

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 3076335

Book Page CIVIL

No. Pages: 19

Instrument: ORDER

Control #: 202205120640

Index #: E2021009637

Date: 05/12/2022

Time: 12:20:08 PM

Return To:
Christina R. Massoud
200 Elizabeth Street
Utica, NY 13502

Kulcavage, Shirley
kulcavage, edward

lindberg/mph
Mader Corp (Individually and as successor to Rochester
Acoustical)
AECOM ENERGY & CONSTRUCTION INC.
and Morrison&8208;Knudsen Co. Inc., successor to Raytheon
Engineers & Constructors Inc., Raytheon Constructors Inc. and

Total Fees Paid: \$0.00

Employee: CW

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

JAMIE ROMEO

MONROE COUNTY CLERK



PRESENT: Hon. Erin P. Gall, J.S.C.
Justice Presiding

SUPREME COURT OF THE STATE OF NEW YORK
SEVENTH JUDICIAL DISTRICT

In Re: Fifth Judicial District (Monroe County)
Asbestos Litigation

This Document Applies to:

SHIRLEY KULCAVAGE, individually and as Personal
Representative of the Estate of EDWARD KULCAVAGE,

ORDER

Index No.: E2021009637

Plaintiffs,

against

BURNETT PROCESS, INC., *et al.*,

Defendants.

Pursuant to a Court-ordered conference of this matter held on March 30, 2022 with counsel for all parties of record concerning ongoing discovery; and upon hearing arguments from Darron E. Berquist, Esq. of Lanier Law Firm PLLC on behalf of Plaintiffs, and Meagan E. Dean, Esq. of McGivney Kluger Clark & Intoccia, P.C. as Defense Liaison Counsel on behalf of Defendants; it is hereby

ORDERED that Defendants' responses to Plaintiffs' First Standard Set of Liability Interrogatories and Request for Production of Documents pursuant to Section VII(A)(2) of the Third, Fourth, Fifth, Sixth, And Seventh Judicial District Asbestos Litigation Case Management Order ("CMO"), which are hereby deemed served on all defendants but held in abeyance, are required to be served on Plaintiffs no later than forty-five (45) days subsequent to Plaintiffs' production of evidence identifying a particular Defendant as a probable source of Plaintiff-Decedent's exposure to asbestos or, subsequent to that same production of evidence, within sixty

(60) days of the date of service of Plaintiffs' First Standard Set of Liability Interrogatories and Request for Production of Documents on a particular Defendant, whichever is later,¹ absent an application by Plaintiffs' counsel on a Defendant-specific basis as to why responses to such demands from that particular defendant are reasonable, necessary and material to the prosecution of this action prior thereto; and it is hereby

ORDERED that Defendants' responses to 'Plaintiffs' First Set of Product Identification Interrogatories & Document Requests *with respect to case-specific work sites* pursuant to Section VII(A)(2)(c) of the Third, Fourth, Fifth, Sixth, And Seventh Judicial District Asbestos Litigation Case Management Order ("CMO"), are to be served on Plaintiffs within sixty (60) days of the date of service of such interrogatory demands on a particular Defendant, or within thirty (30) days from the date of Plaintiffs' production of responses to Defendants' Standard Set of Interrogatories and Requests for Production of Documents in this matter in particular, whichever is later, absent an agreement otherwise between the parties; and that Plaintiffs' First Set of Product Identification Interrogatories & Document Requests, to the extent they are to be served by Plaintiffs' counsel in this matter, shall not deviate from the standard form attached hereto as Exhibit A though Plaintiffs' counsel reserves the right to *remove* any interrogatories or document requests therein; and it is hereby

ORDERED that this Order applies retroactively to all prior-served discovery demands in this matter pursuant to Section VII(A) of the Third, Fourth, Fifth, Sixth, And Seventh Judicial District Asbestos Litigation Case Management Order; and it is hereby

ORDERED that any application by any party concerning discovery demands and/or

¹ Nothing in this Order shall prohibit any Defendant who has served Answers to Interrogatories in any other jurisdiction, if that response remains accurate, from adopting those Answers to Interrogatories, with Plaintiff's consent, as and for their responses to Plaintiffs' interrogatories in this matter, pursuant to Section VII(A) of the Third, Fourth, Fifth, Sixth, And Seventh Judicial District Asbestos Litigation Case Management Order.

responses pursuant to Section VII(A) of the Third, Fourth, Fifth, Sixth, And Seventh Judicial District Asbestos Litigation Case Management Order served in this case is to be made in letter-form to the Court, on notice to all parties, after which the Court will conference the issue on a Defendant-specific basis and may thereafter, upon the Court's discretion, hear oral argument or permit further briefing on remaining discovery disputes on a Defendant-specific basis; and it is hereby

ORDERED that this Court may at any time on its own initiative or on motion of any party or of any person from whom or about whom discovery is sought issue a protective order further denying, limiting, conditioning or regulating the use of Plaintiffs' discovery demands addressed herein as to any Defendant or Defendants to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the Courts (*see generally* CPLR 3103[a]; *see also Impellizzeri v. Campagni*, 181 A.D.3d 1181 (4th Dept. 2020), *Voss v Duchmann*, 129 AD3d 1697, 1698, 12 N.Y.S.3d 428 (4th Dept 2015), ("It is well settled that a court is vested with broad discretion to control discovery and that the court's determination of discovery issues should be disturbed only upon a showing of clear abuse of discretion")); and it is hereby


ORDERED that this Order is made pursuant to the specific facts and circumstances of this case, as well as the Third, Fourth, Fifth, Sixth, And Seventh Judicial District Asbestos Litigation Case Management Order's express purpose to encourage and bring about the fair, expeditious, and inexpensive resolution of asbestos litigation matters and permit parties to obtain reasonably necessary documents and information without imposing undue burdens in order to permit the parties to evaluate the cases, reach earlier settlements, and prepare unsettled cases for trial, and with respect to controlling discovery statutes and relevant case law, which hold that in the context of discovery disputes, competing interests must always be balanced, the need for discovery must

be weighed against any special burden to be borne by the opposing party [*see Kavanagh v. Ogden Allied Maintenance Corp.*, 92 N.Y.2d 952, 954 (1998)], and such determinations must be made on a case-by-case basis pursuant to the Court's discretion and upon the required undertaking of the balancing of interests of all parties, as this Court has done and will continue to do in this matter; and it is hereby

ORDERED that to the extent this Order differs with any provision of the Scheduling Order in this case or broader Case Management Order, this Order shall control.

DATED: Utica, NY
 May 12th, 2022

SO ORDERED:



HON. ERIN P. GALL, J.S.C.

ENTER

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiffs,

Index No.:

-against-

**PLAINTIFFS' FIRST SET OF
PRODUCT IDENTIFICATION
INTERROGATORIES &
DOCUMENT REQUESTS
TO ALL DEFENDANTS**

Defendants.

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PLEASE TAKE NOTICE, that pursuant to Article 31 of the CPLR, Plaintiffs hereby demand that each defendant answer the following Interrogatories. Defendant's answers are to be served on the undersigned within twenty (20) days after service hereof. Any document not produced or any material or documents not searched or reviewed based on a claim of privilege should be specifically identified.

DEFINITIONS

1. The word "document" is defined to be synonymous in meaning and equal in scope of usage of this term in CPLR §3120, including but not limited to, every writing or record of every type and description that is or has been in the possession, control or custody of defendants, or any of the other persons or entities described below, or any of the defendant's agents, representatives, consultants or attorneys (excluding privileged materials) or of which said defendant and entities have knowledge, including without limitation correspondence, contracts, memoranda, tapes, stenographic or hand-written notes, studies, publications, books, pamphlets, pictures, photographs, films, voice recordings, maps, reports, surveys, charts, minutes, calendars, diaries, invoices, purchase orders,

bills, bills of lading, and all electronically stored data; every draft of every document; every copy of each such document for which the original is not in the possession, custody or control of defendants; and every copy of every document where such copy is not an identical copy of any original or where such copy contains any commentary or notation whatsoever which does not appear on the original.

2. When asked to “describe” or “identify” a document, state the title, subject matter, author, date, addressee, file designation and other identifying designation and the present location and custodian of the document. Please attach the document as an exhibit or indicate whether you will produce the document as an exhibit or indicate whether you will produce the document without a formal request.

3. “Regarding” shall mean relating to, reflecting, referring, concerning, describing, evidencing or constituting.

4. The word “representative” shall be liberally construed and shall include all agents, employees, officials, officers, executives, directors, consultants and any others who directly or indirectly represent in any manner the defendants.

5. “Asbestos products” or “asbestos-containing products” are used interchangeably and include any supplies, equipment calling for the use or installation of asbestos or asbestos-containing products, other products, materials, or equipment containing or including asbestos in whole or in mixture with other products or materials.

6. The terms “defendant,” “you” or “your” shall be interpreted to mean and include the defendants and the defendant’s predecessor or successor entities, each of its/their agents or employees, and each person acting or purporting to act on defendant’s behalf.

INSTRUCTIONS

1. Pursuant to Article 31 of the CPLR, these interrogatories shall be deemed continuing and defendant is required to supplement its responses as new or additional information is acquired.

2. You are requested to furnish all information in your possession and all information available to you, not merely such information as you know of your own personal knowledge, but also all knowledge that is available to you, your employees, officers and agents, by reason of inquiry including inquiry of representatives or agents.

3. If you are unable to answer any of the following interrogatories completely, answer to the greatest extent possible, and specifically state the reason for any incomplete answer.

4. The responses to all interrogatories relating to oral communications shall set forth whether or not the oral communication was by telephone or in person, and also provide the names, present addresses, business positions, and occupations of the parties involved in said communication, and the names and addresses of any other persons present during said communications.

5. The singular shall be considered plural and the plural shall be considered singular when necessary to broaden the scope of any request.

6. The conjunctive and disjunctive shall be deemed interchangeable when to do so would broaden the scope of any request.

7. As used herein, the terms "you," yourself," or our refer to defendant, defendant's predecessor or successor entities, each of its/their agents or employees, and each person acting or purporting to act on defendant's behalf.

INTERROGATORIES

1. (A) State whether any asbestos-containing product that was manufactured, rebranded, sold, shipped, installed, or distributed by you was present at any job sites listed on the attached Chart "A" during the specified time periods.

(B) For each site listed in the attached Chart "A" where an asbestos containing

product was present during the specified time period that was manufactured, rebranded, sold, shipped, installed, or distributed by you, specify with particularity: the type of product(s), the products' manufacturer(s); the trade name of such product(s); the amount/volume of the product(s); the job site at which such products(s) were present; the products' intended and actual use; and the time frame during which such product(s) were present.

2. Identify all documents including but not limited to invoices, purchase orders, contracts, billing statements, bills of lading, packing slips, and inventory (including information stored in electronic form such as word processing files and computer databases), photographs, books, contracts, agreements, drawings, approvals, delivery tickets, studies, memoranda, (including your company's internal communications), statements, pleadings, stipulations, promotional material, product brochures, reports, telegrams and any and all other written, printed, graphic or audio materials of any kind or description, including all non-identical copies thereof, in your possession, custody or control, or in the possession, custody or control of your agents or representatives, including your attorneys, that indicate the use or presence of raw asbestos, asbestos-containing products and/or equipment/machinery which were manufactured, sold, delivered, shipped, rebranded, contracted for, distributed, installed or retailed by you, your successor or predecessor entities, subdivisions or affiliates at any of the job sites listed on the attached Chart "A" during the specified time periods.

3. Identify all documents including but not limited to invoices, purchase orders, contracts, billing statements, bills of lading, packing slips, and inventory lists (including information stored in electronic form such as word processing files and computer databases), photographs, books, contracts, agreements, drawings, approvals, delivery tickets, studies, memoranda, statements, pleadings, stipulations, promotional material, reports, telegrams and any and all other written, printed, graphic or audio materials of any kind or description, including all non-identical copies

thereof, in your possession, custody or control, or in the possession, custody or control of your agents or representatives, including your attorneys, that indicate the names and addresses of general contractors, installation contractors and subcontractors used to install or apply any asbestos-containing products at the job sites listed on the annexed Chart "A".

4. Identify any and all individuals who have given sworn testimony in which any asbestos-containing product(s) sold, shipped, distributed, rebranded, installed and/or manufactured by you were identified at any of the job sites identified in the attached Chart "A" during the specified time period by providing the following information: name of deponent, date of deposition, venue of action and job site identified, product type and product name.

5. Identify all individuals with knowledge of any of the allegations in Plaintiffs' Complaint related to any of the job sites identified in the attached Chart "A" during the specified time period(s).

6. Identify all individuals with knowledge about any product manufactured, sold delivered, shipped, rebranded, contracted for, distributed, installed or retailed by you, your successor or predecessor entities, subdivisions or affiliates at any of the job sites during the time periods listed in the annexed Chart "A".

7. Supply any and all information concerning or regarding any legal proceedings brought against you by persons claiming injury resulting from exposure to asbestos-containing products present at any of the job sites listed in the attached Chart "A" during the specified time periods.

8. Supply any and all information concerning or regarding any state or federal administrative proceedings related to your manufacture, selling, installation, rebranding, shipping, rebranding or distribution of asbestos-containing products at the sites listed in the attached Chart "A" during the specified time periods.

9. Supply any and all information concerning or regarding any legal proceedings brought against you by persons claiming damage to property interests related to your manufacture, selling, shipping, rebranding, installation, use or distribution of asbestos-containing products at the sites listed in the attached Chart "A" during the specified time periods.

10. Supply any and all information concerning or regarding any state or federal administrative proceedings where any persons or entities claimed damage to property interests related to your manufacture, selling, shipping, rebranding, installation, use or distribution of asbestos-containing products at the sites listed in the attached Chart "A" during the specified time periods.

11. Supply any and all information concerning or regarding any asbestos abatement programs, in which you were involved as a party or otherwise, relating to your manufacture, selling, shipping, rebranding, installation, use or distribution of asbestos-containing products at the sites listed in the attached Chart "A" during the specified time periods.

Dated: _____

Respectfully submitted,

Attorney for Plaintiffs

By: _____

CHART "A"

Name:

SITE:UP TO AND INCLUDING:

PLAINTIFFS' FIRST DEMAND FOR THE PRODUCTION OF DOCUMENTS

Pursuant to CPLR 3120, Plaintiffs, by and through their attorneys, _____ request that defendants produce the following documents and things, in their best available form, at the law offices of _____, within sixty (60) days after service of this notice. Consistent with the CPLR, these demands are of a continuing nature, requiring that modified or supplemental responses be provided if defendant obtains additional responsive information.

DEFINITIONS

1. The term "document" is to be considered synonymous in meaning and equal in scope to the usage of this term in CPLR 3120. That is, the term document should be read in its broadest possible sense consistent with the CPLR. The term document includes, but is not limited to, every writing or record of every type and description that is or has been in the possession, control or custody of the defendant, or any of the other persons or entities acting as defendant's agents or employees, or those purporting to act on defendant's behalf, including any of defendant's entities' agents, representatives, consultants or attorneys (excluding privileged materials), or of which said defendant and entities have knowledge, including without limitation correspondence, contracts, memoranda, tapes, stenographic or hand-written notes, studies, publications, books, pamphlets, pictures, photographs, films, voice recordings, maps, reports, charts, minutes, calendars, diaries, invoices, purchase orders, bills, bills of lading, board minutes, all electronically stored data; each and every document; every copy of each such document for the original is not in the possession, custody or control of the defendant; and every copy of every document where such copy is not an identical copy of any original or where such copy contains any commentary or notation whatsoever that does not appear on the original.

2. As used herein, the terms "you," yourself," or our refer to defendant, defendant's

predecessor or successor entities, each of its/their agents or employees, and each person acting or purporting to act on defendant's behalf.

3. Regarding or concerning shall mean relating to, reflecting, referring, describing, evidencing and/or constituting.

4. The singular shall be considered plural and the plural shall be considered singular when necessary to broaden the scope of any request.

5. The conjunctive and disjunctive shall be deemed interchangeable when to do so would broaden the scope of any request.

INSTRUCTIONS

1. If any documents are no longer in your possession, custody or control because of destruction, loss or any other reason, please provide a description of the document that contains the following information:

- a. The type of document;
- b. The date of the document;
- c. The identity of the persons who sent, received, or were copied on the original and any copy of the document;
- d. Describe in as much detail as possible the contents and subject matter of the document; and
- e. State the manner and date of disposition of the document.

2. If you contend that you are entitled to withhold from production any documents requested herein on the basis of privilege, then provide the following information with respect to each document:

- a. Describe the type of document (e.g., letter or memorandum);
- b. State the date of the document;
- c. State the identity of the persons who sent, received, or were copied on the original and any copy of the document;
- d. Describe in as much detail as possible the contents and subject matter of the document;
- e. State the basis upon which you contend you are entitled to withhold the document from production; and
- f. State all other information required by CPLR § 3122(b).

FIRST SET OF REQUESTS

1. All documents identified in your answers to Plaintiffs' First Set of Interrogatories served concurrently herewith.

2. All documents evidencing any communications within your company concerning or regarding the allegations in Plaintiffs' complaint related to job sites listed on the annexed Chart "A."

3. All documents evidencing any communications between you and any third parties concerning or regarding the allegations in Plaintiffs' complaint related to job sites listed on the annexed Chart "A."

4. All documents evidencing your manufacture, installation, rebranding, selling, shipping, use, or distribution of any asbestos-containing products that were present at any of the job sites listed in the attached Chart "A" during the specified time periods.

5. All documents generated by you before 1980 concerning, regarding, or discussing

any of the health risks associated with asbestos exposure related to any of the job sites listed in the attached Chart "A" during the specified time periods.

6. All documents concerning or regarding any workman's compensation claims brought by any individuals who alleged injury from exposure to asbestos containing products manufactured, installed, rebranded, sold, used, shipped, or distributed by you that were present at any of the job sites listed in the attached Chart "A" during the specified time periods.

7. All documents evidencing any distribution agreements, contracts, bills, bills of lading, or any other agreements between you and any third party concerning or regarding asbestos-containing products that were present at any of the job sites listed in the attached Chart "A" during the specified time periods.

8. All documents evidencing the asbestos content of any asbestos-containing products manufactured, sold, shipped, rebranded or distributed by you at any of the job sites listed in the attached Chart "A" during the specified time periods.

9. All documents concerning or regarding any legal proceedings brought against you by persons claiming injury resulting from exposure to asbestos-containing products present at any of the job sites listed in the attached Chart "A" during the specified time periods.

10. All documents concerning or regarding any state or federal administrative proceedings related to your manufacture, selling, installation, use, shipping, rebranding or distribution of asbestos-containing products at the sites listed in the attached Chart "A" during the specified time periods.

11. All documents concerning or regarding any legal proceedings brought against you by persons claiming damage to property interests related to your manufacture, selling, installation, shipping, rebranding, use or distribution of asbestos-containing products at the sites

listed in the attached Chart "A" during the specified time periods.

12. All documents concerning or regarding any state or federal administrative proceedings where any persons or entities claimed damage to property interests related to your manufacture, selling, shipping, installation, rebranding, use or distribution of asbestos-containing products at the sites listed in the attached Chart "A" during the specified time periods.

13. All documents concerning or regarding any asbestos abatement programs, in which you were involved as a party or otherwise, relating to your manufacture, selling, shipping, rebranding, installation, use or distribution of asbestos-containing products at the sites listed in the attached Chart "A" during the specified time periods.

Dated: _____

Respectfully submitted,

Attorney for Plaintiffs

By: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

-----X

Plaintiffs,

Index No.:

-against-

CERTIFICATION

Defendants.

-----X

_____, an attorney duly admitted to practice before the Courts of the State of New York, hereby certifies in accordance with 22 NYCRR Part 130-1.1-a of the Rules of the Chief Administrator that to the best of my knowledge, information and belief, which was formed after a reasonable inquiry under the circumstances, the presentation of the foregoing **PLAINTIFFS' PRODUCT IDENTIFICATION INTERROGATORIES AND DOCUMENT REQUESTS TO ALL DEFENDANTS** and its contents are not frivolous, as the term is defined in Part 130.

Dated: _____

Attorneys for Plaintiffs

By: _____