are venued shall file a copy of the paper in the each separate file under the index numbers so identified. It is the responsibility of the attorney submitting such paper for filing to supply a cover sheet containing the captions, titles and index numbers of all actions to which the paper is applicable and to supply the appropriate County Clerks with sufficient copies of the paper to facilitate compliance with the directives of this paragraph.

IV. Rules of Procedure

The Civil Practice Law and Rules and the Rules of the Fourth Department, the Eighth Judicial District and the Counties comprising the Eighth Judicial District, together with the express provisions of this Order, shall govern all proceedings in the EJDAL.

The Court may depart from the procedures contained in this Case Management Order based on the needs and circumstances of a particular case.

V. Pleadings

A. Plaintiff's Statement:

A Plaintiff's Statement form, a copy of which is annexed as Appendix A, shall be completed for each injured plaintiff or plaintiff's decedent and shall be either: attached to the complaint; or served upon the defendants within sixty (60) days after filing of the complaint or sixty (60) days from the date of this Order, whichever date is later. When the Plaintiff's Statement is not attached to the complaint, the original Plaintiff's Statement shall be filed by the Clerk of the County in which the action is venued under the index number of the action to which it applies. A Plaintiff's Statement shall include, to the extent possible, the primary work site(s) at which it is claimed that injurious asbestos exposure occurred. Plaintiff's Statements are for compilation of trial lists and statistical purposes. In no event are Plaintiff's Statements intended to limit proof and they are not admissible for any purpose.

If at any time after the filing of the Plaintiff's statement, but before service of plaintiff's Answers to Standard Interrogatories, plaintiff's claimed asbestos-related illness changes from a non-malignancy to a malignancy, the Plaintiff's Statement shall be amended accordingly. All such amendments must be filed and served within sixty days of notification to plaintiff's counsel of such change in claimed illness.

B. Standardized Pleadings:

1. Plaintiffs' counsel may file in the EJDAL Master File and serve on defendants a complaint or set of complaints containing standard allegations generally applicable to all claims of a similar nature. Thereafter, plaintiffs may file and serve short form complaints that incorporate by reference all allegations contained in the appropriate standard complaint. With respect to asbestos actions commenced prior to the date of this Order, leave is hereby granted to file and serve such short form complaints as amended complaints.

2. A defendant may file in the EJDAL Master File and serve on all

plaintiffs' and defendants' counsel a Standard Answer with affirmative defenses. When a Standard Answer has been filed, a defendant may serve a plaintiff in an action with an Acknowledgment of Service, a sample form for which is annexed as Appendix B. Upon service of an Acknowledgment of Service, a defendant will be deemed to have denied all material allegations contained in the complaint, except as stated in such Acknowledgment, and to have raised each affirmative defense contained in its Standard Answer, except as stated in such Acknowledgment. Nothing herein shall preclude a defendant from filing an individual answer, if it so chooses.

3. Third-party plaintiffs' counsel may file in the EJDAL Master File and serve on third-party defendants a third-party complaint or set of third-party complaints containing standard allegations generally applicable to all third-party claims of a similar nature. Thereafter, third-party plaintiffs may file and serve short form third-party complaints that incorporate by reference all of the allegations contained in the appropriate standard third-party complaint.

4. A third-party defendant may file in the EJDAL Master File and serve on third-party plaintiffs a Standard Answer to Third-Party Complaint with affirmative defenses. When a Standard Answer to Third-Party Complaint has been filed, a third-party defendant may serve a third-party plaintiff in an action with an Acknowledgment of Service of Third-Party Complaint, a sample form for which is annexed as Appendix C. Upon service of an Acknowledgment of Service of Third-Party Complaint, a third-party defendant will be deemed to have denied all material allegations contained in the third-party complaint, except as stated in such Acknowledgment, and to have raised each affirmative defense contained in its Standard Answer to Third-Party Complaint, except as stated in such Acknowledgment. Nothing herein shall preclude a third-party defendant from filing an individual answer, if it so chooses.

C. Substitution of Proper Party Upon Death of Plaintiff and Assertion of Additional Claims Following Death of Plaintiff:

1. Upon the death of an injured plaintiff, the personal representative of the deceased injured plaintiff may be substituted as plaintiff, without leave of Court, if said personal

representative, within one year of injured plaintiff's death, serves upon all attorneys of record in the pending action:

- a. The date and place of the deceased injured plaintiff's death;
- b. The name and address of the deceased injured plaintiff's personal representative;
- c. A copy of the death certificate for the deceased injured plaintiff;
- d. A copy of the Surrogate's certification of the appointment of the personal representative; and
- e. A proposed Order of Substitution.

If there are no written objections to the proposed Order of Substitution within 15 days of its mailing, the plaintiff's attorney, without further notice, may submit said Order to the Court for signature and filing.

2. Within one year of an injured plaintiff's death, a substituted plaintiff may, without leave of Court, amend the original complaint to add claims based on survivorship or death of the original plaintiff. Service of such amendments on counsel who has appeared for a defendant shall be considered service on that defendant. Defendants may answer as set forth in this Order.

A substituted plaintiff seeking to amend a complaint to add claims based on the death of the original injured plaintiff must support the enlargement of the complaint to include a cause of action for wrongful death with medical documentation including: the certificate of death; and an autopsy report or hospital admission/discharge summary or a report prepared and signed by a physician supporting the allegation of a connection between the alleged injurious exposure to asbestos and the death. No presumption regarding causation is created by such enlargement of a complaint. The issue of the connection between the alleged injurious exposure to asbestos, if any, and the death shall be preserved for the trier of fact or for the Court upon motion. A defendant who served an Acknowledgment of Service or answer in the original action is not required to serve an answer to the amended complaint as all new material allegations contained in the amended complaint will be deemed denied by any such defendant.

D. Other Amendments to Pleadings:

Amendments to the pleadings, other than those set forth in Section V © of this Order shall be made in compliance with CPLR §3025. The parties are encouraged to consent to amendments where appropriate in light of New York State's recognition that leave to amend is to be freely granted.

VI. Liaison Counsel

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

B. Subject to the right of any party to present individual positions or divergent positions or to take individual actions, Liaison Counsel are vested by the Court with the following responsibilities and duties:

1. Coordinating the conduct of discovery procedures, including but not limited to coordination of the preparation of joint written interrogatories, joint requests to admit, and joint requests for the production of documents, where applicable;
2. Coordinating the examination of witnesses in depositions;
3. Calling meetings of counsel for plaintiffs' counsel and defendants' counsel, respectively, for the purpose of proposing joint actions, including but not limited to responses to questions and suggestions of the Court or of adversaries with regard to orders, schedules, briefs, and stipulations of the facts.

C. Co-Liaison Counsel for the plaintiffs shall be the firms of: Lipsitz, Green, Fahringer, Roll, Salisbury & Cambria, LLP; and Lipsitz & Ponterio, LLC.

D. Co-Liaison Counsel for the defendants shall be the firms of: Anderson Kill & Olick, P.C. (Smith, Murphy & Schoepperle, LLP, as local counsel); and Damon & Morey.

E. Liaison Counsel are authorized to receive orders, notices, correspondence and

telephone calls from the Court regarding general case management issues on behalf of all plaintiffs and defendants. Liaison Counsel shall be responsible for notifying all plaintiff counsel and defense counsel, respectively, of all communications received from the Court. Liaison Counsel may not be used by any party for service and/or distribution of papers, orders, notices or correspondence to other counsel.

F. Notwithstanding the appointment of Liaison Counsel, each counsel shall have the right to participate in all proceedings before the Court as fully as such counsel deems necessary.

G. Liaison Counsel shall not have the right to bind any party except Liaison Counsel's own respective clients as to any matter without the consent of counsel for any other party.

H. Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall be reimbursed periodically, but not less than every six months, by counsel for plaintiffs and defendants, respectively, for necessary and reasonable disbursements actually incurred in performing their responsibilities pursuant to this Order. Liaison Counsel shall keep records of such disbursements in reasonable detail for examination by counsel. Liaison Counsel shall be paid, respectively, by each plaintiff or defense law firm on an equitable basis to be agreed upon by the parties or fixed by the Court with each plaintiff and defense law firm having to pay a proportionate share of the disbursements incurred by its respective Liaison Counsel in representing its interests. Liaison Counsels' invoices for services as Liaison Counsel pursuant to this Order shall be due and payable when submitted. Interest shall be computed at the rate applicable to judgments starting thirty (30) days after the date of their submission.

VII. Standard Consolidated Discovery

A. Interrogatories and Document Requests:

Standard Interrogatories and Requests for Production of Documents shall be used as set forth herein. The Court on its own motion hereby permits the use of interrogatories

in addition to depositions pursuant to CPLR §3130.

1. Defendants' Interrogatories and Document Requests:

a. Defendants' standard set of interrogatories to plaintiffs have been filed in the EJDAL Master File and have been provided to Plaintiffs' Liaison Counsel. These standard interrogatories, captioned "Defendants' First Set of Interrogatories and Request for Production of Documents (revised)" ("Defendants' Standard Interrogatories"), are annexed by reference.

b. Plaintiffs shall serve responses to Defendants' Standard Interrogatories ("Plaintiffs' Answers to Standard Interrogatories") upon all defendants in an action and in accordance with the applicable discovery and trial submission schedule for that action. Defendants' Standard Interrogatories shall be answered in full, unless appropriate objections are stated in lieu of an answer. Plaintiffs' Answers to Standard Interrogatories shall be verified by the individual injured plaintiff(s) or plaintiff estate representative.

c. A defendant may serve supplemental, non-repetitive interrogatories and requests for production of documents ("Defendant's Supplemental Interrogatories") in accordance with the applicable discovery and trial submission schedule for an action.

d. Copies of any records obtained by a defendant pursuant to authorization of a plaintiff, other than those records which are obtained through a mutually agreed upon records retrieval service, shall be made available to plaintiff's counsel by notice of receipt mailed to plaintiff's counsel within twenty (20) days of defendant's receipt of such records.

2. Plaintiffs' Interrogatories and Document Requests:

a. Plaintiffs' standard set of general liability interrogatories have been filed in the EJDAL Master File and have been provided to Defendants' Liaison Counsel. These standard interrogatories, captioned "Plaintiffs' First Standard Set of Liability Interrogatories and Request for Production of Documents" ("Plaintiffs' Standard Interrogatories"), are annexed by reference. In the event that a plaintiffs' counsel commences an action against a defendant not

previously sued, said plaintiff's counsel will serve Plaintiffs' Standard Interrogatories on such defendant.

b. To the extent not previously done, each defendant shall file a single set of responses to Plaintiffs' Standard Interrogatories ("Defendants' Answers to Standard Interrogatories") in the EJDAL Master File and shall serve same on plaintiffs' counsel. Defendants' Answers to Standard Interrogatories shall be applicable to all EJDAL actions. When so filed and served, Defendants' Answers to Standard Interrogatories shall be deemed served in accordance with the applicable discovery schedule in each individual action.

c. A defendant who has served answers to standard interrogatories in any jurisdiction in New York State other than the Eighth Judicial District is entitled to adopt those interrogatories answers as and for their responses to Plaintiffs' Standard interrogatories in the EJDAL, provided that the defendant files and serves responses to any non-duplicative interrogatories contained in Plaintiffs' Standard Interrogatories in the EJDAL.

d. A plaintiff may serve supplemental, non-repetitive interrogatories and requests for production of documents ("Plaintiff's Supplemental Interrogatories") in accordance with the applicable discovery and trial submission schedule for an action. Plaintiffs' counsel are to exercise good faith in determining the need for such further interrogatories.

e. A plaintiff may serve non-duplicative, standard product identification interrogatories with respect to particular work sites ("Plaintiffs' Standard Product Identification/Work Site Interrogatories") in accordance with the applicable discovery and trial submission schedule for an action. If a defendant has previously responded to such interrogatories for that work site, that defendant may respond by letter adopting said prior response.

B. General Guidelines Regarding Document Requests:

1. A party requesting discovery and inspection of documents shall specify a reasonable time, place, and manner for making the inspection. The request will describe each item with reasonable particularity.

2. Responses to requests for discovery and inspection of documents should be, to the extent practicable, in such form as will make clear the request to which the document is responsive.

3. Any response that a document cannot be located shall state with reasonable particularity the efforts made to obtain the requested document.

4. Counsel are to exercise good faith in making requests for and in responding to requests for production of documents.

5. Counsel are to exercise their best efforts to resolve on an informal basis disputes arising out of the document requests and responses and objections thereto.

C. General Guidelines Regarding Discovery:

1. Disputes with regard to discovery shall be called immediately to the attention of the Court for resolution and, unless otherwise directed by the Court, shall not be relied upon by any party as a justification for not adhering to any applicable discovery and trial submission schedule.

2. Objections to discovery based on privilege shall clearly identify the privilege claimed and shall provide sufficient information concerning (i) the basis for the claim of privilege to establish *prima facie* the validity of the claim, and (ii) the privileged information to permit identification of the information or document as to which privilege is claimed. If not so identified, the privilege shall be deemed waived. The parties shall negotiate in an effort to preserve the confidentiality of trade secrets.

3. Responses to requests for discovery and inspection of business or medical records shall state whether the record is or is not a record made in the course of a regularly conducted activity so as to be admissible under CPLR § 4518. If not so described, the document shall be deemed admissible under the rule.

4. Any objection to discovery based on burdensomeness shall describe the burden with reasonable particularity. Any objection based on burdensomeness and any objection to the time, place, or manner of production shall state a reasonable alternative as a counterproposal.

5. Any response that information cannot be determined shall state with reasonable particularity the efforts made to obtain the requested information.

6. Any notice and/or motion for discovery served upon a non-party shall be served contemporaneously upon all parties to the action.

VIII. Medical Examinations of Plaintiffs

Physical examinations of plaintiffs shall be conducted in accordance with the CPLR and applicable case law.

IX. Depositions

A. General Guidelines:

1. All depositions of parties shall be held in the Eighth Judicial District unless otherwise ordered by the Court or agreed to by the parties.

2. All counsel shall avoid unnecessary and repetitive questioning of witnesses.

3. Unless all parties otherwise agree, all objections, except as to the form of the question, shall be reserved for determination by the trial judge.

4. All counsel may attend any deposition.

5. Counsel may notice any deposition to apply to more than one case and shall use best efforts to insure that depositions are noticed to apply to all appropriate cases. Nothing in this provision shall be deemed to prohibit a party from moving to limit the use of deposition testimony based upon good cause shown.

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

7. In the event that a notice for a discovery deposition is not served, but such deposition is scheduled by agreement of counsel or order of the Court, any such deposition of an injured plaintiff, plaintiff spouse or personal representative will be deemed to have been noticed

for or scheduled by defendants' counsel and any such depositions of a defendant will be deemed to have been noticed for or scheduled by plaintiffs' counsel.

8. Deposition testimony may be used only against those parties which received actual written notification of the deposition stating the date, time and location of the deposition. Said notification must be served in compliance with the CPLR, this Order, or other Court order and, in any event, unless good cause is shown, must be served no later than three (3) business days prior to the scheduled date of the deposition.

B. Depositions of Plaintiffs:

1. Depositions of injured plaintiffs will be scheduled by Liaison Counsel when preparing discovery and trial submission schedules for actions scheduled for trial. In all actions, the rights of defendants and third party defendants to depose plaintiff spouses, personal representatives and distributees of decedents at any time prior to jury selection is reserved. Such a deposition may be requested, noticed for and/or scheduled by any defense counsel.

2. Questioning of the injured plaintiff by defense counsel shall begin with interrogation by Defendants' Liaison Counsel, followed by interrogation by other defense counsel in an order agreed to by defense counsel or as decided by Defendants' Liaison Counsel when such an agreement cannot be reached.

3. Questioning of plaintiff spouses, personal representatives and distributees of decedents shall begin with interrogation by the defense counsel who requested, noticed and/or scheduled the deposition, followed by interrogation by other defense counsel in an order agreed to by defense counsel or as decided by Defendants' Liaison Counsel when such an agreement cannot be reached. If the above deponent is a present or former officer or employee of a defendant, that defendant shall question first, followed by other defense counsel in the order described in Section IX (B)(2) of this Order.

C. Depositions of Defendants and Non-Party Witnesses:

1. Depositions of defendants and non-party witnesses will be noticed for and/or scheduled by the party seeking the deposition during the period of time that is provided in

the applicable discovery and trial submission schedule for the action for the conducting of such depositions.

2. The parties shall make every effort to use depositions as well as other discovery obtained from defendants in other actions in New York State and other jurisdictions for all purposes as if taken in each action in these cases in accordance with of this Order. No other depositions of defendants shall be taken in these cases except pursuant to Section IX (C)(3) of this Order.

3. Any plaintiff may serve notice of intent to take non-repetitive depositions of defendants' representatives pertaining to issues which were not covered or not adequately covered by prior depositions of that defendant. Objections to said depositions shall be brought by the affected defendant before the Court who shall issue a ruling. All corporate depositions shall be noticed at a time and place convenient to the parties and witnesses, taking into account the expense to the parties and the health of the defendants' witnesses.

4. Questioning by plaintiffs' counsel shall begin with interrogation by Plaintiffs' Liaison Counsel or by the plaintiffs' counsel who noticed the deposition, followed by other plaintiffs' counsel in the order of their appearance in this litigation and defense counsel in the order described in Section IX (B)(2) of this Order. If the above deponent is a present or former officer or employee of a defendant, questioning by defense counsel shall begin by questioning by that defendant, followed by other defense counsel in the order described in Section IX (B)(2) of this Order.

D. Stenographer's Fees:

1. When a deposition of a party to an action is taken at the request of any other party, the cost of the stenographer's appearance, the preparation of the transcript and the party deponent's copy of the transcript shall be divided equally among all counsel who appear at the deposition, other than counsel for the party-deponent. Any party, other than the party-deponent, who requests a copy of the transcript shall bear the cost of that copy.

2. When a party elects to take his, hers or its own testimony, that party shall bear the cost of the stenographer's appearance and the preparation of the transcript. Any party who requests a copy of the transcript shall bear the cost of that copy.

3. When a deposition of a non-party is taken, the cost of the stenographer's appearance, the preparation of the transcript, and the non-party's copy of the transcript will be divided equally among all counsel who appear at the deposition, other than counsel for the non-party. Any party, other than the non-party's counsel, who requests a copy of the transcript shall bear the cost of that copy.

E. Videotaped Depositions:

1. For the purpose of this section, the term videotaped depositions shall include videotaped trial testimony.

2. Any party upon service of proper notice of deposition may videotape depositions for any use permitted by the CPLR. All videotape depositions shall be conducted in accordance with 22 NYCRR 202.15, with the exceptions and stipulations set forth below:

a. If the party noticing for or scheduling a deposition wants the deposition to be videotaped, that party shall so advise all parties either in its notice of the deposition or by letter;

b. The videographer may not be an employee of any party or any party's counsel;

c. The videotaped deposition shall be taken before a person authorized by statute who will swear the deponent and make a stenographic record of the proceedings;

d. At the beginning of the deposition, the videographer will state on camera, in addition to that required by Uniform Rule Section 202.15(d)(1): the title and venue of the action; the name of the deponent; and the name of the officer before whom the deposition is being taken.

3. Unless otherwise agreed to by counsel, videotaped depositions of deponents who have not been previously deposed in the pending action and who are not terminally ill may not be taken sooner than fifteen (15) days after completion of that witness' non-videotaped discovery deposition. Upon agreement of all counsel, this provision may be waived.

4. A videotape deposition of a terminally ill plaintiff who has previously submitted to a discovery deposition and whose availability for trial may reasonably be doubted

may be promptly taken on notice and without further order of the Court provided that plaintiff serves on all parties: a medical affidavit executed by a treating physician specifying plaintiff's present diagnosis and prognosis and indicating any prescribed medication which would in any way affect plaintiff's mental faculties and ability to understand and respond to questioning; and all other documents requested by defense counsel including, but not limited to, supplemental responses to Defendants' Standard Interrogatories and all new medical records and reports in the possession of plaintiff and plaintiff's counsel. Plaintiff's counsel should confer with Defendants' Liaison Counsel to schedule the deposition with reasonable notice, giving due consideration to plaintiff's medical condition. If notice of the deposition is given seven (7) days or less prior to the date when the deposition is to be taken, notice must be served by facsimile. In no event shall the taking of the videotape deposition be delayed more than ten (10) days from the date of receipt of plaintiff's counsel's certification and notice to take the videotape deposition except with agreement of plaintiff's counsel or by order of the Court. Plaintiff's counsel shall permit defendants to take a further discovery deposition for the purposes of obtaining non-repetitive testimony off-camera at defendants' expense prior to the videotape deposition.

5. Unless all counsel agree otherwise or unless the Court on motion directs otherwise, only one camera may be used and the camera will record the witness's head and shoulders view only, with the exception that, at the request of questioning counsel, the camera may record a close-up of a deposition exhibit or other exhibit, including demonstrative exhibits, while the witness is being questioned concerning the exhibit.

6. All objections to questions and testimony given at a videotaped deposition, except as to the form of the question, are preserved until the time of trial.

7. The cost of the videotape, as a material, and the cost of recording the deposition on videotape will be borne by the party noticing the videotaped deposition; that party shall have ownership of the videotape. When an edited version is required, the cost of the videotape, as a material, and the cost of producing the edited version of the videotape recording for use at trial shall be borne by the party who caused to be recorded testimony or other evidence subsequently determined to be objectionable and ordered stricken from the tape by the Court; that party shall have ownership of the edited version of the videotape.

X. Expedited Discovery and Trials for *In Extremis* Plaintiffs

A. When a injured plaintiff is *in extremis*, plaintiff's counsel may petition the Court for an Order providing for a jury selection date and an expedited discovery and trial submission schedule. Any such petition to the Court shall be served on all parties and/or prospective parties and shall include and/or be accompanied by:

1. A medical affidavit executed by a treating physician specifying the injured plaintiff's present diagnosis and prognosis and indicating any prescribed medication which would in any way affect the injured plaintiff's mental faculties and ability to understand and respond to questioning;

2. A copy of the summons and complaint and any amended and/or supplemental summonses and complaints;

3. Plaintiff's responses to Defendants' Standard Interrogatories and to any supplemental interrogatories previously served;

4. All medical records and reports in the possession of plaintiff and plaintiff's counsel; and

5. All other documents requested by defense counsel and in plaintiff's or plaintiff's counsel's possession including all tax, workers' compensation and social security records.

B. In the event that plaintiff counsel seeks to conduct videotaped trial testimony of the injured plaintiff, plaintiff's counsel will permit defendants to conduct a discovery deposition prior to the videotaped trial testimony.

C. Plaintiff may not conduct videotaped trial testimony of an *in extremis* injured plaintiff unless the materials set forth in Section X (A) have been provided to all defense counsel and defense counsel have completed their discovery deposition.

D. The parties will make a good faith effort to schedule the *in extremis* discovery deposition and videotaped trial testimony at mutually agreeable times and locations. All parties are encouraged to act reasonably concerning the scheduling.

XII. Motion practice

A. Discovery Motions:

Parties will make a good faith effort to resolve all discovery disputes without the need for Court intervention. However, when a dispute cannot be resolved by the parties, a motion may be brought pursuant to the applicable provisions of the CPLR.

B. Accelerated Judgment:

Each party has a right to seek or oppose an accelerated judgment pursuant to CPLR Sections 3211 and/or 3212. However, in an effort to avoid unnecessary motion practice and to streamline the conclusion of these cases, the Court hereby adopts the following process:

1. At any time, plaintiff's counsel may notify a defendant that, upon the review of a particular action, it appears unlikely that plaintiff will be able to produce any evidence of identification of products containing asbestos manufactured, supplied or applied by that particular defendant. Upon receipt of such notification, such defendant may prepare and serve on plaintiff's and co-defendants' counsel a proposed order dismissing plaintiffs' claims and all cross-claims, giving notice to all parties of defendant's intention to enter said order. If no party serves written objection to such proposed order within twenty (20) days of its service, the defendant may submit the proposed order to the Court, with copies to all parties. If, within twenty (20) days of service of a proposed order and notice pursuant to this paragraph (B)(1), any co-defendant advises in writing that it intends to pursue in good faith its cross-claims against the submitting defendant, that co-defendants's cross-claims may be converted to third-party claims in accordance with Section 1007 of the CPLR. The submitting defendant may then submit to the Court a revised order dismissing plaintiff's claims and reflecting the revised caption, or may move for other or different relief.

2. A defendant may in good faith serve upon the plaintiff a statement in writing that there is no evidence of product identification ("Product Identification Letter"). When a Product Identification Letter is served upon plaintiff, plaintiff shall respond by:

- a. Advising the defendant of the identities of co-worker(s) or other witness(es) who will testify concerning product identification or specifying documents that will

evidence product identification, and in doing so plaintiff will not be precluded from presenting additional witnesses or documents at the time of trial so long as such witnesses or documents have been identified as required by the CPLR and/or this Order; or

b. By advising the defendant that no evidence of product identification will be forthcoming, in which case defendant may proceed to enter an order in accordance with Section XII (B)(1) of this Order.

3. In the event that a plaintiff responds by advising defendant of identities of co-workers and/or other witnesses, the plaintiff must refer the defendant to prior testimony substantiating product identification or provide sworn affidavit(s) of the designated witnesses stating: (a) the job sites and the time periods affiant was at the job sites; and (b) a summary of the anticipated testimony regarding the identification of products and the circumstances of injured plaintiff's/decedent's exposure to the product.

4. Product Identification Letters are to be served and responded to in accordance with the applicable discovery and trial submission schedule. If plaintiff fails to respond to defendant's demand for product identification in accordance with the applicable discovery and trial submission schedule, such defendant is entitled to submit to the Court, on notice, an order dismissing plaintiff's complaint against that defendant. Plaintiff retains the right to be heard in opposition to the signing and entry of such an order by the Court, and also retains his or her right to oppose an accelerated judgment pursuant to CPLR Sections 3211 and 3212, or both.

5. If, based upon plaintiff's response to its Product Identification Letter, a defendant desires to depose co-workers and/or other witnesses, such defendant shall advise plaintiff's counsel in writing. Noticing and/or scheduling of the depositions will proceed in accordance with Section IX of this Order.

6. When a plaintiff discontinues an action against a defendant, such defendant may proceed in either of the following manners:

(a) Such defendant may serve written notice of the discontinuance upon all parties to the action and a proposed order dismissing all claims and cross-claims against it,

giving notice to all parties of defendant's intention to enter said order. If no party serves written objection to such proposed order within twenty (20) days of its service, the defendant may submit the proposed order to the Court, with copies to all parties. If, within twenty (20) days of service of said proposed order and notice, a co-defendant serves a written objection to dismissal on the ground that it intends to pursue in good faith its cross-claims against the defendant obtaining the discontinuance, that defendant's cross-claims may be converted to third-party claims in accordance with Section 1007 of the CPLR. The defendant obtaining the discontinuance may then submit to the Court a revised order dismissing all claims and all cross-claims except those of the objecting co-defendant and reflecting the revised caption, or may move the Court for other or different relief.

(b) In the alternative, such defendant may move for an order dismissing all claims and cross-claims against it in the action. The return date of such motion shall be at least twenty (20) days following service of said motion unless, by Order to Show Cause, the Court permits a shorter notice period. If no party serves written objection to such dismissal within twenty (20) days following service of such motion, or within such other time period as the Court may set, the motion will be granted and the moving defendant may submit to the Court, with copies to all parties, an order dismissing all claims and cross-claims against it and deleting it from the action. If any party to the action serves written objection to such motion for dismissal within the applicable time period, the Court shall hear the motion and issue such order as is just.

XIII. Scheduling of Trials and Discovery

The Court will periodically issue Orders setting forth dates for Jury Selection in actions pending in the EJDAL in accordance with this Order. For the purpose of this Section of this Order, the term injured plaintiff is meant to refer to the individual who was allegedly injured by reason of exposure to asbestos and, when the plaintiff is a personal or estate representative, is meant to refer to the decedent.

A. Jury Selection Dates:

The Court will issue individual Jury Selection dates for asbestos actions pending in the EJDAL. The Court may group for discovery purposes: (1) actions of injured plaintiffs

who were the direct employees of a legal entity at a plant site in the Eighth Judicial District (for example, employees of Bethlehem Steel, Carbon Graphite, Carborundum, DuPont, Durez Plastics, General Motors, Goodyear, Hooker Chemical, Linde Division, and Olin Matheson); (2) the action of an injured plaintiff who alleges injurious exposure to asbestos by reason of kinship or co-habitation with the action of a related person who also has an action pending in the EJDAL; and (3) other cases which under the circumstances would warrant discovery grouping. Nothing in this Case Management Order shall be construed to prevent the Court from consolidating two or more actions for trial. Nothing in this Case Management Order shall be construed to prevent defendants from applying to the Court for the removal of one or more plaintiffs from a discovery group for good cause shown.

B. Procedure for Scheduling Jury Selection Dates:

1. On or before the first business day of June in each calendar year, all plaintiffs' counsel shall submit to the Court and Defendants' Liaison Counsel a list of all asbestos actions which said counsel has commenced in the EJDAL as of May 15 of that year and which have not been assigned Jury Selection dates ("List of Pending EJDAL Actions"). All Lists of Pending EJDAL Actions shall remain confidential, shall not be distributed to anyone by Defendants' Liaison Counsel, and shall be destroyed by Defendants' Liaison Counsel upon completion of the scheduling of trials and discovery process. Plaintiffs' counsel's List of Pending EJDAL Actions shall be in order of date of commencement and shall contain the following information:
 - a. The full name of the injured plaintiff and whether the injured plaintiff is deceased;
 - b. The nature of the exposure claimed (*i.e.*, trade, plant, kinship, etc.) together with the applicable trade union affiliation, or the plant employer and plant site;
 - c. The name of each asbestos related condition from which the injured plaintiff allegedly suffers (*i.e.*, asbestos related pleural disease, asbestosis, lung cancer, mesothelioma and/or other condition);
 - d. The date on which the action was commenced, the county in which the action was commenced and the index number assigned to the action.

2. On or before the first business day of June in each calendar year, all plaintiffs' counsel shall submit to all defense counsel a list of actions for which Jury Selection Dates are requested for the following calendar year ("Proposed EJDAL Trial List"). The Proposed EJDAL Trial List shall include the following information for each action: the proposed date for jury selection; and the information set forth in Section XIII (B)(1) of this Order. If plaintiffs' counsel requests any groupings of cases for discovery purposes, plaintiffs' counsel must submit a copy of the Plaintiff's Statement for each member of the proposed group.

3. In June of each calendar year Liaison Counsel will confer for the purpose of reaching an agreement as to the actions which will be assigned Jury Selection Dates for the following calendar year. By the last Thursday of June, Defendants' Liaison Counsel will report the status of their negotiations with Plaintiffs' Liaison Counsel to other defense counsel. If all EJDAL counsel reach an agreement by the first Thursday of July, Liaison Counsel will so advise the Court and, on notice to all counsel, will submit to the Court for its approval and execution a proposed Order or Orders setting forth the agreement as to the assignment of Jury Selection Dates for the next calendar year ("Trial Calendar"). If EJDAL Counsel are unable to reach an agreement by the first Thursday of July, Plaintiffs' Liaison Counsel, Defendants' Liaison Counsel, and any other interested counsel will submit their Proposed EJDAL Trial Lists to the Court by the second Thursday of July. The Court will then schedule a meeting of all counsel for the third Thursday of July, or at such other time as the Court may set. Following said counsel meeting the Court will issue an Order setting forth the assignment of Jury Selection dates for the next calendar year.

4. **General Guidelines for Assignment of Jury Selection Dates:**

a. The assignment of Jury Selection Dates for a calendar year shall take into consideration the inventory of actions from each plaintiff law firm and be consistent, to the extent practicable, with the number and age of the actions on each plaintiffs' counsel's List of Pending EJDAL Actions, as well as the occupational and disease mix of the actions on said List. There shall be no requirement, however, that the cases assigned Jury Selection Dates represent the exact percentages of the numbers of certain disease categories which appear on the List of Pending EJDAL Actions.

b. The assignment of actions for Jury Selection shall be, to the extent practicable, in a chronological order from the date of filing.

c. Ordinarily each Jury Selection Date will be a Monday at 9:30 in the morning. For a week in which a court holiday occurs on Monday, the Jury Selection Date will be Tuesday.

D. Jury Selection Dates for *In Extremis* Actions:

The Court may schedule expedited Jury Selection dates for *in extremis* plaintiffs in accordance with Section X of this Order. Any Order providing for an expedited Jury Selection date will also include an expedited discovery and trial submission schedule in accordance with the checklist annexed as Appendix D.

E. Scheduling of Discovery:

Following the assignment of Jury Selection Dates for a given calendar year, Liaison Counsel will meet and confer in order to develop a Discovery and Trial Submission Schedule for each action assigned a Jury Selection Date. The Discovery and Trial Submission Schedule will set forth a date for each of the following discovery and trial submissions steps:

Step 1. The last day by which plaintiffs are to: serve responses to defendants' standard interrogatories and document requests; provide copies of all medical, personnel, union, earning, social security, worker's compensation and tax documents in their possession; and serve written authorizations on defendants or defendants' record retrieval service.

Step 2. The last day for defendants to serve: responses to plaintiffs' standard interrogatories and document requests; non-repetitive, supplemental interrogatories; and any objections to plaintiffs' interrogatory responses.

Step 3. The last day for plaintiffs to serve: non-repetitive, supplemental interrogatories; and responses to defendants' non-repetitive, supplemental interrogatories.

Step 4. The last day for defendants to serve responses to plaintiffs' non-repetitive, supplemental interrogatories.

Step 5. The date of injured plaintiff's deposition. In all actions, the rights of defendants and third party defendants to depose plaintiff spouses, personal representatives and distributees of decedents at any time prior to jury selection is reserved.

Step 6. The date of commencement of depositions of defendants, third-party defendants, and non-parties. In all actions, the rights of all parties to depose defendants, third-party defendants, and non-parties at any time prior to jury selection is reserved.

Step 7. The date by which plaintiffs are to provide all original medical materials to defendants. It is plaintiffs' duty to locate and obtain possession of all original medical materials and to provide them to the defendants.

Step 8. The date by which defendants are to commence third party actions, if any.

Step 9. The date by which defendants are to have forwarded Product Identification Letters.

Step 10. The date by which plaintiffs are to have responded to Product Identification Letters.

Step 11. The date by which plaintiffs are to serve and file Requests for Judicial Intervention, notes of issue and statements of readiness and to serve on each defendant a settlement demand.

Step 12. The date by which plaintiffs are to serve expert information and trial witness and exhibit lists and by which both plaintiffs and defendants are to serve all motions in limine and, unless good cause is shown, all motions for summary judgment.

Step 13. The date by which defendant are to serve expert information and trial witness and exhibit lists.

Step 14. The date by which plaintiffs and defendants are to serve counter submissions for trial.

Step 15. The date on which motions in limine will be argued and a pretrial conference will be conducted. Ordinarily, this date will be the Thursday prior to the Jury Selection date.

Step 16. The Jury Selection Date. Ordinarily, this date will be a Monday. Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel will provide a copy of the Discovery and Trial Submission Schedule to the Court. In addition, Plaintiffs' Liaison Counsel will provide a copy of same to all plaintiffs' counsel and Defendants' Liaison Counsel will provide a copy of same to all defense counsel.

F. Removal of Actions from the Trial Calendar:

1. An action will be removed from the Trial Calendar if the plaintiff fails to comply with Discovery Step 1 within 28 days of the scheduled date for compliance.
2. An action may be removed from the Trial Calendar if plaintiff fails to comply with or Discovery Step 11. Any party wishing to avail themselves of the sanction provided by this paragraph shall make a written application, by Order to Show Cause, to the Court. The Court will issue a ruling within five (5) days after hearing oral argument.
3. If an action is removed from the Trial Calendar, it may be reinstated upon application to the Court and a showing of a reasonable excuse for failure to comply and absence of prejudice to defendants.

XVI. Pretrial Submissions

A. Pretrial submissions shall be served in accordance with the applicable discovery and trial submission schedule. Pretrial submissions include a list of all expert witnesses, fact witnesses and all exhibits that the parties intend to use at trial. Counsel shall have an opportunity to designate additional witnesses and exhibits in response to their adversaries designations as set forth in the discovery and trial submission schedule or at some later time for good cause shown.

B. The trial judge shall make such further orders as (s)he shall desire for submission of proposed *voir dire*, requests for jury charges or other submissions. Additionally, the trial court shall direct a schedule for objections to exhibits or proposed deposition testimony, as necessary and as the Court so chooses.

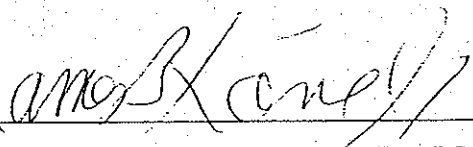
XVII. Miscellaneous

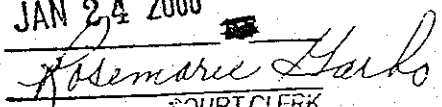
The Court recognizes that cooperation among counsel and parties is essential for the orderly and expeditious resolution of this litigation. The communication of information among the plaintiffs' counsel, among defense counsel, and among defendants shall not be deemed a

waiver of the attorney-client privilege, the protection afforded by the attorney work-product doctrine, or any other privilege to which a party may be entitled. Any cooperative efforts described above shall not, in any way, be used against any of the parties, shall not constitute evidence of conspiracy, concerted action, or any wrongful conduct, and shall not be communicated to the jury. The exchange of information or documents by counsel will not, by itself, render such information or documents privileged.

Liaison Counsel for plaintiffs and defendants are hereby directed to mail a copy of this Order to all counsel who have appeared in these actions.

SO ORDERED.


HONORABLE JAMES B. KANE, JR., J.S.C.

GRANTED
JAN 24 2000

COURT CLERK
ROSEMARIE GARBO

SUPREME COURT OF THE STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

In re EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION

This document applies to:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION

PLAINTIFF'S STATEMENT

Plaintiffs,

vs.

Defendants.

_____ County

Index Number: _____

PLEASE STATE:

Nature of Action: Personal Injury _____
Wrongful Death _____

As to PLAINTIFF:

1. Full Name:
2. Date of Birth:
3. Present Address:
4. Social Security Number:

As to PLAINTIFF'S SPOUSE, if applicable:

5. Full Name:
6. Date of Birth:
7. Present Address:
8. Social Security Number:

APPENDIX A

As to PLAINTIFF'S DECEDENT, if applicable:

9. Full Name:
10. Date of Birth:
11. Last Address:
12. Social Security Number:
13. Date and Place of Death:
14. Cause of Death:

As to alleged ASBESTOS EXPOSURE:

15. Indicate which of the following types of activities resulted in plaintiff's/decedent's alleged exposure to asbestos:
 - A. Insulating Trade:
 - B. Boiler Trade (indicate trade):
 - C. Construction Trade (indicate trade):
 - D. Plant Worker (indicate trade):
 - E. Brake Lining or Friction Worker:
 - F. Non-Occupational (describe):
 - G. Other (describe):
16. Primary work site(s):
17. Date of First Exposure:
18. Date of Last Exposure:
19. Asbestos containing products to which plaintiff/decedent was allegedly exposed:
20. Nature of alleged asbestos related illness and date of diagnosis:

Date of Diagnosis

Asbestosis	_____
Lung Cancer	_____
Mesothelioma	_____
Pleural Changes	_____
Other (identify)	_____

APPENDIX A

20. Has plaintiff or did decedent ever smoke cigarettes?

Yes _____

No _____

If so, state the number of years and the number of packs per day of plaintiff's/decedent's smoking:

21. Has plaintiff been or was decedent exposed to non-asbestos containing products or substances which have been demonstrated to cause or contribute to lung disease, injury or dysfunction?

Yes _____

No _____

If so, state all such products or substances:

22. State all other prior or pending asbestos actions:

Title:

Venue:

Index or Docket Number:

Status of Action:

Title:

Venue:

Index or Docket Number:

Status of Action:

Title:

Venue:

Index or Docket Number:

Status of Action:

Dated:

(Signature of Plaintiff or Attorney)

By: (Typed name of signator)

Name, address and telephone number of
Attorney for Plaintiff(s)

APPENDIX A

SUPREME COURT OF THE STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

In Re EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION

EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION

This Document Applies To:

County: _____
Index Number: _____

ACKNOWLEDGMENT OF SERVICE

Defendant _____, by its attorneys _____, acknowledges receipt of a summons and complaint in this action.

Pursuant to EJDAL Case Management Order Number 8, Section V, defendant _____ hereby answers the complaint in this action and refers plaintiff(s) to its standard answer filed in the EJDAL on _____ and raises each of the affirmative defenses and cross-claims contained therein.

Respectfully submitted,

Defendant _____

By its Attorneys:

(Typed name of signator)

Name, address and telephone number of
Attorney for Defendant

Dated: _____

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
EIGHTH JUDICIAL DISTRICT

In Re EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION

EIGHTH JUDICIAL DISTRICT
ASBESTOS LITIGATION

This Document Applies To:

County
Index Number:

ACKNOWLEDGMENT OF SERVICE

Third-party defendant _____, by its attorneys _____, acknowledges receipt of a third-party summons and complaint in this action.

Pursuant to EJDAL Case Management Order Number 8, Section V, third-party defendant _____ hereby answers the third-party complaint in this action and refers third-party plaintiff to its standard answer to third-party complaint filed in the EJDAL on _____ and raises each of the affirmative defenses and cross-claims contained therein.

Respectfully submitted,

Third-Party Defendant _____

By its Attorneys:

(Typed name of signator)
Name, address and telephone number of
Attorney for Third-Party Defendant

Dated: _____

APPENDIX C

IN EXTREMIS DISCOVERY AND TRIAL SUBMISSION CHECKLIST

1. Date for plaintiff to serve Answers to Standard Interrogatories, to provide copies of all medical and employment documents in their possession, and to serve written authorizations on defendants: _____
2. Date, time and place of plaintiff's discovery deposition: _____
3. Date, time and place of plaintiff's videotaped trial testimony: _____
4. Date for plaintiff to provide all original medical material to defendants: _____
5. Date by which defendants are to serve product identification letters: _____
6. Date by which plaintiff is to respond to defendants' product identification letters: _____
7. Date for plaintiff to serve note of issue and statement of readiness and to serve a settlement demand on each defendant: _____
8. Date by which plaintiff is to serve expert designations: _____
9. Date by which defendants are to serve expert designations (following service of plaintiff's designations): _____
10. Date for plaintiff's pretrial submissions, including lay witness list, motions *in limine*, exhibit list and deposition designations: _____
11. Date for defendants' pretrial submissions, including lay witness list, motions *in limine*, exhibit list and deposition designations: _____
12. Date for argument of motions *in limine* and pretrial conference (usually the Thursday before jury selection at 11 a.m.): _____

APPENDIX D