

FINAL DRAFT

OHIO ASBESTOS LITIGATION

"OAL PLAN (1992)"

**Chief Judge Thomas D. Lambros
United States District Court
Northern District of Ohio
Cleveland, Ohio**

**Chief Justice Thomas J. Moyer
Ohio Supreme Court
Columbus, Ohio**

TABLE OF CONTENTS

Page No.

| | |
|----------------------------------------------------------------------------------|--|
| FOREWORD | |
| REMARKS OF CHIEF JUDGE LAMBROS | |
| REMARKS OF CHIEF JUSTICE MOYER | |
| EXECUTIVE SUMMARY | |
| CONCEPT FOR OAL PLAN (1992) | |
| APPENDIX A - Federal-State Memorandum of Accord | |
| APPENDIX B - Filings by Case Types, SY81-90 | |
| APPENDIX C - OAL Order No. 32 - SPRINT | |
| APPENDIX D - OAL Order No. 120 - Priority Case Management System | |
| APPENDIX E - Ohio Case Management Plans | |
| APPENDIX F - Ohio Timelines | |
| APPENDIX G - CEAP - Case Evaluation and Apportionment Process . | |
| APPENDIX H - Sample Case Management Plan | |
| APPENDIX I - Sample Timeline | |
| APPENDIX J - Defendants' Model Consolidated Discovery Request (CDR) | |
| APPENDIX K - Plaintiffs' Model Consolidated Discovery Request (CDR) | |

FOREWORD

The enclosed document contains recommendations from the Northern District of Ohio Judicial Improvements Act of 1990 Advisory Group, which I chair, concerning the most efficient means to achieve expense and delay reduction in connection with the disposition of personal injury actions that allege illness, diseases, and wrongful death by reason of exposure to asbestos and asbestos-containing products. The recommendations that follow are the product of months of meetings, discussions, and deliberation by members of a Task Force established to review case management in the Northern District of Ohio. These recommendations are the result of a collective effort by the case management task force which included members of the bar and state judiciary. The measures suggested are in all cases compelling and to some extent innovative. The predicament that faces the American Judicial System by reason of asbestos litigation is too well-known to warrant repetition here. Accordingly, the Task Force abandoned a "business as usual" attitude in order to formulate a plan that will actually work within the confines of the tort system.

The recommended approach maximizes available judicial resources. It proceeds from the unfortunate but realistic assumption that asbestos actions will not settle unless a firm credible trial date has been established. See, T. E. Willging, "Asbestos Case Management Pretrial and Trial Procedures", (Federal Judicial Center, 1985) at 24, citing S. Flanders, Case Management and Court Management in United States District Courts

33 (Federal Judicial Center, 1977). The recommendations recognize that judicial cooperation between state and federal courts is vital if either the state or federal systems can realistically expect to eradicate the blockages that asbestos litigation has created in the civil litigation system. Under this Plan, OAL Plan 1992, if necessary every pending asbestos case can be tried. Of course, our greatest hope is that such an outcome will not be required.

The Plan contained within these pages is capable of achieving the joint goals of the Judicial Improvements Act, expense and delay reduction. The Advisory Group therefore urges its adoption and approval by both the Northern District of Ohio and Ohio Supreme Court.

Advisory Group Chairman

EXECUTIVE SUMMARY

OVERVIEW:

The Civil Justice Reform Act of 1990, 28 U.S.C. § 471, et seq., (hereinafter the "Act") authorized the establishment of a Northern District of Ohio Advisory Group to assist the United States District Court for the Northern District of Ohio in the formulation of a Civil Justice Expense and Delay Reduction Plan. The Act provides that courts should consider:

[S]ystematic differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case.

See 28 U.S.C. § 473(A)(1).

In addition to this broad mandate, the Act authorized the establishment of an Advisory Group Task Force on differentiated case management in the Northern District of Ohio. Under the Act, the United States District Court for the Northern District of Ohio is directed to "Experiment with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and explicit rules, procedures and time frames for the completion of discovery and for trial." See, Act, Sec. 104(b) Program Requirement. As one aspect of implementation of this legislative mandate, a Subcommittee was established to review the management of asbestos cases in the Northern District of Ohio. Asbestos actions constitute the heaviest component of the civil docket in the Northern District Ohio. The Asbestos Subcommittee has considered the pattern of asbestos case management in this

District over the past ten to fifteen years. The following report constitutes the Subcommittee's recommendations to the Advisory Group Task Force concerning the most efficient means to cope with a major element of the Northern District of Ohio's civil docket, personal injury actions arising from alleged exposure to asbestos and asbestos containing products.

Set forth below are the Subcommittee's observations of where this litigation has been, where it is now, and where the Subcommittee believes it must proceed in the future in order to achieve the goals of the Act.

HISTORICAL PERSPECTIVE:

Following a period of generalized treatment which was characterized by asbestos actions frequently being transferred from the dockets of sitting judges to those of newly appointed judges, and by protracted, expensive individualized case management, on June 14, 1983, the United States District Court for the Northern District of Ohio issued General Order No. 67 which provided:

The crises occasioned by asbestos-related disease has had an unprecedented impact on the American Judicial System. The volume of cases filed in this court arising as a result of asbestos-related diseases is large, with little likelihood that the number of filings will diminish in the near future.

We believe that consolidated supervision and management by one judge would best serve the interest of justice, and promote the efficient, expeditious and economical resolution of these disputes.

Therefore, it is ordered that any judge may transfer pending and future cases involving asbestos-related diseases to the docket of Judge Thomas D. Lambros.

Following transfer of asbestos-related actions to Chief Judge Lambros, appointments of two special masters under Federal Rule of Civil Procedure 53 took place. These Special Masters, Professors Francis E. McGovern and Eric D. Green, undertook, at the direction of Judge Lambros, formulation of an Ohio Asbestos Litigation Case Management Plan (CMP) and Case Evaluation and Apportionment Process (CEAP). Northern District of Ohio counsel that had been engaged to represent parties in this litigation collaborated with Professors McGovern and Green to devise the first OAL Plan. This plan was adopted on December 16, 1983. The OAL Plan introduced novel case management concepts. See, OAL Order No. 6, Ohio Asbestos Litigation Plan (referred to hereinafter as OAL).

Under the initial OAL Plan, substantial recognition was accorded to the desirability of Federal-State coordination in order to achieve a comprehensive and efficient case management scheme. See, Federal-State Memorandum of Accord on Asbestos Litigation, July 14, 1983, Appendix A. Moreover, the Plan contained distinct components that addressed: Standardized pleadings, streamlined discovery, settlement/status conferences, multiple case pretrial activity, expedited motion practice, computerized settlement evaluation, and trials utilizing clustering and consolidation. See, OAL Order No. 6, Supra.

The original OAL Plan was well-suited to the environment in which it had been designed to operate. At the time of its adoption, roughly one hundred ten asbestos actions were pending in the Northern District of Ohio. The case processing period,

four hundred eighty days from case filing to projected termination, and cluster size, five cases, was appropriate for the pending Northern District of Ohio asbestos caseload. However, as the number of cases filed increased, the original Plan had to be supplemented in order to accommodate the burgeoning asbestos docket. See, Appendix B for data concerning Northern District of Ohio asbestos case filings for SY81-90. Accordingly, over one hundred fifty implementation orders that, among other things, varied cluster size, reduced the number of standardized interrogatories, modified deposition format (See OAL Order No. 32 establishing Simplified Pretrial Informational Transaction-Sprint, Appendix C), and established a priority Case Management System had to be issued. See, Appendix D. In addition, a separate maritime case management plan was formulated by Special Master Steven B. Janik to address a large number of asbestos cases brought under the Jones Act and general maritime law.

The numerical increases in case filings and the dynamic nature of this litigation has produced an asbestos case management system in the Northern District of Ohio that greatly differs from that which was adopted in 1983 under OAL Order No. 6. The system that has evolved is the product of countless hours of debate among counsel, changes in the fiscal condition of parties, experience in other forums, and innovation and initiative on behalf of Chief Judge Lambros. The lessons learned during the past decade have provided a basis for the

Subcommittee's recommendations and additional future improvements.

PRESENT CONDITIONS:

The year 1990 was a watershed period in asbestos litigation nationally. Present conditions in Ohio reflect national experience, which has been aptly summarized as follows:

The picture is not a pretty one. Decisions concerning thousands of deaths, millions of injuries, and billions of dollars are entangled in a litigation system whose strengths have increasingly been overshadowed by its weaknesses.

Citing D. Hensler, et al., Asbestos in the Courts, the Challenge of Mass Torts, iii (Forward) (Rand Corp. 1985).

The ensuing five years have seen the picture worsen; increased filings, larger backlogs, higher costs, more bankruptcies and poorer prospects that judgments - if ever obtained - can be collected.

It is a tale of danger known in the 1930's, exposure inflicted upon millions of Americans in the 1940's and 1950's, injuries that began to take their toll in the 1960's, and a flood of lawsuits beginning in the 1970's. On the basis of past and current filing data, and because of a latency period that may last as long as 40 years for some asbestos related diseases, a continuing stream of claims can be expected. The final toll of asbestos related injuries is unknown. Predictions have been made of 200,000 asbestos disease deaths before the year 2000 and as many as 265,000 by the year 2015.

The most objectionable aspects of asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether.

It is easy to describe the problems. It is not so easy to fashion an appropriate remedy in the context of our federal system.

See, Report of the Judicial Conference Ad Hoc Committee on Asbestos Litigation, March, 1991 at 2, Citing I. Selikoff,

Disability Compensation for Asbestos-Associated Disease in the United States (1981). P. MacAvoy, et al., "The Economic Consequences of Asbestos-Related Diseases", Yale University School of Org. and Man., Working Paper No. 27 (Sum. 1982).

Our Subcommittee estimates that roughly 10,000 asbestos actions are now pending in state and federal courts in Ohio. The largest concentration of cases is found in northeastern Ohio, i.e. United States District Court for the Northern District of Ohio, Cuyahoga County Court of Common Pleas, and Summit County Court of Common Pleas. Roughly four thousand separate actions related to alleged asbestos exposure in rubber factories have been filed in state and federal court, i.e., Cleveland, Akron, and Dayton, Ohio. Another three to four thousand actions related to the building trades are pending in state and federal court (Cuyahoga County Court of Common Pleas and the Northern District of Ohio). Asbestos actions have been instituted in every division of both Ohio federal districts and in over twenty separate Ohio common pleas courts.

Ohio courts have not attempted to achieve uniform procedural treatment for asbestos cases. However, case management plans have been adopted in thirteen Ohio counties and three Ohio United States District courts. See, Appendix E for a narrative summary of Ohio case management plans. In the main, these plans are based on the event driven format first introduced in OAL. Cluster size and filing to disposition time frames prescribed under these plans range from clusters of single cases to no more than twenty, and timelines of up to 500 days. See, Appendix F for a detailed

analysis of the various Ohio plans. Some state and federal courts such as Hamilton County Court of Common Pleas and United States District Court for the Southern District Ohio, Columbus, have not deviated from the traditional individual case approach to asbestos cases. These courts unquestionably have the longest filing to disposition rates and highest per case expenditures. It appears unlikely to the Subcommittee from this data that this overall statewide ad hoc and disjointed approach to case management will suffice to clear the asbestos docket in either the state or federal systems in Ohio.

According to Professor McGovern who was consulted by our Subcommittee in connection with its work, it is unwise to devise a case management plan that deals with only federal actions. The majority of cases have been filed in state court and this trend will increase as the federal system improves judicial cooperation and increases reliance on class actions, consolidated trials, and the Joint Panel on Multidistrict Litigation. Accordingly, the asbestos morass will not truly be resolved unless case management systems address both the state and federal dockets. The federal docket may clear, but the cases will simply be moved into state court.

Professor McGovern recently documented the extent to which members of the federal judiciary have endeavored to collaborate concerning their respective asbestos dockets. The following excerpt is from an April, 1991 conference at Harvard where he presented his views:

The recent history of cooperation in the asbestos cases among federal judges began in May, 1990, when a group of federal district court chief judges met with the Director of the Federal Judicial Center to request a meeting of federal judges to consider a national approach for resolving pending asbestos cases. The center had previously held conferences in 1984 and 1988, but the purpose of those meetings had been limited to sharing case management approaches. The Director was also approached by at least one academic who reinforced the chief judges' request. On June 5, 1990, letters went to the ten federal judges who had the largest number of asbestos cases filed in their courts, inviting them to a June 25, 1990 conference at the Dolley Madison House. In addition, four special masters, thirteen attorneys, three academics, and one state judge were also invited.

During the one day conference, the participants heard background information and suggested national strategies, options and solutions. They were then divided into groups of judges, defense lawyers, and plaintiffs' lawyers to consider consensus alternatives to the existing methodology for resolving asbestos cases. As might have been suspected, the lawyers generally favored a speedier status quo. The judges formed separate committees on alternative dispute resolution, case management and legislation to consider further options. The lawyers were also requested to refine their ideas and report back to the group as a whole.

The case management committee, headed by Judge Thomas D. Lambros of the Northern District of Ohio, a long time procedural innovator, began immediately to discuss coordinated approaches among federal and state judges. The legislative committee under the leadership of Judge Robert M. Parker of the Eastern District of Texas, a staunch advocate of more radical solutions for resolving asbestos cases, began drafting proposed legislation to strengthen the role of the courts in handling these cases.

In July 1990, Judge Jack B. Weinstein of the Eastern District of New York, who had substantial experience with mass torts but who had been unable to attend the June 25 meeting at the Dolley Madison House, suggested in an order in the Brooklyn asbestos cases that there should be a national mandatory class action for all asbestos litigation. On July 19, Judge Weinstein used his jurisdiction over the Manville Personal Injury Trust as a defendant in his cases to stay payment of all claims against the Trust. Other asbestos defendants were invited to file for Rule 23(b)(1)(B) limited fund mandatory class action treatment in Judge Weinstein's court in order to have pending actions against them stayed, to determine a fixed sum of money to satisfy pending and future claims, and to receive protection from any additional asbestos litigation.

On July 16, Judge Lambros sua sponte conditionally certified a Rule 23(b)(1)(B) class action for all asbestos personal injury and wrongful death cases to explore the use of a national class action as a resolution mechanism and to prevent other courts from taking jurisdiction over all asbestos cases. On July 17, a group of plaintiffs' attorneys filed a notice for certification of a national 23(b)(1)(B) class in Judge Parker's court. On July 23, Eagle-Picher Industries filed a motion requesting 23(b)(1)(B) treatment before Judge Weinstein, and on July 29, a group of plaintiffs filed for a mandatory class action before Judge Lambros. In the first week of August, Judge Weinstein traveled to Houston, Texas and Cleveland, Ohio to discuss the various class action motions with Judges Parker and Lambros.

Judge Lambros scheduled a meeting of the previously appointed asbestos case management group for the Federal Judicial Center on August 10. At that meeting, the same judges who had been invited to the June 25 conference discussed possible alternatives for a national approach to the asbestos cases. As a result of the August 10 meeting, Judges Lambros and Parker signed an order, with the concurrence of all the other judges, consolidating their two class actions for a hearing scheduled on September 14 in Cleveland. They also consolidated their class action with Judge Weinstein's class action for purposes of joint fact finding and the appointment of experts under Rule 706. A hearing was scheduled to consider (1) a Rule 23(b)(3) voluntary settlement class in Cleveland, and (2) a Rule 23(b)(1)(B) mandatory limited fund class in Beaumont to resolve common issues including defect, punitive damages and defendants' share of liability. Up to six defendants seeking a limited fund class action in the Eastern District of New York were excluded from the proposed national classes.

On August 17, a panel of the Sixth Circuit acting upon a mandamus of Judge Lambros' July 16 order rules that, notwithstanding the effect of the August 10 order to supersede all previous orders, there was no authority to consolidate non-Northern District of Ohio cases in Ohio. Judge Lambros canceled the September 14 hearing and limited the scope of his class action treatment to the motion and cases in his court. On August 29, Judge Parker rescheduled the September 14 hearing for New Orleans and wrote to the Judicial Conference Committee on Inter-circuit Transfers to allow the judges attending the August 10 meeting to come to New Orleans and participate in the hearing. On September 10, Judge Parker canceled the September 14 hearing based upon defendants' request for a postponement. Judge Weinstein proceeded with an expedited approach in the Manville Trust and Eagle-Picher cases, appointing various officials to oversee the negotiations, study claims

resolution facility options, and determine the availability of assets.

On September 27, 1990, Chief Justice William Rehnquist appointed an "Ad Hoc Committee on Asbestos Litigation of the Judicial Conference of the United States" chaired by Judge Thomas S. Reavley of the Fifth Circuit Court of Appeals and Chairman of the Judicial Conference Committee on State-Federal Relations. Judge Parker, as Chairman of the Judicial Conference Committee on Case Management, was also a member. On October 16, Judge Parker transferred the asbestos class action pending before him to Judge Richard A. Schell of Beaumont.

The same federal judges who had met at the Federal Judicial Center in August, with the exception of Judges Weinstein and Sifton, met again on November 16 at the Dolley Madison House. They considered a series of options for devising a national asbestos litigation strategy and agreed to draft a letter to the Judicial Panel on Multidistrict Litigation (JPMDL) recommending that the asbestos cases be consolidated under 28 U.S.C. § 1407 and that Judge Charles R. Weiner of the Eastern District of Pennsylvania be designated transferee judge. That letter was sent on November 21. On January 17, 1991, the JPMDL issued an order with a hearing scheduled for May 30, 1991 to show cause why the asbestos personal injury and wrongful death cases should not be consolidated.

After a series of hearings and manoeuvring, on January 7, 1991, Eagle-Picher Industries filed for bankruptcy in Cincinnati, Ohio. Judge Weinstein is currently considering the settlement of claims against the Manville Trust under a Rule 23(b)(1)(B) class. Judge Lambros is handling over 4,000 asbestos cases filed in his court.

On March 12, 1991, the "Ad Hoc Asbestos Committee" filed its report with the Judicial Conference and recommended that Congress enact legislation to assist in achieving a consolidation of cases in the courts. A dissent recommended a federalized compensation system in lieu of the existing tort approach.

Contemporaneous with the federal judicial efforts to achieve some level of cooperation among courts, various state judges were urging joint efforts. Judges Sandra Moss of Philadelphia, Helen Freedman of New York City, and Marshall Levin of Baltimore began to organize a group of interested state judges. Judge Levin had been invited to the June 25, 1990 meeting at the Federal Judicial Center and was asked to seek input from the state judiciary into the federal decision-making process. Through various efforts, the state Justice Institute agreed to fund a National Center for State Courts meeting of eleven state judges for Washington, DC on January 19, 1991.

At that meeting U.S. District Judges Charles Wolle of Iowa, Parker and Weinstein presented the status of asbestos litigation from a federal perspective. In addition, the state judges received reports from the National Center for State Courts on the state court asbestos litigation landscape and from an academic concerning various strategic and tactical options available to them. The state judges discussed their different approaches to asbestos litigation and decided that they would pursue an effort to coordinate their activities. A second meeting is scheduled for May 17, 1991, in part to consider their position on the JPMDL show cause order.

Professor McGovern has advised our Subcommittee that the State Judges Committee is scheduled to meet again in August, 1991.

The experiences of 1990 have made several points clear to our Subcommittee. To begin, any proposal that we recommend must steadfastly respect jurisdictional lines. See, Allied Signal, 915 F2d. 190 (6th Cir. 1990). We also note that many have begun to doubt the ability of the tort system to cope with asbestos litigation. See, Ad Hoc Committee Report, Supra. at 17. Lastly, we recognize that the sheer number of actions that are involved in a large scale asbestos program, i.e. MDL or state-level coordinated state-federal program will intensify the requirements for appropriate administrative resources and staffing. Nonetheless, the Subcommittee has concluded that with appropriate coordination between judges, planning, and organization, the asbestos litigation challenge can be met within the confines of our present Rules of Civil Procedure.

It is with these considerations in mind that the Subcommittee recommends the measures included in the following section entitled, "Concept for OAL Plan, (1992)".

CONCEPT FOR OAL PLAN (1992)

OAL Plan (1992) seeks to achieve the following:

GOALS

1. A rational settlement - based approach to claims resolution;
2. A firm and credible trial program;
3. Harmonization of actions in state and federal court;
4. Operate compatibly with administrative facilities such as the Center for Claims Resolution, UNARCO, and the Manville Fund;
5. Establish a framework into which bankrupt defendants may be integrated;
6. Establish a framework capable of adaptation to an MDL-driven program;
7. Establish a plan that is dynamic. It must contain sufficient flexibility to regulate claims processing rates in order to avoid the future accumulation of backlogs. The events and intervals in the case management plans must also be capable of rapid revision and adaptation to future changes and case types.

STATE-FEDERAL CHARACTER

OAL Plan (1992) is dual-tracked. That is to say, the Plan approved by the Task Force should immediately be forwarded to the Ohio Chief Justice for consideration concerning use in the state system. Involvement of the state courts is essential for four reasons:

1. As the federal courts increase coordination and national management of asbestos actions, there is an increase in the filing of new actions in state courts;
2. The present duplication of effort and expense caused by the same claims being filed in two forums, state and federal, can be eliminated;
3. The majority of asbestos actions are pending in state court; and
4. There exists a greater supply of judicial resources in the state court system to implement a state-wide trial plan.

Federal-state cooperation will be accomplished by issuing separate orders from Chief Judge Lambros and Chief Justice Moyer adopting the Plan.

STAFFING LEVELS

A. The following staff is recommended for the United States District Court Northern District Ohio to implement the Plan:

- 1 - Full time United States Magistrate
- 2 - GS 11/12 law clerks
- 1 - Case Management Analyst
- 1 - File clerk
- 1 - Clerk typist

B. The following staff is recommended for an Ohio State Court Asbestos Litigation Clearinghouse¹:

- 1 - Attorney, Ohio State Asbestos Litigation Coordinator
- 1 - Law Clerk
- 1 - Case Management Analyst
- 1 - Clerk typist
- 1 - File Clerk

METHODOLOGY

The Plan has four distinct phases: an organizational phase, a claim verification phase, a settlement evaluation phase, and a trial phase.

PHASE I - "ORGANIZATIONAL":

A clearing house should be established at state level to facilitate communication and coordination with the Clerk U.S. District Court in Cleveland. The State clearing house will generate information to the field statewide concerning asbestos case management. The state clearing house should put all state

¹ The functions of an asbestos clearinghouse would be as follows: To monitor asbestos litigation in Ohio courts; to collect materials and information relative to asbestos injuries and litigation, including records of trials with copies of orders, depositions and documents that would be helpful to judges in asbestos trials; and to supply information to judges on asbestos litigation issues when requested. See, Ad Hoc Committee Report, p. 37.

This office should ideally be a part of the clerk's staff of the Ohio Supreme Court. It is this office that would maintain day-to-day communication with the Northern District of Ohio asbestos litigation's magistrate and staff and the clerk, Northern District Ohio. Consideration could be given to staffing and establishing this function within the office of the Ohio Attorney General if budget or staffing limitations prevent it from operating as a section within the Clerk Office Ohio Supreme Court.

level courts in notice that a statewide asbestos ADR plan is being implemented. The state courts should then place all asbestos cases on a county level asbestos docket in the respective common pleas courts from which they arose. The cases should be organized and sorted by the clearinghouse according to a to-be-established protocol. These protocols will be sent to the state clearing house for case clustering and further organization. Administrative clustering and organization should be a state level activity. This activity must be coordinated with Cleveland federal court. Cluster size may range from fifty to a thousand cases. Cluster size will vary based upon the size of the docket. The goal should be to resolve at least one-half of the statewide docket annually.

Case management planning will occur during this phase. State cases will be clustered with federal cases if logical. This will be a purely administrative phase. The phase will be jointly managed by the Northern District Ohio Asbestos Magistrate and Ohio Asbestos Litigation Coordinator. Matters such as common defense agreements and Omnibus procedures to facilitate crossclaims etc. will be established. Once a cluster has been identified and organized for pretrial management, the parties and courts' staff will select an appropriate case management plan. It is expected that three basic CMP's will be employed, a land-based plan (See Exhibit H for an example), a maritime plan, and a rubber worker plan. Case management plans may be modified during this phase if a need to accommodate a peculiar aspect of a cluster is noted. It is expected that this phase may last up to twenty days. It may involve several meetings between counsel and the courts' staff. The objective of the phase is to establish logical case groupings that will facilitate the settlement of actions. Plans may also be devised at this juncture to coordinate with medical facilities, etc. in order to assure that appropriate time is allowed to accomplish IME's, record acquisition, and other activity that will be required for the claim verification and settlement phases.

PHASE II - "CLAIM VERIFICATION":

This phase is designed to identify claims that should be dismissed or deferred. A United States Magistrate will preside over this phase. Non-deferred claims will proceed through this phase. The phase may last up to 120 days. The points of emphasis will be resolution of threshold issues, basic product identification, and dismissal of any party defendant that should not be in a given action.

The dispositive motion function will be discharged at a motion day type hearing. In order to overcome jurisdictional problems in state actions, a retired judge appropriately designated by the Chief Justice Ohio Supreme Court should be assigned to jointly preside with the federal judge on motion day, SSCI. This duty may be rotated. In the alternative, motions in

state cases may be scheduled for non-oral hearing and decided locally.

Any party or claim that survives this phase will be involved in Phase III.

PHASE III - "SETTLEMENT EVALUATION":

This phase is designed to enable the parties to undertake the discovery needed to determine claim value. During this phase, all activity will be closely managed by the magistrate. Only discovery that is undertaken to determine claim value is permitted.

Efforts should be made at this juncture to communicate with all administrative claims processing facilities, i.e. UNR, CCR, Manville to assure that their dollars are available and considered during settlement discussions. Coordination with bankrupt defendants and courts will also occur. The goal will be to have all parties available at one location for settlement. Redundancy must be avoided.

This phase will culminate with a major settlement conference, SSC II. CEAP may be utilized if desired at this juncture. See, Appendix G. Most SSC II activity should be conducted between the parties, extra-judicially. The court need only become involved in the event of a specific requirement or impasse that the court can assist in overcoming.

Any action that is not resolved by the date designated for SSC II to close, will be processed for trial.

Phase III should last from thirty to sixty days. Rule 68 offers of judgment should be made at this stage.

PHASE IV - "TRIAL":

Actions that have not settled will be reviewed by the state clearinghouse and federal staff for trial clustering. Prioritization based upon disease will be one consideration for clustering. All federal claims that have not settled will be dismissed under Rule 41 Fed.R.Civ. without prejudice. The state courts should grant leave to plaintiffs to amend their state complaints, using Omnibus procedures, to name any previously sued federal defendant now dismissed under Rule 41. This will facilitate state long-arm jurisdiction over these previous federal defendants. With amended state complaints, all defendants will be subjected to state jurisdiction. In personam, jurisdiction over defendants previously sued only in federal court will be available in Ohio courts under the State's long-arm statute for the reason it will have been alleged that these defendants caused tortious injury in Ohio. See, § 2307.382(A)(4) Ohio Rev. Code Ann. (Page 1990). U.S. District Court will retain trial jurisdiction over those actions with pure diversity, i.e.

non Ohio parties or federal question jurisdiction, e.g. maritime claims.

State trials should be handled by state common pleas judges. In addition to trial clustering, the clearinghouse will recommend various trial devices, i.e. multiple concurrent trials in several counties statewide (D-days), class actions, reverse bifurcation, etc. In the event the parties do not settle, maximum judicial resources must be focused on trial to assure the parties recognize that a firm credible trial plan exists. See, Trends in Asbestos Litigation, Alternative Trial Structures, Federal Judicial Center, 1987, at 87 for a listing of various trial approaches. The State Clearing House should compile documents, orders, literature, and other resource material to assist in the formulation of trial structures. While the Plan is settlement driven, in order to make settlements occur all parties must recognize that the Ohio tort system is capable of multiple concurrent trials in a format that will survive appeal.

APPENDIX A

1-13
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

LAMEROS, DISTRICT JUDGE

McMONAGLE, COMMON PLEAS JUDGE ,

| | | |
|--------------------------|---|------------------------|
| IN RE: |) | FEDERAL-STATE |
| |) | MEMORANDUM OF ACCORD |
| OHIO ASBESTOS LITIGATION |) | ON ASBESTOS LITIGATION |

Litigation associated with asbestos-related disease has had an unprecedented impact on the American judicial system. Transcending jurisdictional distinctions, to date approximately 20,000 individual cases have been filed in state and federal courts. Of these less than 250 have gone to trial and less than 4,000 have settled. A substantial number of such cases are pending in the Common Pleas Court of Cuyahoga County, Ohio, and in the United States District Court for the Northern District of Ohio, and have been assigned to the dockets of the above-named judges.

We are well-aware that numerous attempts are being made by diverse groups, including the Judicial Administration Working Group on Asbestos Litigation of the National Center for State Courts, the Federal Judicial Center, the Center for Public Resources Judicial Panel, and various bankruptcy judges to resolve asbestos cases on a national or regional level. Because of the large numbers of these cases, not only on our dockets, but on the dockets of federal and state courts nationwide, and because these cases have been assigned to us over a short period of time, it is crucial that there be significant coordination between our courts to assure uniform, fair, and efficient justice consistent with the laws and procedures

pliable to state and federal courts.

The parties hereto have attended the joint sessions held by on June 13 and June 20, 1983 regarding the possible joint appointment of Special Masters to supervise and coordinate the pretrial aspects of these cases. These hearings were undertaken out of our belief that the problems associated with asbestos litigation cut across jurisdictional lines insofar as litigation costs, liability issues, and pretrial discovery problems are concerned. It was our purpose to explore better ways of handling this unique class of litigation in our region, with a hope that any plan we implement may ultimately be of use on a nationwide basis. At the hearings, we were immeasurably aided by the information conveyed by counsel regarding efforts already taken to coordinate discovery, and their candid expressions regarding the concurrent appointment of Special Masters.

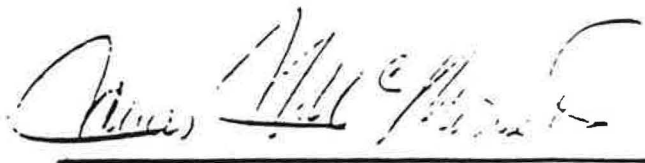
Because of differences in our respective rules of civil procedure, we have determined that the proposed concurrent appointment will not be undertaken. By the Order dated July 14, 1983, the Special Masters have been appointed to serve in regards to the federal cases, although no order will issue at this time in regards to the state cases. Nonetheless, it is our desire that there be a coordinated and uniform treatment of the asbestos cases pending before our two courts, and that the approach developed by Special Masters will aid in the resolution of cases on both levels. We are mindful of our jurisdictional distinctions, and nothing in this memorandum shall be construed as a delegation of authority possessed by either of us or as a commingling of

jurisdiction.

We believe that it is our duty as judges to instill in the public the confidence that our judicial system will function, resolve these cases honorably and effectively in a manner not compatible with the public interest. It is our hope that the memorandum of accord will achieve that goal.



THOMAS D. LAMBROS
United States District Judge



JAMES J. MCMONAGLE
Judge, Common Pleas Court

APPENDIX B

Chart 2 shows the trend of case filings over the past ten years for the Type I and Type II categories. Table 1 shows filing trends for the more detailed taxonomy of case types.

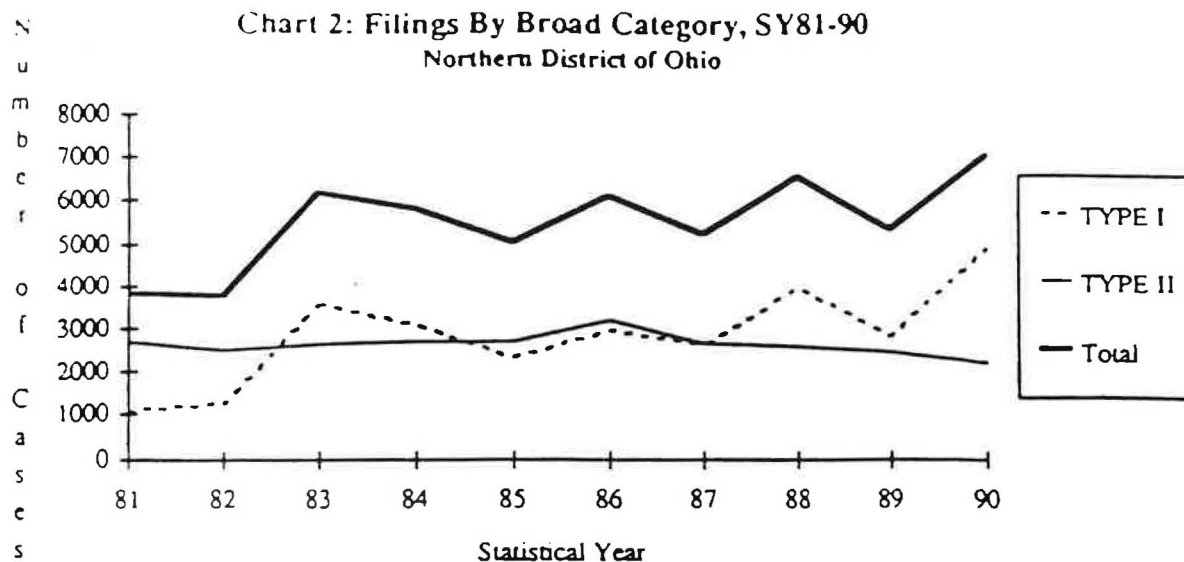


Table 1: Filings by Case Types, SY81-90

Northern District of Ohio

| | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 |
|-------------------------------------|------|------|------|------|------|------|------|------|------|------|
| Asbestos | 19 | 25 | 2 | 11 | 34 | 926 | 980 | 2534 | 1725 | 3854 |
| Bankruptcy Matters | 42 | 32 | 65 | 89 | 68 | 67 | 65 | 61 | 90 | 74 |
| Banks and Banking | 3 | 3 | 4 | 3 | 3 | 4 | 4 | 2 | 3 | 9 |
| Civil Rights | 531 | 564 | 699 | 719 | 613 | 673 | 632 | 622 | 585 | 490 |
| Commerce: ICC Rates, etc. | 19 | 10 | 24 | 33 | 24 | 14 | 31 | 56 | 28 | 23 |
| Contract | 437 | 444 | 570 | 592 | 553 | 556 | 467 | 495 | 520 | 400 |
| Copyright, Patent, Trademark | 90 | 70 | 78 | 82 | 129 | 107 | 86 | 111 | 99 | 89 |
| ERISA | 86 | 77 | 115 | 162 | 122 | 124 | 111 | 170 | 184 | 204 |
| Forfeiture and Penalty (excl. drug) | 15 | 28 | 21 | 24 | 22 | 34 | 23 | 34 | 31 | 50 |
| Fraud, Truth in Lending | 30 | 29 | 33 | 28 | 21 | 39 | 27 | 25 | 17 | 21 |
| Labor | 354 | 267 | 272 | 297 | 301 | 354 | 328 | 281 | 235 | 188 |
| Land Condemnation, Foreclosure | 373 | 261 | 274 | 197 | 321 | 237 | 122 | 169 | 78 | 78 |
| Personal Injury | 444 | 561 | 393 | 373 | 486 | 477 | 372 | 400 | 384 | 298 |
| Prisoner | 238 | 243 | 210 | 168 | 271 | 300 | 263 | 266 | 261 | 353 |
| RICO | 0 | 0 | 0 | 0 | 0 | 7 | 18 | 17 | 17 | 19 |
| Securities, Commodities | 27 | 33 | 48 | 47 | 47 | 43 | 41 | 35 | 37 | 41 |
| Social Security | 421 | 477 | 893 | 1345 | 711 | 469 | 604 | 598 | 391 | 269 |
| Student Loan and Veteran's | 0 | 208 | 2114 | 1253 | 900 | 937 | 516 | 283 | 291 | 217 |
| Tax | 84 | 140 | 78 | 34 | 56 | 48 | 44 | 35 | 50 | 41 |
| All Other | 600 | 289 | 264 | 311 | 321 | 682 | 434 | 313 | 283 | 307 |
| All Civil Cases | 3813 | 3761 | 6157 | 5768 | 5003 | 6098 | 5168 | 6507 | 5309 | 7025 |

APPENDIX C

FILE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEB 6 1985

at 5³⁰ o'clock P.

CLERK OF COURTS

U. S. District Court, N.

IN RE:

)

OAL ORDER NO. 32

OHIO ASBESTOS LITIGATION

)

)

SIMPLIFIED PRETRIAL INFORMATIONAL TRANSACTIONS (SPRINT)
A CLAIM VERIFICATION PROCEDURE

THOMAS D. LAMBROS, DISTRICT JUDGE

This order establishes a court-annexed method of claim verification to facilitate settlement of the remaining asbestos cases pending in the Northern District of Ohio. This procedure is designated SPRINT, Simplified Pretrial Informational Transactions. SPRINT is a method of pretrial claim verification by adversarial interviews of witnesses in lieu of depositions. This procedure is being implemented to facilitate the completion of all informational transactions before the March 14th Settlement Conference.

The deposition is one of the most costly aspects of case preparation. Reduction in excessive expenditures of funds for case preparation without a corresponding reduction in the quality of preparation is the purpose of SPRINT.

Counsel have reported that these cases cannot be evaluated for settlement until the depositions of co-workers are taken. These depositions are essential for product identification, verification of whether or not a particular

defendant's product could arguably be considered a factor in causing the plaintiff's injuries. It has been suggested that approximately 600 depositions of co-workers must be taken. Conducting 600 depositions will be costly and time consuming.

A less costly and much faster equivalent of the deposition is required. A predeposition adversarial interview is a quicker alternative means of gathering pretrial information for claims evaluation. It is recognized that counsel have not experienced this type of alternative procedure. The many alternative avenues that are potentially available in lieu of the costly formalistic process of discovery have been considered. It has been determined that SPRINT can work and provide the parties a solution to the dilemma caused by asbestos litigation. SPRINT cuts through the unending jungle of fact gathering and provides a faster, simpler, cheaper, and effective method of obtaining important answers to crucial evaluative questions. SPRINT does not take away the right to conduct the deposition later if it is determined to be necessary.

It is my belief that satisfactory verification will be achieved by this alternative discovery process resulting in the settlement of most, if not all, of the pending cases. If this is achieved the ultimate savings in money and time will be substantial. Let's give it a try. It's worth the effort.

Accordingly, under the authority of Rule 26 of the Federal Rules of Civil Procedure all discovery by deposition in these cases is hereby temporarily suspended. SPRINT, the

procedure explained below, shall be employed in place of these depositions.

The Claims Verification Procedure shall be conducted in the following manner:

1. All co-workers and plaintiffs who would otherwise have given testimony by deposition in preparation for the Settlement Conference shall be interviewed on February 18, 19, 20 and 21.
2. The interviews shall be conducted at the federal courthouses in Cleveland, Akron, Youngstown and Toledo in accordance with a schedule which will accommodate the witnesses and the interviewing teams.
3. The lawyers for the plaintiffs and the defendants shall establish a sufficient number of interviewing teams consisting of at least one plaintiff's lawyer and one defendant's lawyer for each interviewing team.
4. Each interviewing team should complete the interviewing requirements of at least two cases per day.
5. The required number of teams should be established which are necessary to complete the interviews within the time established in this order.
6. A written summarized narrative of each witness interview shall be prepared by each interviewing team. The defense team shall prepare such a narrative and make it available to all defense counsel. The plaintiff team shall prepare such a narrative and make it available to all plaintiffs' counsel.
7. The summarized narratives shall be prepared promptly at the close of the interviewing day and made available for distribution to counsel.
8. All interviews shall be electronically recorded. Each separate plaintiff interview team and each separate defense interview team shall have a tape recorder available at the interview. It is expected that two tape recorders shall be used to record the interviews. Each separate team shall provide the recorder and the cassette.
9. The list of witnesses to be interviewed shall be comprised of those designated on the consolidated witness

list which plaintiffs' counsel are required to prepare in accordance with Ohio Asbestos Litigation Order No. 30.

10. At the February 8th OAL Conference the interviewing teams shall be designated and a schedule shall be prepared establishing team assignments and times and places for the individual witness interviews.

11. Counsel shall coordinate all scheduling requirements with the Ohio Asbestos Litigation Coordinator, Mr. Percy Squire.

12. Counsel for the plaintiffs and counsel for the defendants shall each prepare a separate interviewing format to facilitate expeditious interviewing procedures. The questions should reflect an informational content that is essential for settlement evaluation of these cases. The information required to complete the OAL data collection protocols, which embody the Case Evaluation and Apportionment Process (CEAP) critical case criteria, should serve as a guide for the questioning. The interviews will be adversarial but not obstructive in nature. It is expected that these interviews will provide counsel an informational basis for settlement as well as an opportunity to size-up the overall strength or weakness of the witnesses.

13. During the four day SPRINT procedure lead counsel are expected to coordinate among themselves and with the OAL Coordinator the transmission of all medical and economic loss data necessary for case evaluation.

It is recognized that counsel have not experienced this type of alternative procedure. The various avenues that are potentially available in lieu of costly discovery have been considered. On balance, I have determined that SPRINT is a feasible means of providing the parties with a solution to the dilemma caused by the magnitude of discovery in asbestos litigation.

The discovery provisions outlined in Rules 26 through 37 of the Federal Rules of Civil Procedure set forth the legally sanctioned methods of gathering information for purposes of

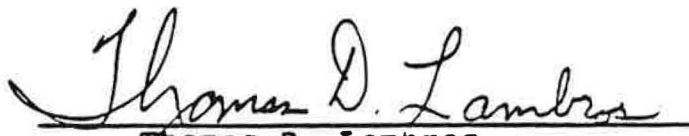
trial preparation. In order to expedite the extensive discovery traditionally associated with asbestos litigation, we have attempted to simplify these procedures through the use of consolidated discovery requests. Nonetheless, an excessive amount of time and money is still being expended on discovery in these cases. As a result of our experience, however, we are not better able to determine what information is necessary to place a realistic value on these cases. Accordingly, in order to promote the best interests of justice and the parties, all discovery in these cases pursuant to Rules 27 through 31 is hereby suspended until further order of the Court. As an alternative to these discovery procedures, the parties shall obtain the information necessary to facilitate serious settlement negotiation in accordance with directives of this order.

Each of you know that my work as a trial judge for 25 years combines the usual and customary judicial process of case decisions and resolution with an explorative endeavor constantly in search of better ways to resolve human disputes. All of us have experienced vicariously the thrill of space exploration and medical and scientific advances which have served the physical well being and strength of our nation. That same type of explorative endeavor by lawyers and judges in the universe of law will far exceed the national and potentially world wide benefit of space and medical advances because what we deal with here are matters of human conflicts. Such conflicts are capable

of being resolved only through human understanding, which is essential to our existence in a civilized world. Remember when Learned Hand, speaking at Rockefeller Center before a group of new citizens, defined the spirit of liberty among other things, as, men and women seeking to understand the minds of other men and women.

Here we work in the realm of human controversy seeking new ways to learn and to teach men and women to solve their problems sensibly. We are privileged to have this opportunity as judges and lawyers to apply our energies and our ideas to solving human problems and hopefully bringing about a better human understanding.

I therefore seek your cooperation in the fulfillment of the requirements of this order.


Thomas D. Lambros
United States District Judge

DATED: February 6, 1985
7

APPENDIX D

FILED

30 DEC 26 P1:18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

IN RE:) OAL ORDER NO. 120
OHIO ASBESTOS LITIGATION) OAL PRIORITY CASE
MANAGEMENT SYSTEM

THOMAS D. LAMBROS, CHIEF JUDGE

Ohio Asbestos Litigation Order 118 directed counsel for plaintiffs in OAL Cases -- MARDOC, Land-based, Rubberworkers, et al. -- to "[p]rovide listings of...cases which they are suggesting for voluntary entry into a deferral system." See, OAL Order 118, p.2, December 12, 1990, N.D. Ohio. Since its inception, the OAL Plan has envisioned use of various optional case management methods to ensure fair and economical claims resolution. See, Ohio Asbestos Litigation Case Management Plan and Case Evaluation and Apportionment Process, N.D. Ohio, December 16, 1983, p. 105. In particular, OAL Optional Order III(G)(7) clearly contemplates a system of case management that establishes priorities based upon the level of disease manifestations. *Id.* at 112. In this connection Optional Order III(G)(7) provides, in pertinent part:

If for example, suits are brought by plaintiffs who have a history of exposure to asbestos but who currently have no physical manifestations of asbestos related disease, it may be possible to develop a system for a voluntary deferral of consideration of their cases until a later date. Figuratively, such plaintiffs might be given a "yellow card" to present to the court at a later date without having to overcome potential statute of limitations problems. If some asbestos related disease eventually becomes manifest, these plaintiffs would then have the option of returning to the litigation process to seek damages.

Asbestos litigation has now reached a scale in this jurisdiction, as well as nationwide, where revised case processing techniques, such as those outlined in Optional Order III(G)(7), are appropriate. Accordingly, this Order sets forth specific guidelines designed to implement an Optional Order III(G)(7) case management system through the deferral of actions delineated below and simultaneously to give priority to the trial of actions in which disease manifestation is pronounced.

In accordance with OAL 118, Mr. Leonard Jaques, plaintiffs' counsel in MARDOC, has submitted actions that fall into two broad categories. The first category, the individual designations of which are set forth in Attachment A, contains 336 actions that allege significant manifestation of asbestos-induced impairment. These 336 actions have been classified into 30 trial clusters, as set forth in Attachment A. It is expected that, as soon as trial judge designations are made, the first 8 clusters will be scheduled for trial before 4 judges in the Northern District of Ohio and 4 judges in the Eastern District of Michigan. All remaining clusters will be assigned, in the designated sequential order, to magistrates to be designated from the Northern District of Ohio and the Eastern District of Michigan, for pretrial management and placement into a state of trial readiness. Additional orders will be forthcoming to regulate the mode and timing of further trial preparation. It is expected that Clusters 1 through 8 will be tried during the Spring of 1991. Trial teams and pretrial support teams should be constituted to receive assignments of the first eight (8) trial clusters and for the pretrial development of the remaining clusters.

Subject to the making of arrangements with Circuit Chief Judge Gilbert S. Merritt and District Chief Judge Julian Cook and the Michigan U.S. Judges for designation and assignment of judges, clusters 1, 2, 5, and 6 on the "A" list will be assigned to Michigan and clusters 3, 4, 7, and 8 on the "A" list will be assigned to Ohio.

The initiative of Chief Judge Gilbert S. Merritt and his providing of judicial resources marks a new dimension in the providing of solutions to address the increasing demands of asbestos litigation.

Set forth at Attachment B are four additional classifications of MARDOC actions. These actions are subclassified at Attachments B1 through B4. Each subclassification is self-explanatory. The actions at Attachment B are hereby placed in a deferred status.

Deferred status is intended to remove these claims from the OAL docket at this juncture under the provisions of Civil Rule 41(a)(2). Under Rule 41(a)(2) the actions at Attachment B may be dismissed upon such terms as are just and proper. Accordingly, it is deemed just and proper that all cases at Attachments B1 through B4 are dismissed without prejudice subject to reinstatement under Fed. R. Civ. P. 60(b)(6), as set forth below.

Asbestos litigation presents novel and difficult technical, legal, and medical issues. Courts have labored to contend with these considerations despite the competing demands posed by high transactional costs, docket congestion, corporate insolvency, and claimant suffering. The various solutions advanced to reconcile these demands have been inconsistent. In many instances these solutions reflect

controlling substantive legal precedent in an affected jurisdiction. See, Young v. Raymark Industries, 789 F.2d 397 (6th Cir. 1986); cf. Wilson v. Johns-Manville Sales Corp., 684 F.2d 111 (D.C. Cir. 1982); but see, Howell v. Celotex Corp., 904 F.2d 3 (3rd Cir. 1990); Kraciun v. Owens-Corning Fiberglas Corp., 895 F.2d 444 (8th Cir. 1990); Joyce v. A.C. & S., Inc., 785 F.2d 1200 (4th Cir. 1986); and In re Hawaii Fed. Asbestos Cases, 734 F. Supp. 1563 (D. Haw. 1990).

These dismissals are without prejudice to a plaintiff's right to reinstatement and vacation of the dismissal Order upon proof of the progression of medical symptomatology. By reason of the lengthy latency period associated with asbestos-induced disease, the vagaries of diagnosis, and evolving notions of what constitutes objectively verifiable functional impairment, the periods of limitation within which these actions for asbestos injury must be reinstated by plaintiffs listed in Attachment B are governed by Fed. R. Civ. P. 60(b), which provides that the "...motion shall be made within a reasonable time."

The dismissals of the cases on the "B" lists without prejudice to reinstatement diverts these cases to an inactive and suspended status. This status terminates the need for further litigation-type transactional costs and permits the allocation of all available legal and judicial resources to the priority cases on the "A" list.

When any case on the "B" list is determined to be appropriate for returning to the litigation process, it shall be placed in an appropriate trial cluster or assignment. However, as to these cases on the "B" list, counsel should consider the establishment of extrajudicial procedures to resolve these disputes as contemplated

by Fed. R. Civ. P. 16(c)(7) without the need of returning these cases to the litigation process. These extrajudicial procedures should include at least two objectives -- medical monitoring and ADR. Medical monitoring should be considered to address the health needs of the individuals whose cases are on the "B" list and an ADR process should be developed to establish procedures for resolving these disputes without the need of these cases returning to the costly litigation process. The ADR procedures could include a case evaluation and apportionment process (CEAP) of the type contemplated in the original OAL Case Management Plan, NDO, December 16, 1983, page 113.

It is further suggested that counsel convene a joint conference among the lawyers and principals of all MARDOC parties to consider the extrajudicial supervision of the "B" list cases. At this joint conference, it is recommended that the participants consult with Prof. Francis McGovern and Prof. Eric Green in considering the wide array of available alternative methods of addressing these cases. Truly, there are an infinite number of possibilities for meaningful containment of the "B" list cases within an extrajudicial format. The parties should avail themselves of the full spectrum of options.

The "B" list cases are considered to include those cases that are not sufficiently mature for trial because medical symptomatology or other proof is not presently available to adequately meet substantive or economical standards for the litigation process. Most would be extremely high risk cases for trial to warrant expenditure of resources at this time.

A third category of actions is set forth at Attachment C. Attachment C incorporates, where applicable, a cross-reference of companion claims that relate to cases filed against employer shipowners. Attachment C actions marked "PA" (Products Actions) are against manufacturer defendants. The actions marked "JA" (Jones Act Actions) are against employer shipowners. The actions at Attachment C are hereby determined in accordance with the disposition accorded to the corresponding shipowner actions at Attachments A and B.

A fourth category of actions is set forth at Attachment "D". Attachment "D" incorporates those cases that were dismissed following my personal review of the x-ray B-reader reports and upon finding insufficient medical evidence to warrant prosecution of these actions. The companion claims against the manufacturer defendants listed on Attachment "D" are dismissed in accordance with the disposition accorded to the corresponding shipowner actions.

For logistical efficiency, Attachments A, B, C, and D, although fully incorporated and made a part of this order, will be available on January 2, 1991.

This order addresses 1500 OAL Mardoc Cases. In the other OAL dockets, consisting of Landbased, Rubberworkers, et al., a committee was established to address the matter of giving priority to certain cases and diverting the other cases from the litigation process. It is expected that the recommendations of the committee will be made during the work week commencing January 2, 1991.

All prior Mardoc clusters, except the 20 case cluster presently in trial before me, are superseded by the priority clustering in Attachment A of this order.

In summary, this Order places 336 cases, consisting of 296 Ohio cases and 40 Michigan cases, in a priority status for trial. Furthermore, this Order places 1158 cases in a deferral and suspension status of which 973 are Ohio cases and 185 are Michigan cases. To achieve a deferral and suspension status, these 1158 cases are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(2) and may be reinstated pursuant to Fed. R. Civ. P. 60(b)(6), as provided in this Order.

IT IS SO ORDERED.



Thomas D. Lambros
Chief Judge
United States District Court

AT CLEVELAND, OHIO
DATED: December 26, 1990

APPENDIX E

ASBESTOS
CASE MANAGEMENT PLANS

ACL0408F

OHIO ASBESTOS CASE MANAGEMENT PLANS

There are thirteen (13) counties and three (3) United States District Courts in Ohio that have asbestos case management plans. Depending upon either the number of judges or the location of plaintiffs' exposure, the actual number of plans within a specific county will vary from one to thirteen. The comprehensiveness of each plan also varies from rudimentary to complex.

The following is a brief summary of each plan. Also included are three (3) case management orders from California.

BUTLER COUNTY

There are apparently only two cases in Butler County. In one case (Grace Baker) Judge Crehan established a scheduling order with deadlines to be met by both parties. That order anticipated a 310-day calendar of events until trial. The calendar began when plaintiffs furnished the identity of all plaintiffs' co-workers who plaintiff intends to call as witnesses at trial.

In the other case (John W. Sims), the Court set out by order various pretrial and trial matters which the parties were to follow in the matter.

CUYAHOGA COUNTY NON-TIREWORKER ("NTW") CASES

A Plan is currently being proposed by a group of defendants for the Cuyahoga County Non-Tireworker cases. This Plan as anticipated has two time lines: (1) for cases filed prior to Asbestos General Order No. 1; and (2) for cases filed after Asbestos General Order No. 1.

The time line for category (1) cases anticipates that Day 1 will begin when plaintiff provides defendants with executed medical releases for medical records, social security and employment records, income tax returns, and the plaintiff's affidavit. This Plan anticipates a 375-day calendar to trial. This plan is factually similar to the Cuyahoga County Tireworker Cases but with a shorter time line.

CUYAHOGA COUNTY
TIREWORKER ("TW") CASES

Standing Order No. 2 is currently being proposed by a group of defendants for the Cuyahoga County Tireworker cases. It is intended to supplement the Order of Judge McMonagle, dated November 6, 1989. The planned effective date of the Standing Order No. 2 is July 15, 1991.

It creates a Master File System for the Court's convenience which provides a mechanism for the filing of complex, voluminous documents which are applicable to a large number of cases.

Since the complaints contain multiple plaintiffs, all plaintiffs on that complaint are clustered together into a single group for discovery and pretrial purposes. Those cases which contain a single plaintiff will be grouped with nine to twelve other single plaintiff cases filed by the same counsel for discovery and pretrial purposes. The starting date for the various clustered groups will be on a one-month interval.

Each plaintiff's case is scheduled for a separate trial. Trial date is 500 days from the beginning of Plan.

Sanctions can be imposed on both parties for failure to comply with the Plan.

There may be two independent medical exams at the discretion of the defendants. More than two medical exams may be permitted for good cause shown, and then only by order of the Court.

Autopsies may be permitted for defendants to examine and preserve evidence, but only with hearing and order of Court.

De bene esse depositions are permitted under certain circumstances without Court order or stipulation between all of the parties.

Defendants shall designate liaison counsel with whom the Court may communicate orally for the purpose of dissemination of information to defendants regarding administrative and scheduling matters.

FRANKLIN COUNTY'S CASE MANAGEMENT PLAN

There are ten judges in Franklin county that each have their own case management plans which closely resemble one another. The largest plan belongs to Judge Gillie, who handles 38 case groupings, usually five to six individual plaintiffs per grouping. Each case grouping has its own case management timeline. Plaintiffs are grouped according to which complaints were

filed earliest. The case management time-line is 381 days long for each grouping, and there is approximately a one month gap between the starting or initiating dates for each grouping. (For example, for group 1, the starting date began 11-30-88, and the starting date for group 2 began on 12-31-88, for group 3 it was 1-31-89, and so on.) The event that begins the time-line for each group is the provision by plaintiffs to defendants of medical and employer releases, social security printouts, income tax returns, and appropriate authorizations.

Judge Cain has only one case management plan, which contains only two plaintiffs. The case management plan is 255 days long and the initiating event is the same as in Judge Gillie's plans.

Judge Close has one case management plan, which contains only one plaintiff. The case management plan is 242 days long and the initiating event resembles Judge Gillie's plans.

Judge Crawford has two case management plans, the first plan is 422 days long, and contains only one plaintiff. The second plan is 221 days long. In both plans, the initiating event resembles that in Judge Gillie's plans, and both begin on the same day.

Judge C. Howard Johnson has one case management plan that contains two plaintiffs. This plan is 242 days long and the initiating event resembles that in Judge Gillie's plans.

Judge David Johnson has one case management plan which is 242 days long, and contains only one plaintiff. The initiating event resembles that in Judge Gillie's plans.

Judge McGrath has one case management plan, which contains one plaintiff. This plan is 252 days long and the initiating event resembles that in Judge Gillie's plans.

Judge Millard has two case management plans, the first plan is 256 days long, and contains one plaintiff. The initiating event resembles that in Judge Gillie's plans. The second plan contains one plaintiff, and is better known as the "trial continuance and scheduling order". It is not known if an actual "case management plan" exists for this plaintiff. However, the first event discussed in this order is the "trial witness identification list". From this event to trial, the plan is 126 days long.

Judge Thompson has two case management plans. The first plan contains one plaintiff and is roughly 48 weeks long. Deadlines are calculated in weeks, from the date of the filing of the complaint. Its first event is the disclosure of plaintiff's possible primary witnesses, including experts. The second plan

is 254 days long and contains two plaintiffs. The initiating event resembles that in Judge Gillie's plans.

Judge West has one case management plan and one pretrial order which sets out date for discovery as the trial date grows closer. The case management plan contains two plaintiffs, and is 250 days long. The initiating event resembles that in Judge Gillie's plan. The pretrial order pertains to only one plaintiff. From first event, (motions to be filed) to the date of trial, this plan is 101 days long.

JEFFERSON COUNTY CASE MANAGEMENT PLAN
(Judges Olivito and Mascio)

This Plan has an approximate 405-day calendar to trial, which begins when plaintiffs provide defendants with executed releases for medical records, social security and employment records. Various activities are to be completed by the parties on the time line provided by the Court.

KNOX COUNTY CASE MANAGEMENT PLAN

Case management orders have been adopted for two cases in Knox County by Judge Thomas Badger. In the Colgin case, the initiating event was a December 11, 1989 status conference at which time counsel agreed upon a timeline beginning March 2, 1990, and ending with a tentative trial date of May 6, 1991, approximately 399 days. The Wirick case timeline began May 23, 1990 and runs to a tentative trial date on January 27, 1992, 592 days. The first event under both plans is plaintiffs' service of interrogatories & requests for production of documents upon defendants.

LUCAS COUNTY CASE MANAGEMENT PLAN

Lucas County adopted a case management order on May 17, 1990 by order of Judge Kenneth A. Rohrs. Under the plan, cases are grouped according to plaintiff attorney. Groups are defined at an initial pre-trial conference, and cases will be tried in numerical order within each group.

Lucas County Clerk of Courts has established a "Master Asbestos File" for all orders, pleadings, depositions and other filings common to all pending cases. Common documents should be designated "MAF" and any party may adopt by reference any pleading, brief, affidavit, deposition or other document previously or simultaneously filed in the master file. Defendants may file one answer in this file and thereafter, answer complaints by filing an answer which incorporates the one

in the master file. Plaintiffs were required to file Standard Complaints, each bearing a number designation from 100 to 104, in the master file. Future actions could be commenced by filing & serving a notice of complaint & jury demand and designating by number a Standard Complaint that the case was based upon. Defendants were also to file Master Answers bearing numerical designations. Plaintiffs & defendants also filed standardized interrogatories, requests for production of documents & requests for admissions in the master file.

There are two major groups of cases in Lucas County--Sweeney cases and non-Sweeney cases. Timelines for these groups are about 240 days long. The first group, Sweeney cases, began on February 1, 1991 and runs until a proposed starting trial date of 9-30-91. The non-Sweeney cases start 30 days later and end with a proposed trial date of 10-14-91. Certain events, such as pre-trial conferences, end of depositions, & filing of summary judgement motions, are scheduled to occur on the same day for all cases. Additionally, the case management order establishes the third Monday of every month as "Motion Day" for hearing & disposing of pending motions.

MEIGS COUNTY CASE MANAGEMENT PLAN

A case management plan was adopted in the Sheley case following a May 8, 1990 pre-trial conference with Judge W. Fred Crow, III. The timeline began May 18, 1990 and, as a result of subsequent amendments to the plan, continued through a scheduled pre-trial conference and motion hearing on October 29, 1990, a length of approximately 150 days. The first event in the timeline was plaintiff's service of his Consolidated Discovery Request upon defendants.

MONROE COUNTY'S CASE MANAGEMENT PLAN

Monroe County's "case management plan" is merely a Court order upon which motions were pending by both plaintiff's and defendant's counsel. This order pertains to one plaintiff, and simply states the deadlines for providing a list of product identification witnesses to defendants, when discovery of these witnesses is to be completed by defendants, when motions for summary judgment can be filed, and their respective motions in opposition and in reply to plaintiff's motion in opposition. The total amount of time given for these events is 158 days.

MONTGOMERY COUNTY CASE MANAGEMENT PLAN

Montgomery County Judge Walter A. Porter adopted a case management plan in February, 1990. Plaintiffs are put into eleven groups of five according to a case management schedule. The effective date of the order is February 8, 1990. Defendants are to file completed defendants questionnaires & requests for production of documents within 45 days of the order (for pending cases) or within 45 days of the complaint, whichever is later. Plaintiffs must serve completed Plaintiffs questionnaires and authorizations and releases within 60 days of the order (for pending cases) or upon filing a complaint. Defendants are expected to serve their responses to the plaintiffs' Master Contention Interrogatories (MCIs) and Master Contention Requests for Production of Documents (MCRPD) within 90 days of the order or 90 days after plaintiff files a complaint. Plaintiffs were to have 105 days from the effective date of the order to begin serving their responses to defendants' MCIs and MCRPDs, at the rate of five per week. A sample case management plan for Group II cases begins with plaintiffs providing product identification witnesses and all available medical expert reports, while defendants provide answers to Defendant's Questionnaire & respond to first request for production of documents. The plan runs approximately 335 days until a proposed trial date of April 15, 1991. Cases are set to be tried in alphabetical order within each group. No master docketing system is created, but individual plaintiffs' claims & the related consortium claims are to be assigned a special docket identifier by the clerk of courts.

PICKAWAY COUNTY'S CASE MANAGEMENT PLAN

Like Monroe County, there is no "case management plan" in Pickaway County. Rather, Judge Ammer has issued a pretrial order for only one plaintiff, which sets out critical dates from the completion of discovery for all of plaintiff's product identification witnesses, to the date for trial. Since the date for trial is not specifically outlined, the total amount of time given for these events is roughly anywhere from 150 to 180 days.

STARK COUNTY'S CASE MANAGEMENT PLAN

The plan devised for Stark county is fairly new, and has not yet been adopted by the Judge. The proposed plan is 490 days long, but has not yet developed a scheme of plaintiff groupings. The initial event which will trigger action in this plan is the filing of responsive answers and production of documentation by the plaintiffs as requested by the Defendant's Standard Interrogatories and Request for Production of Documents.

SUMMIT COUNTY CASE MANAGEMENT PLAN

Summit County case management is governed by Standing Orders #2 and #3. All "Tireworker"--e.g., asbestos--cases in Summit County were consolidated into Judge William H. Victor's docket. All Summit County cases use the prefix "ACV" before the case number. Additionally, plaintiffs & defendants are identified by special docket identifiers as prepared by Roetzel & Andress; i.e.-ACV88-06-1731 P67 means the pleading refers to the 67th plaintiff in case ACV88-06-1731. Defendants are similarly referenced. Under the master file system, parties filing documents pertaining to several asbestos cases prepare a cover sheet which includes the nature of the filing and a list of cases in chronological order to which the filing pertains.

Under the case management plan, plaintiffs have been grouped into groups of ten where there are more than ten primary plaintiffs in a case. Where there are less than ten plaintiffs in a case, they are considered one group. Plaintiffs having only consortium claims included in the same group as the associated primary plaintiff. Plaintiff groups have been formed in chronological order by filing date of the case. Plaintiffs are then alphabetized within each group. The timeline for these cases begins July 1, 1991, and there is a three week interval between groups. Plaintiffs' counsel are expected to prepare and serve defendants' liaison counsel with written schedules of their cases grouped according to the case management plan.

The timeline for processing a single group of cases starts at Day 1, with the plaintiff required to serve each defendant a completed questionnaire (as outlined in Standing Order #2), Social Security statements, tax returns, diagnosing physician reports and completed authorization forms. The timeline ends on Day 500, with trials to begin in alphabetical order within each group.

WASHINGTON COUNTY'S CASE MANAGEMENT PLAN

There are two judges handling asbestos cases in Washington County. It appears that Judge Susan Boyer has issued a case management plan, where the initial event would be the production of a product identification witness list to defendants by plaintiffs, six weeks after pretrial. The time frame from the beginning of discovery through summary judgment motions is 240 days. No time frame indicating when trials are to occur, as well as a list of plaintiffs involved was provided. According to the memorandum that this summary is based upon, Judge Hallock had not issued a case management plan for his cases.

UNITED STATES DISTRICT COURT IN CINCINNATI

Judge Spiegel did not have a formalized Case Management Plan. However, 60 days after the filing of an action the Court would set the case for preliminary pretrial conference which would deal with any preliminary questions and compose a scheduling order for discovery. At that time the Court would establish cut-off dates for motions addressed to the pleadings for discovery and a tentative date for the final pretrial conference and tentative date for trial.

Approximately 30 to 45 days prior to trial a final pretrial conference would be held.

While it was the Court's goal to try all cases within one year of the preliminary pretrial conference, complex litigation may proceed on a more extended discovery schedule.

A similar program was instituted in Judge Rubin's courtroom.

UNITED STATES DISTRICT COURT -- DAYTON

At some point Judge Rice appointed a steering committee to formulate a Case Management Plan; however, this Plan was never issued. Consequently, the Court and counsel created specific deadlines for the filing of cutoff on discovery, pretrial order, exchange of trial exhibits, final pretrial conferences and finally trial.

U.S.D.C. - CLEVELAND O.A.L. CASE MANAGEMENT PLAN

Asbestos cases in this area have been grouped into five different types, and a case management plan has been provided for each type. These types include insulation cases, manufacturing products cases, friction materials cases, asbestos and other materials cases (such as roofers), and employer defendant cases. Each case type is organized in clusters of no more than five cases according to stage of preparation for trial, severity of the alleged injury, and date of filing. All case management plans within this district resemble one another, and follow an approximate time line of 480 days. The initiating event begins at day 60, with plaintiff's responses to defendant's first consolidated discovery request.

U.S.D.C. - MARDOC CASE MANAGEMENT PLAN

The cases in this area have been placed into three groups, A, B, and C. The most severe injury claims have been placed into group A, based on an I.L.O. rating of 2-3, otherwise known as

death or mesothelioma claims. Groups B and C, are grouped according to less severe I.L.O. ratings, and currently do not have a case management plan. Group A follows a 480 day case management plan, which breaks cases down into 30 clusters, each cluster containing 11-12 cases. The initiating event in this plan is the provision by plaintiffs to defendants of the medical, union and I.R.S. releases.

APPENDIX F

| | BUTLER | | CLYAHOGA NTW | | CLYAHOGA TW |
|---------|------------------------------------------------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | (CASE WAS IN PROCESS PRIOR TO COURT'S SCHEDULING DEADLINES) | DAY 1 | P's answers to De C.D.R.'s provided before this date. P's provide De with releases for doctors/hospital records, and employer records. P provides D with copies of social security and tax returns | DAY 1 | Completed questionnaire provided. P must serve social security statement, tax returns, diagnosing physicians' report, authorizations for medical, employment, military, social security and workers' compensation records. P deposits all pathological specimens and original x-rays with R.D.S. and serve notice of the deposit on all counsel |
| DAY 1 | P's identify co-workers' witnesses | DAY 75 | Each P provides list of up to 6 product id witnesses and provide expert medical witness reports. De respond to master interrogatories and requests for production | DAY 15 | D may request from P a consent order dismissing that D. P must respond in writing within 45 days of receipt of letter. |
| DAY 106 | De identify all fact witnesses | DAY 90 | De may request from P, a consent order dismissing D w/o prejudice. P responds within 30 days of receipt of letter. | DAY 30 | D's respond to questionnaire |
| DAY 197 | De Motions for SJ on Prod id | DAY 100 | Depos of employers begin | DAY 60 | P responds to master interrogatories & provide list of up to 6 product identification witnesses & expert medical witness reports. De must respond to master interrogatories and requests for production |
| DAY 227 | P's response to De Motions for Summary Judgment | DAY 110-170 | P's discovery of De. Depos of P and co-workers to begin | DAY 90 | Depos of plant personnel and employers begin. P & D may serve supplemental discovery requests on opposing party. |
| DAY 243 | De rebuttal to P's response to Motion for SJ | DAY 185 | De file and serve Motions for SJ | DAY 100 | P conduct discovery of De; depositions of P's and co-workers commence |
| DAY — | P's provide summaries of expert witnesses rpts. P's identify expert witnesses & provide identity summaries | DAY 200 | Opposition to Motions for SJ or consent for dismissal filed by P | DAY 180 | Motions for SJ filed |
| DAY — | De expert witnesses & provide summaries | DAY 210 | De reply to P's Opposition to Motion for Summary Judgment | DAY 210 | Filing of Objections to Motions for SJ or consent for dismissal |
| DAY 283 | PRETRIAL CONFERENCE | DAY 225 | Pretrial hearing on dispositive motions & establishment of pretrial procedures. Preliminary settlement discussions | DAY 225 | De reply to P's Opposition to Motion for SJ |
| DAY 295 | TRIAL (estimated length - 10 days) | DAY 230 | P names expert and lay witnesses provide expert and lay witnesses statement of testimony. P resumes depositions. IME's begin. | DAY 240 | Pretrial hearing on dispositive motions & establish pretrial procedures. Preliminary settlement discussions |
| DAY | | DAY 260 | De name lay and expert witnesses, provide reports statement of testimony. If prior testimony of witness(es), must provide copies | DAY 250 | P names expert and lay witnesses, provide reports, statements. P's & D's resume depositions |
| DAY | | DAY 280 | IME Report provided by D | DAY 270 | IME's begin |
| DAY | | DAY 310 | De/P's to conclude depositions expert and lay witnesses. Exhibit and final witness list to be filed | DAY 320 | D names lay and expert witnesses and provides reports or statements |
| DAY | | DAY 320 | Rule 56 dispositive motions to be filed; pretrial motions to be filed | DAY 350 | IME's provided |

| | FRANKLIN | | JEFFERSON | | KNOX |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|-----------------------------------------------------------------------------------------------------------------------------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DAY | P's provide executed releases | DAY 1 | P's provide D's with executed releases | PLAN I (PLAN II) | |
| DAY 1 (30) | P's answer master set of discovery requests & provide list of up to 6 product ID witnesses each and expert medical witnesses' reports | DAY 15 | P's answers to Interrog; provide up to 6 prod. id. witness & expert medical witness rpts., D's answer P's discovery request | DAY 1 | P serves Interrog. & Req. for Prod. of Docs. upon D's |
| DAY 15 (19) [45] | P's answer D's supplemental master discovery requests | DAY 29 | P's answer D's supp. discovery | DAY 7 | P's identify co-workers/ prod. id. witnesses; P to provide releases; P to provide supplemental answers to Interrog; Depos. of P and co-worker/ prod. id. witnesses begin |
| DAY 1-61, (1-63) [60-150] | P's conduct discovery from D's including Interrog., req. for production, and requests for admission. D's conduct discovery of P's, co-workers, employers and others including interrogatories, requests for production, and requests for admission. | DAY 60 | P's & D's conduct discovery of P's co-workers & employers for 2 months | DAY 24 (29) | P to provide list of 10 co-worker/ prod. id. witnesses |
| DAY | D's depose P's | DAY 134 | D's file dispositive motions | DAY 52 (98) | D's conclude depositions; D's return P's Interrog. & Req. for Prod. of Docs. |
| DAY | D's depose co-workers | DAY 148 | P's & D's respond to dispositive motions | DAY 75 (119) | P provide preliminary list of medical witnesses & provide med. rpts., original tissue slides & blocks & x-rays |
| DAY 29 (32) [90] | D's answer P's master discovery request | DAY 162 | P's & D's file supplemental & reply briefs | DAY 108 (157) | D's file Motions for SJ on prod. |
| DAY 60 (134) [150] | P's file dispositive motions (Rule 12 & Rule 56). D's file dispositive motions (Rule 12 & Rule 56) | DAY 177 | Pretrial hearing on dispositive motions & establishment of trial procedures | DAY 151 (189) | P's responses to D's Motions for SJ |
| DAY 70 (76) [164] | P's and D's respond to all dispositive motions | DAY 190 | P's name expert witnesses & provide rpts. D's may resume depositions. | DAY 165 (210) | D's reply to responses of P |
| DAY 77 (84) [171] | P's and D's file supplemental or reply briefs in support of their dispositive motions | DAY 218 | D's name expert witnesses & provide rpts. | DAY 179 (241) | Hearings on all pending motions |
| DAY 1 (104) [210] | P's name expert & lay witnesses & provide reports of statements. P's & D's to take depositions. P's to provide tissue slides and blocks. | DAY 309 | P's & D's conclude lay and expert depositions. | DAY 196 (276) | P names all expert witnesses and provides reports |
| DAY 22 (125) [275] | D's name lay and expert witnesses & provides report or statements of DME's completed | DAY 323 | Pretrial motions' s filed. | DAY 242 (339) | P's & D's name lay witnesses; D's name experts and provide rpts. |
| DAY 156 (173) [321] | P's submit list exhibits for trial | DAY 344 | Response to pretrial motions. | DAY 319 (430) | Final Discovery Cutoff; exchange of exhibit lists |
| DAY 64 (187) [335] | P's & D's to conclude depositions of witnesses. D's to conclude depositions of P's lay and expert D's submit list of exhibits for trial | DAY 365 | Final pretrial hearing on outstanding motions; final settlement conference after pretrial | DAY 333 (472) | Filing of trial motions; D's may file additional Motions for SJ |

| | | | | | |
|---------------------------|----------------------------------------------------------------------------|---------|------------------------|------------------|-----------------------------------------------------------------------------------------------|
| DAY 78 (192) [341] | Pretrial Rule 56 dispositive motions filed | DAY 379 | Trial brief submitted. | DAY 354 (502) | P's respond to D's additional Motions for SJ. P's & D's respond to all other motions |
| DAY 78 (205) [355] | P's/D's respond to dispositive and pretrial motions | DAY 407 | Trial day. | DAY 361 (528) | Reply briefs filed regarding pending motions |
| DAY 113 (219) [362] | Pretrial hearing on outstanding motions; final settlement conference | DAY | | DAY 368 (560) | Hearing on pending motions; final pretrial |
| DAY 198 (216) [367] | Objections to exhibit list | DAY | | DAY 399 (592) | Testative Trial Date |
| DAY | Depos regarding exhibit authenticity | | | | |
| DAY 111 (245) [374] | Trial briefs submitted | | | | |
| DAY 126 (249) [381] | Trial of cases in order of case number | | | | |

| | LUCAS | | MEIGS | | MONROE |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|--------------------------------------------------------------------------------------|---------|-----------------------------------------------------------|
| DAY 1 | Pl identify preliminary prod. id witnesses; discovery brochures due in Sweeney cases. | DAY 1 | Pretrial conference to set deadlines | | CASE ALREADY IN PROGRESS AT TIME OF CASE MANAGEMENT ORDER |
| DAY 29 | Pl (non-Sweeney) identify preliminary prod. id witnesses; Discovery brochures due in non-Sweeney cases. | DAY 10 | P to deliver CDR's to Ds | DAY 1 | Pl provide Ds with a list 15 prod id witnesses |
| DAY 52 | Completion of all P's depositions | DAY 30 | Pl to provide Ds with list of co-workers and experts | DAY 45 | Ds complete discovery of Pl prod id witnesses |
| DAY 80 | Pl designated trial of prod. id witnesses. | DAY 44 | Ds to complete P's Depos | DAY 75 | Ds Motions for SJ |
| DAY 94 | D's complete IME's of Pl (Sweeney); Pl (Sweeney) provide expert medical rpts. | DAY 61 | D's to complete co-workers Depos | DAY 113 | Pl Opposition to Ds Motions for SJ |
| DAY 115 | D's complete prod. id witness depositions. | DAY 91 | Ds to provide Pl with list of lay and expert witnesses for trial; motion cut-off day | DAY 127 | Ds replies to Pl Opposition to Motion for SJ |
| DAY 129 | D's complete IME's of Pl (non-Sweeney); Pl (non-Sweeney) provide trial expert medical rpts. | DAY 138 | Pre-trial conference & hearing on all pending motions | DAY | |
| DAY 143 | Status conference. | DAY 180 approx | TRIAL DATE | DAY | |
| DAY 157 | D's provide trial expert medical rpts Pl & Ds to file list of all witnesses for trial & provide rpts of non-medical expert witnesses | DAY | | DAY | |
| DAY 164 | Motions for SJ due. | DAY | | DAY | |
| DAY 178 | Responses to Motions for SJ. | DAY | | DAY | |
| DAY 181 | Trial trials due on Sweeney cases. | DAY | | DAY | |
| DAY 189 | Completion expert depositions in Sweeney cases & filing of all pretrial motions in Sweeney cases; completion of all non-prod. id witness depositions. | DAY | | DAY | |
| DAY 197 | Trial trials due in non-Sweeney cases. | DAY | | DAY | |
| DAY 203 | Completion of all expert depositions in non-Sweeney cases; file pretrial motions in non-Sweeney cases. | DAY | | DAY | |
| DAY 206 | Final pretrial conferences in all cases. | DAY | | DAY | |
| DAY 213 | Trial day in Sweeney cases. | DAY | | DAY | |
| DAY 227 | Trial day in non-Sweeney cases. | DAY | | DAY | |

| | MONTGOMERY | | PICKAWAY | | STARK |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------------------------|---------|------------------------------------------------------------------------------------------------------------------------------|
| | CASES ALREADY ON FILE WHEN CASE MANAGEMENT ORDER ADOPTED | DAY 1 | D's to complete discovery of P's prod. id witnesses. | DAY 1 | P's Complaint |
| DAY 1 | De answer questionnaire and respond to Req for Prod of Docs. P file Master Contention Interrogatories (MCIs) and Master Contention Requests for Production of Documents (MCRPDs). P's provide medical expert reports list of 6 prod id witnesses | DAY 29 | D's file Motions for SJ. | DAY 60 | P's to respond to and produce docs for Interrog and Req for Prod of Docs. P's releases |
| DAY 14 | De file MCIs and MCRPDs. P answer questionnaire and submit Prod of Docs and Releases | DAY 59 | P's respond to D's motion for SJ. | DAY 90 | P's file Interrog and Req for Prod of Doc upon De |
| DAY 22 | De may seek consent dismissals prior to this day | DAY 73 | D's Reply. | DAY 105 | P provide De with a list of six product id witnesses P. Depos of P's, co-workers and others begin |
| DAY 45 | De answer MCIs and MCRPDs | DAY 89 | D's submit defense motions. | DAY 150 | De file responses to and make available doc for inspection. P to provide De a list of expert medical witnesses and reports. |
| DAY 60 | De file supplemental individual interrogs and req for prod of docs. P's answer MCIs and MCRPDs | DAY 103 | P's response to D's motions. | DAY 180 | De conclude P and co-worker product id witnesses |
| DAY 120 | P's answer De supplemental interrogs and req for prod of docs. | DAY 118 | Pretrial hearing & settlement hearing. | DAY 210 | P's & D's conclude depositions of lay witnesses. P's provide De list of expert witnesses and reports |
| DAY 97-140 | De conduct discovery depositions of P's, co-workers and others P's conduct discovery depositions | DAY 178 - DAY 208 | Trial day. | DAY 250 | P's response to Motions for SJ |
| DAY 127 | De may again seek consent dismissals after this day | DAY | | DAY 265 | De reply to P's response to Motions for SJ |
| DAY 133 | De and P's file Rule 12 & Rule 56 dispositive motions | DAY | | DAY 280 | Hearing on all pending Motions for SJ |
| DAY 145 | De and P's respond to dispositive motions | DAY | | DAY 300 | De complete IMEs on P |
| DAY 152 | De and P's file reply memos for dispositive motions | DAY | | DAY 350 | De provide P's a list of expert witnesses and reports testimony from each. Depositions of expert witnesses begin |
| DAY 165 | Hearing on all pending motions. P's name lay & expert witnesses and provide reports or statements | DAY | | DAY 390 | P's & D's to complete depositions of expert witnesses and conclude discovery. P's and De to exchange lists of trial exhibits |
| DAY 195 | De and P's resume depositions | DAY | | DAY 420 | P's & D's file Motions for SJ and other pretrial motions |
| DAY 280 | Pretrial motions and further Rule 56 dispositive motions filed | DAY | | DAY 450 | Opposing motions filed |

| | SUMMIT | | WASHINGTON | | USDC-MARDOC CLEVELAND |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|----------------------------------------------------------------------------------------------------------------------------------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DAY 1 | Ps serve completed questionnaire on D's; Ps deposit path specimens & original X-rays with RDS. | DAY 1 | Pretrial conference | DAY 1 | Complaints filed |
| DAY 15 | D's request consent order from Ps dismissing D. | DAY 42 | Ps produce list of prod id witnesses | DAY 30 | P's x-rays union, medical, IRS releases on file |
| DAY 30 | D's respond to questionnaire. | DAY 120 | All product id discovery completed. All discovery, objections, motions to compel and other discovery-related motions and replies filed | DAY 50 | D's Answer & file, R. 12 motions |
| DAY 60 | Ps response to master interrog; Ps provide list to prod. id witness & expert medical witness reports; D respond to master interrog & req. for production. | DAY 150 | De file all motions, all depositions, admissions, documents and affidavits | DAY 65 | P's brief opposing D's R. 12 motions |
| DAY 90 | Depos of plant personnel & other employees commence; Ps & De may serve supplemental discovery requests. | DAY 180 | Ps to respond to De motions | DAY 75 | Discovery begins on approx 8 clusters; cases prepared for trial within 100 days; CDR's completed within 21 days; IME's scheduled, exchange medical records; deposit scheduling |
| DAY 100 | P's Discovery of De. D's depos of Ps & co-workers commence | DAY 195 | De reply to Ps responses | DAY 175 | Discovery completed on first eight clusters; discovery begins on second eight clusters |
| DAY 180 | D's motions for SJ | | | DAY 177 | Pretrial conference on first eight clusters |
| DAY 210 | P's opposition to motions for SJ or consists for dismissal to be filed | | | DAY 180 | Trial begins on first eight clusters - unfurcated, phase #1: medical causation; phase #2: liability and punitive damages; phase #3: third party claims |
| DAY 225 | D's reply to P's opposition to motion for SJ. | | | DAY 275 | Discovery completed on second eight clusters; discovery begins on third eight clusters |
| DAY 240 | Pretrial hearing on dispositive motions & establishment of pretrial procedures, preliminary settlement negotiations | | | DAY 277 | Pretrial conference on second eight clusters |
| DAY 250 | P names expert & lay witness & provides rpt & stmt; P to restate depos | | | DAY 280 | Trial begins on second eight clusters-trifurcated |
| DAY 270 | D's IME to commence | | | DAY 375 | Discovery completed on third eight clusters; discovery begins on remaining clusters |
| DAY 320 | D's names lay & expert witnesses, provides expert rpt & stmt D's IME's completed | | | DAY 377 | Pretrial conference on third eight clusters |
| DAY 410 | Ps to conclude depos of D's experts & lay witnesses; Ps to serve exhibits & final witness lists; D's to conclude depo of P's expert & lay witnesses; D's to serve exhibits & final witness lists. | | | DAY 380 | Trial begins on third eight clusters-unfurcated |
| DAY 430 | Ps & De file R. 56 dispositive motions & pretrial motions | | | DAY 475 | Discovery completed on remaining clusters |
| DAY 445 | Ps & De respond to dispositive motions & other pretrial motions | | | DAY 477 | Pretrial conference on remaining clusters |
| DAY 475 | Pretrial hearing on outstanding motions; final settlement conf after pretrial. | | | DAY 480 | Trial of remaining clusters-trifurcated |
| DAY 490 | Ps & De to submit written designations of prior testimony for trial, exhibit lists & trial briefs. | | | | |
| Day 1,500 | Trial day | | | | |

| | OAL MANUFACTURING - CLEVELAND - USDC | | USDC CINCINNATI | | USDC DAYTON |
|---------|------------------------------------------------------------------------------------------------------------|---------|-----------------------------------------------------------------------------------------------|-----------------------|---------------------------------|
| DAY 1 | P's file complaint & affidavit | DAY 1 | There is no case mgmt. plan per 16 but cases are scheduled* in accordance with Fed. R. 16(b). | | CASES ALREADY IN PROGRESS |
| DAY 60 | P's respond to D's 1st CDR's. | DAY 30 | Complaint filed | DAY 1 (Plan II) | Motion cut-off |
| DAY 90 | D's respond to P's 1st CDR's. | DAY 50 | Motions addressed to pleadings | DAY 21 (Plan II) | Motion responses due |
| DAY 120 | P's respond to D's 2nd CDR's. | DAY 65 | Motions to join other parties and to amend pleadings | DAY 31 (Plan II) | Motion replies to responses due |
| DAY 240 | P's Depo: co-workers depo; employer prod at; responses to P's 2nd CDR | DAY 75 | Discovery cut-off | DAY 140 (Plan I & II) | Hearing on all pending motions |
| DAY 250 | D's 3rd party complaint. | DAY 175 | Final pretrial | DAY 144 (Plan I) | Final pretrial order |
| DAY 280 | D's responses to 3rd party D's CDR's. | DAY 177 | Trial | DAY 148 (Plan I) | Final pretrial conference |
| DAY 330 | P's demand. | DAY 180 | | DAY 154 (Plan I) | Trial begins |
| DAY 375 | P's & D's name non-expert witnesses. | DAY 275 | | DAY 200 (Plan II) | Trial begins |
| DAY 390 | P's names expert witnesses. | DAY 277 | | DAY | |
| DAY 405 | D's names expert witnesses. | DAY 280 | | DAY | |
| DAY 430 | Depos of non-expert witnesses completed | DAY 375 | | DAY | |
| DAY 450 | Depos of expert witnesses & all discovery completed; exhibit list exchanged. | DAY 377 | | DAY | |
| DAY 460 | P's & D's file pretrial motions filed; exhibits lists filed; proposed voir dire & jury instructions filed. | DAY 380 | | DAY | |
| DAY 465 | P's & D's respond motions | DAY 475 | | DAY | |
| DAY 470 | P's & D's motions resolved. | DAY 477 | | DAY | |
| DAY 475 | P's & D's file trial briefs | DAY 480 | | DAY | |
| DAY 480 | Trial day. | | | DAY | |

APPENDIX G

CASE EVALUATION AND APPORTIONMENT PROCESS ("CEAP")

This is a modification of the CEAP proposal devised by Eric D. Green in OAL Order No. 6.

The Case Evaluation and Apportionment Process ("CEAP") is designed to assist in the rapid evaluation and settlement of large numbers of asbestos cases. It is a distinct phase of the Case Management Plan.

CEAP consists of three parts:

- A) the development of an analysis for rapid, systematic and equitable evaluation of individual asbestos cases;
- B) the development of a methodology for apportioning liability among defendants (and, indirectly, their insurers) that would apply across-the-board to all appropriate cases;
- C) the development of techniques for budgeting and funding appropriate payments to plaintiffs in an effort to benefit from economies of scale.

A. Evaluation of Claims:

It should be possible to predict the value of a case with considerable accuracy if there are (1) sufficient objective indications of an asbestos related disease that can be obtained through pulmonary function tests, x-rays, tissue samples and various physical manifestations, and (2) sufficient information concerning a plaintiff's background.

First, a threshold measure should be developed to determine the minimum amount of asbestos-related disease that must exist to qualify a case for systematic case evaluation analysis. Cases

involving no physical manifestation of asbestos-related disease are not presently susceptible to the kind of case evaluation analysis suggested here because of a lack of any objective evidence of injury. These cases must be handled separately on a pure "at risk" evaluation basis unless some type of voluntary deferral system. (See Appendix D.)

Second, a large number of previously litigated or settled OAL or comparable cases should be selected and examined to determine the amount of compensation received in those cases. The theory behind this "historical" approach is that the value of previous cases should provide some indication of the value of current cases. This case evaluation method requires a review of previously resolved cases to obtain both their overall values and their specific case variables or factors that were critical in establishing an overall value. Current cases can then be evaluated by comparing their specific case factors to similar case factors in previously resolved cases. Standard data analysis methods and techniques can also be used to locate correlations between specific case factors and overall case evaluation. (See, e.g., E. Tufte, DATA ANALYSIS FOR POLITICS AND POLICY (Prentice-HALL 1974); J. Johnston, ECONOMETRIC METHODS (McGraw-Hill 1971)).

A disadvantage of this approach is that it is static and does not take into account dynamic changes in asbestos litigation. New developments in the handling of cases or the type of evidence in trials might not be reflected in previously

resolved cases. Thus, this approach could serve as only one of several tools in a systematic case evaluation analysis.

Thus, the third step is to develop a method of evaluating asbestos cases that is more current and dynamic than the historical approach. Such an approach would also involve identification of the specific variables that the parties use to establish a value for each case. These variables would then be compared to each other in the context of the evaluation of current actual cases, and used to develop a model of the present decision-making process of placing a value on asbestos cases. Two approaches of this sort that appear promising are "decision-analysis" (see, e.g. H. Raiffa, DECISION ANALYSIS: INTRODUCTORY LESSONS ON CHOICES UNDER UNCERTAINTY (Harvard 1968); E. Stokey & R. Zeckhauser, A PRIMER FOR POLICY ANALYSIS (Harvard 1978)), and "expert systems" (see, e.g., F. Hayes-Roth, D. Waterman, D. Lerant, BUILDING EXPERT SYSTEMS (Addison-Wesley 1983)). Both of these methods attempt to duplicate the way counsel actually reach a conclusion concerning the value of cases. Successful use of either of these methodologies would result in an analysis that the parties could agree was consistent with their own ad hoc approach to evaluating cases and which could be used with great success in expediting and systematizing the resolution of large numbers of asbestos cases.

In all probability, neither the historical nor either dynamic model alone will be accepted as definitive. In the aggregate, however, by applying the multiple techniques suggested here, counsel and court may gain substantial assistance. If the

parties can agree on a systematic case evaluation analysis combining both an historical and a dynamic evaluation to provide an accurate range of values for a specific case, negotiating a final settlement will be greatly facilitated. At the same time, applying such an analysis to large numbers of cases will decrease the marginal cost of evaluating each case and increase consistency by reducing the possibility that any case is over- or under-valued. Thus, developing a credible case evaluation process combining both the historical and dynamic approaches that is acceptable to most OAL parties is one of the four key parts of the CEAP.

B. Apportionment Among Defendants:

Apportioning liability among defendants (rather than of determining liability to the plaintiff in the first instance), is a major issue in Ohio asbestos litigation. Time and energy associated with apportioning liability among defendants could be significantly reduced or eliminated altogether if the defendants could agree on the apportionment of overall liability for all cases that pass the threshold measure described above and that are deemed appropriate for resolution by settlement.

It is possible in Ohio for defendants (and indirectly, their insurers) to negotiate an overall apportionment method applicable to each individual OAL case. Such a formula could be based on market share, the historical results of closed cases, degree of involvement in specific cases, or a number of other factors. It seems likely that, similar to the evaluation methodology described above, no single approach will gain general acceptance

and that a combination of many factors and approaches will have to be taken into account and negotiated by defendants to yield a mutually acceptable approach.

It this is true, it is likely that development of a negotiated apportionment method will require the participation of a wide range of interested parties. Development of such a method should commence immediately and proceed in two phases-first, among the defendants and second, with the insurers.

C. Budgeting and Funding:

Opportunities exist to save significant amounts of money if the OAL parties can agree on standard evaluation and apportionment methods. If the parties agree on an evaluation method, each case can be valued and a total, amalgamated value for all the relevant asbestos cases can be derived. This amount can then be applied to the apportionment method to yield each defendant/insurer's overall responsibility. The use of structured settlements, insurance policies, annuities, and other deferrals of payment can then be explored to reduce the cost of funding a possible overall resolution of a large number of OAL cases.

APPENDIX H

STANDARD LAND-BASED CMP

1. Pleadings, Discovery, and Settlement/Status Conferences

a. Pleadings:

Any complaint filed that seeks damages allegedly resulting from exposure to asbestos or asbestos containing products shall include the words "Ohio Asbestos Litigation" or "OAL" in the caption. Each complaint shall also include a completed form affidavit as contained in OAL Form 1. All subsequent pleadings filed in an action that has been designated as "OAL" shall contain the words "Ohio Asbestos Litigation" or "OAL" in the caption.

b. Master Ohio Asbestos Litigation File:

The Clerk of the Court is directed to establish a master file for all OAL cases designated "Master OAL File." Counsel shall file in the Master OAL File a copy of all orders, pleadings, depositions, motions, and other filings that are common to more than one OAL case pending in this jurisdiction. All documents filed in the Master OAL File shall contain the uniform designation "Ohio Asbestos Litigation (or "OAL") Master File," plus the case name and number of the case in which they are first filed.

Any party to any OAL case may adopt by reference any document previously or simultaneously filed by any party in the consolidated Master OAL File by referring to the referenced pleading by "Master OAL File, case name and number." The filing of material in the Master OAL File is for convenience only. The presence of a document in the Master OAL File does not imply that such a document will be used in every case or be applicable to every party nor does it constitute a waiver of any party's right to object to its use in any particular proceeding.

c. Standard Consolidated Discovery Requests ("CDR's" and Supplemental Interrogatories and Requests for Admission:

Standardized Interrogatories (Rule 33, F.R.C.P.), requests for admission (Rule 36, F.R.C.P.), and requests for production of documents (Rule 34, F.R.C.P.) in the form approved by the Court shall be utilized as set forth herein and shall be designated "OAL Consolidated Discovery Requests ('CDR's')." If a party requesting discovery determines that a standard OAL CDR is inappropriate in one or more cases, motion may be made to the magistrate assigned to OAL to change the CDR.

The standardized "CDR's" shall be designated:

- (1) Defendant's First Standard OAL Consolidated Discovery Request to Plaintiff or Plaintiff's Decedent (OAL Form, as amended) [Note: This CDR is designed to obtain the basic background information needed to evaluate an asbestos case from a plaintiff or a plaintiff's decedent, as applicable. Specifically it includes personal and family biographical information, income records, union records, workers' compensation records, Social Security records, military records, Veterans' Administration records, work history, and medical records including x-rays, tissue samples, and other tests. In the event some of these records are not currently available, the plaintiff will provide appropriately signed release forms so that the defendants can obtain them.];
- (2) Plaintiff's First Standard OAL Consolidated Discovery Request to Defendant (OAL Form 3) [Note: This CDR is designed to obtain basic liability and product identification information from the defendants.];

NOTE: As Needed -

- (3) Third-Party Defendant's Standard OAL Consolidated Discovery Request to Third-Party Plaintiff (OAL Form 4) [Note: This CDR is designed to obtain basic information concerning the product identification for a third-party defendant.];
- (4) Defendant's Second Standard OAL Consolidated Discovery Request to Plaintiff or Plaintiff's Decedent (OAL Form 5) [Note: This CDR is designed to obtain the identity of six (6) co-workers and medical reports from non-treating medical experts.]; and
- (5) Plaintiff's Second Standard OAL Consolidated Discovery Request to Defendant (OAL Form 6) [Note: This CDR is designed to obtain medical reports from defense physicians.].

c. Rulings on Discovery Motions:

All rulings on discovery motions, including motions to deviate from or comply with this CMP, shall be made by a designated magistrate assigned responsibility for OAL. The magistrate's rulings shall be made within 72 hours after filing if the motion is endorsed with a request for prompt disposition and accompanied by a certificate that copies of the motion have been actually delivered to all counsel of

record in the case. All rulings on objections during depositions, whether taken in this jurisdiction or at a distant location, will be referred to the designated magistrate assigned responsibility for OAL.

The filing or pendency of a discovery motion or an objection shall not suspend the CMP timetable or in any way excuse any party from complying with the CMP schedule in any respect other than with the specific subject matter of the pending motion or objection.

d. An Example of a Time Line is at Appendix I.

OAL FORM 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

)
)
) OAL CASE NO. _____
)
) OHIO ASBESTOS LITIGATION PLAINTIFF
)
) (PLAINTIFF'S DECEDENT) AFFIDAVIT
)
)

1. Identify your (or decedent's) name, address, and date of birth.
2. Indicate which of the following types of activity resulted in your (or decedent's) exposure to asbestos:
____ (a) insulation (e.g. insulator or relative of insulator)
____ (b) manufacturing products (e.g. plant worker or relative)
____ (c) friction materials (e.g. brake repairer or relative)
____ (d) other _____ (Indicate nature)
3. Do you contend in your suit that products other than asbestos caused you (or decedent) any harm?
4. In this case are you suing one or more of your (or decedent's) employers?
5. Indicate the dates of your (or decedent's) employment, employer, employer's address and type of employment:

| <u>DATES OF</u> | | | <u>TYPE OF</u> |
|-------------------|-----------------|----------------|-------------------|
| <u>EMPLOYMENT</u> | <u>EMPLOYER</u> | <u>ADDRESS</u> | <u>EMPLOYMENT</u> |

If you are unable to complete this section, your attorney must indicate that your (the decedent's) social security print-out was unavailable at the time the complaint was filed but that a social security print-out has been ordered.

6. If you are not working, state the last date you (or decedent) worked and the reason for not working: (retirement disability, retirement, lay-off, etc.)
7. Describe the injury, illness or disease that forms the basis of this complaint.
8. When were you (or decedent) first diagnosed as having the illness, injury or disease which is the basis of your complaint?

Signature of Plaintiff

Sworn and subscribed to,
before me this _____ day of _____, 19____

Notary Public

APPENDIX I

CMP

| | |
|-------------------------------------------------|---------------------------------------------------|
| Complaint with CDR's; Medical Authorizations | 1 |
| | 30 Defendants' Answers to Complaints and CDR's |
| Co-worker Product Identification Package | 75 |
| | 90 Plaintiffs' Sprint Interviews |
| | 120 Dispositive Motions Due |
| | 130 Motion Day (SSC-I) |
| Plaintiffs Name Lay & Expert Witnesses | 135 Defendants' Name Lay & Expert Witnesses |
| Motion Rulings Due | 145 Motion Rulings Due |
| | 150 IME Cutoff |
| Expert Discovery Cutoff | 160 Expert Discovery Cutoff |
| Trial Packages Due | 170 Trial Packages Due |
| SSC-II | 180 SSC-II |
| Trial | 190 Trial |

APPENDIX J

TO BE PUBLISHED

APPENDIX K

TO BE PUBLISHED