

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

IN RE: ASBESTOS LITIGATION                   :       OCTOBER TERM 1986  
  :  
  :  
  :       NO. 0001

**CASE MANAGEMENT ORDER  
FOR ASBESTOS-RELATED PERSONAL INJURY CLAIMS**

**AND NOW**, this **9th** day of **November 2023**, the Court enters the following Case Management Order governing personal injury cases involving exposure to asbestos or asbestos-containing products.

This Case Management Order supersedes all prior Case Management Orders entered in the Asbestos Litigation Program and shall apply to all cases now pending and subsequently filed in this Court.

**I.       ADMINISTRATIVE MATTERS**

A. Liaison counsel: Liaison counsel have been appointed to facilitate communication between the parties and the Court, including the dissemination of any documents filed on the Global Docket to their respective constituent groups. If a party, or their respective counsel, has any questions or concerns related to the Asbestos Litigation Program, those questions or concerns should first be addressed to their respective liaison counsel.<sup>1</sup>

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<sup>1</sup> As of the date of this order, the current liaison counsel are:

Plaintiffs' liaison counsel  
Laurence Brown  
Brookman, Rosenberg, Brown & Sandler  
30 South 15<sup>th</sup> Street  
Philadelphia, PA 19102

- B. There shall be no reverse bifurcation of any asbestos case, unless agreed upon by all counsel involved and approved by the Court.
- C. All punitive damage claims in asbestos cases shall be deferred.
- D. Asbestos Cases Projected Trial Grouping: Once a year, the Court will enter an order with a list of cases to be scheduled for projected trial dates in the following year. Asbestos cases shall be organized in groups of a maximum of 10. Liaison counsel shall present the Court with a proposal of trial groups that takes into consideration the following criteria:
- i. Same law. Cases that involve application of the law of different states will not be tried together;
  - ii. Same disease. The disease category for each case in a group must be identical. The disease categories of cases to be grouped for trial are mesotheliomas, peritoneal mesotheliomas, lung cancers, other cancers and non-malignancy cases;
  - iii. Same plaintiff's law firm. Primary trial counsel for all cases in each group will be from a single plaintiff firm. Cases where Philadelphia

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Defense liaison counsel

Catherine Jasons

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The parties and their respective counsel are reminded of their continuing obligation to review the Global Docket for any changes that may occur after the entry of this Case Management Order.

plaintiff firms serve as local counsel for out-of-state counsel may be grouped with cases from the local firm; however, cases will not be tried together if the plaintiffs are not represented by the same firm;

- iv. Pleural mesothelioma is a disease that is distinct from mesotheliomas originating in other parts of the body, and will not be tried on a consolidated basis with non-pleural mesothelioma cases;
- v. Non-pleural mesothelioma cases will be further classified for trial, so that non-pleural mesothelioma cases allegedly caused by occupational exposure will not be tried on a consolidated basis with non-pleural mesothelioma cases allegedly caused by para-occupational (bystander) exposure;
- vi. Such other factors as determined appropriate in weighing whether all parties to the litigation can receive a prompt and just trial. The Court's present backlog of asbestos cases shall not be an overriding factor in the grouping determination.

E. Mediation: Once grouped and assigned a projected trial date, counsel are urged to seek mediation from a special panel of former judges named in ¶ 3 of General Court Regulation 2023-01. All parties will share the expense of mediation.

## **II. PLEADINGS**

### **A. Short-Form Complaints**

A short-form complaint shall be filed and served in every case in accordance with the Pennsylvania Rules of Civil Procedure. Plaintiffs may incorporate by reference the long-form complaints filed on the above-captioned docket.

The short-form complaint shall contain the information required by Rule \*1041.1(B) of the Philadelphia Civil Rules.

A short-form complaint that contains premises liability claims shall include the name and address of each work site at which the plaintiff alleges exposure to asbestos and the dates during which the plaintiff or the decedent worked at each such work site.

### **B. Preliminary Objections**

In response to each short-form complaint, any defendant may file preliminary objections in accordance with the Pennsylvania Rules of Civil Procedure and Rules \*1028 and \*1041.1 of the Philadelphia Civil Rules. The preliminary objections shall comply with the procedures set forth in Sections V(C) and V(E). Plaintiffs' response to preliminary objections shall be subject to Rule 1028(c)(1) of the Pennsylvania Rules of Civil Procedure and Rule \*1028(c) of the Philadelphia Civil Rules.

### **C. Answers to Complaints**

Defendant's answers to complaints are governed by Rule 1041.1 of the Pennsylvania Rules of Civil Procedure and Rule \*1041.1 of the Philadelphia Civil Rules.

### **III. GIFFEAR DOCKET**

Cases that do not state a valid claim pursuant to *Giffear v. Johns-Manville Corp.*, 632 A.2d 880 (Pa. Super. 1993), *aff'd sub nom. Simmons v. Pacor, Inc.*, 674 A.2d 232 (Pa.1996), shall be placed on an inactive docket.

To reactivate a case that has been discontinued pursuant to *Giffear*, a motion to reactivate must be filed and include all necessary medical reports supporting the motion. The motion shall be filed in letter brief format consistent with Section V(C) of this order.

### **IV. DISCOVERY**

- A. Unless otherwise agreed to by opposing counsel or upon a showing of exigent circumstances, all discovery shall take place in Philadelphia. A party may notice a deposition to take place at a location outside of Philadelphia so long as that party provides video conferencing, or telephone conferencing if video conferencing is impracticable, at no expense to opposing parties. All remote depositions shall be conducted under the guidelines set forth in this Court's Order of January 11, 2021, attached as Exhibit A.
- B. A notice of deposition shall be served on all parties at least 14 days before the scheduled deposition date unless, upon agreement of the parties, medically exigent circumstances exist or court approval is obtained for a shorter period. The notice of deposition shall include the intended dates for the continuation of the deposition, if necessary. Plaintiff shall provide the defendants with answers to Defendants' Common Interrogatories no later than five days before the scheduled deposition date of any plaintiff. Each plaintiff firm will use its best efforts to limit the number of depositions scheduled to occur concurrently

to two depositions per firm, per day, regardless of whether the depositions are for witnesses in the same case or different cases.

- C. The following deadlines shall apply for the completion of discovery and the exchange of expert reports, as set forth in the Asbestos Litigation Schedule<sup>2</sup>:

180 Days before the projected jury selection—

Plaintiffs shall serve answers to Defendants' Common Interrogatories and Requests for Production Directed to Plaintiffs, including information relating to Bankruptcy Trust Filings as set forth in this Court's Order of April 5, 2010, attached as Exhibit B.

Plaintiffs shall forward the identification of all health care providers along with addresses to defense counsel and RecordTrak.

Plaintiffs shall forward HIPAA compliant authorization forms signed by plaintiffs to RecordTrak.

120 days before the projected jury selection —

Plaintiffs shall serve medical, economic and liability expert reports.

Plaintiffs shall produce to lead defense counsel all diagnostic materials in the possession of plaintiffs or their counsel and all diagnostic material reviewed by plaintiffs' experts. This includes, but is not limited to, x-rays, CT scans, pathology and cytology.

Plaintiffs shall serve witness lists identifying the defendants whose products the witnesses are expected to identify.

100 days before the projected jury selection — Completion of plaintiffs' depositions.

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<sup>2</sup> The Asbestos Litigation Schedule is established after the Court approves the annual trial grouping schedule that is proposed by liaison counsel. The deadlines contained within the Asbestos Litigation Schedule are consistent with the deadlines set forth under §§ IV(C), V, and VI of this order.

90 days before the projected jury selection — Completion of all co-worker depositions.

10 days before the date of the date-certain jury selection as scheduled by the Court pursuant to Section VIII. —Defendants shall serve medical and expert liability reports.

## **V. MOTIONS PROCEDURES**

- A. This section applies to all motions other than motions for summary judgment that are filed in the Asbestos Litigation Program. Motions for summary judgment shall be governed by Section VI.
- B. All motions shall be electronically filed each Monday pursuant to Rule 205.4 of the Pennsylvania Rules of Civil Procedure and Rule \*205.4 of the Philadelphia Civil Rules. Any motions filed after Monday will be deemed filed the following Monday.
- C. All motions shall be in letter-brief rather than motion package format. The first page of the motion shall include the caption, type of litigation (i.e., Asbestos), name of opposing counsel, and the filing and response dates. The second page of the motion shall be the proposed order. The third page of the motion shall include the title line (Dear Judge” ....) and contain an executive summary followed by questions presented, facts, and discussion of the issues with citation to pertinent legal authority. Each motion must also include a signed Certificate of Service.
- D. All discovery motions also must include a signed Attorney Certification of Good Faith and Certificate of Service. The Attorney Certification of Good Faith shall attest that certifying counsel has spoken with opposing counsel to resolve the specific dispute at issue, and that despite counsel’s good faith

efforts, has been unable to do so. Merely sending an email or letter to opposing counsel without response does not constitute a good faith effort to resolve a discovery dispute.

- E. The moving party must serve opposing counsel and all interested parties with a copy of every motion on the day filed with the Court, by electronic mail, facsimile or hand delivery.<sup>3</sup> The moving party shall notify opposing counsel and all interested parties of the motion Control Number upon notification of same by the Court.
- F. From the date of filing as determined pursuant to Section V(B), opposing counsel shall have seven days to file a response to any motion, unless a specific Case Management Order provides otherwise. The response must be filed no later than 11:59 p.m. of the due date. **THE RESPONSE MUST CLEARLY DISPLAY THE CONTROL NUMBER OF THE CORRESPONDING MOTION ON ITS FIRST PAGE.** The responding party must serve the moving party and all other interested parties with a copy of the response the same day by electronic mail, facsimile or hand delivery.<sup>4</sup>

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<sup>3</sup> Counsel are reminded of the more exacting nature of the motions practice in the Complex Litigation Center because of the shorter response times and the need to ensure the completion of same-day service. Counsel are cautioned that under Rule 205.4(g)(2)(ii) of the Pennsylvania Rules of Civil Procedure, service by electronic transmission is not complete until “an e-mail message is sent to the recipient by the electronic filing system that the legal paper has been filed and is available for review on the system's website.” Accordingly, the obligation of same-day service contained Section V(E) of this order will not be satisfied by reliance on Rule 205.4 (g)(2) of the Pennsylvania Rules of Civil Procedure if a motion, response or reply filed by electronic mail is not accepted by the Court on the date that it is transmitted to the Court.

<sup>4</sup> See Footnote 3, *supra*.



G. If any motion or response is withdrawn, filing counsel must electronically file, under the appropriate Control Number, a praecipe to withdraw. The praecipe must clearly display the Control Number of the motion. All interested parties must be served with a copy the same day by electronic mail, facsimile or hand delivery.<sup>5</sup>

H. Counsel shall not directly contact any mass tort law clerks or Complex Litigation Center staff requesting rulings on motions. Any questions should be sent to the Director of the Complex Litigation Center via e-mail at [ComplexLitigationCenter@courts.phila.gov](mailto:ComplexLitigationCenter@courts.phila.gov). No email correspondence or other ex parte communications should be sent to the judge.

## **VI. SPECIAL PROCEDURES FOR MOTIONS FOR SUMMARY JUDGMENT**

- A. To prevent the filing of unnecessary motions, as set forth in the Asbestos Litigation Schedule, five days before the deadline for filing summary judgment motions (or 85 days before the projected jury selection date) plaintiffs' counsel are to serve upon all parties to a case, a letter identifying all defendants that plaintiff will voluntarily dismiss from that case.
- B. All summary judgment motions shall be electronically filed 80 days before the projected trial date and shall comply with the requirements of Section V(C) *supra*.
- C. Unless otherwise governed by Section VI(F), any opposing counsel shall file a response to the motion on or before 63 days before the jury selection date, as set forth in the Asbestos Litigation Schedule. The response must be filed no

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<sup>5</sup> See Footnote 3, *supra*.

later than 11:59 p.m. of the due date. The response must clearly display the control number of the corresponding motion on its first page. The responding party must serve the moving party and all other interested parties with a copy of the response the same day by electronic mail, facsimile or hand delivery.<sup>6</sup>

- D. A reply by the moving party, if any, shall be electronically filed by 11:59 PM on or before 58 days before the jury selection date, as set forth in the Asbestos Litigation Schedule. The reply must clearly display the control number of the corresponding motion on the first page. The reply must be filed no later than 11:59 p.m. of the due date. The party filing the reply must serve the moving party and all other interested parties with a copy of the reply the same day by electronic mail, facsimile or hand delivery.<sup>7</sup>
- E. Plaintiffs' counsel are under a good faith obligation to determine which of the defendants' motions will be opposed, and to cooperate with defense counsel in signing stipulations of dismissal where appropriate, so that defendants whose presence is not required at mediation are not put to the expense of attending mediation.
- F. If the plaintiffs' counsel would like the Court to hold a motion for summary judgment to allow for mediation, plaintiffs' counsel must notify the Court and all parties within 17 days of the filing of that summary judgment motion. By the same deadline, plaintiffs' counsel shall also advise the Court and all parties which summary judgment motions can be granted as unopposed.

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<sup>6</sup> See Footnote 3, *supra*.

<sup>7</sup> See Footnote 3, *supra*.

Plaintiff need not respond to any motion held in abeyance until the mediator has determined that the claim cannot be resolved before the Court renders a decision on the motion. Once the mediator makes this determination, the mediator shall give notice of the conclusion of the mediation process to the Court and to all parties by email, identifying those defendants who have had claims against them resolved and those against whom claims remain outstanding. Upon receiving notice from the mediator, the Director of the Complex Litigation Center, or their designee, shall then advise the plaintiffs they may file a response to any defendant's pending motion for summary judgment within seven days and defense replies shall be due no later than seven days after the filing of the response.

G. Courtesy copies of motions should not be sent to the Complex Litigation Center or to the Court, unless specifically requested by the Court.

## **VII. MEDIATION**

The Court expects all parties to fully cooperate with one another and to act in good faith to try to resolve pending actions. The Court strongly encourages parties to mediate their cases and to schedule mediation as soon as practicable. Cases that are ready to be mediated shall be scheduled for mediation to take place in the order of the trial groups as they appear on the projected trial lists and after the deadline for the filing of motions for summary judgment as established by this order and the Asbestos Litigation Schedule prepared on an annual basis. Plaintiffs' counsel shall provide the defendants with no less than 45 days' notice of a scheduled mediation. At the time of notice of the mediation, plaintiffs' counsel shall advise which defendants are expected to participate in the mediation and provide

settlement demands. The mediator shall set the deadlines for the timely submission of mediation statements. As cases are scheduled for mediation, plaintiffs' counsel shall notify the Director of the Complex Litigation Center by email with the names of the cases being mediated, the name of the mediator and the date of the mediation.

### **VIII. SCHEDULING OF TRIALS AND DEADLINES**

In any case that has not been resolved through mediation, the parties shall be prepared to proceed to a pre-trial conference to be conducted by the Team Leader Judge or their designee, which may take place approximately 30 days after the Court is notified of the failed mediation. If there are any outstanding motions ripe for review after mediation, the Court may rule on those motions before any pre-trial conference. If no pre-trial conference is held or if the matter does not resolve after any pre-trial conference, trial shall be scheduled to commence not less than 60 days after the mediator's notice that mediation has concluded. At that time, the Court will also schedule a date certain jury selection date or dates.

Plaintiffs shall make best efforts to comply with the deadlines established in the Asbestos Litigation Schedule for the production of plaintiffs' answers to interrogatories, bankruptcy trust filings, authorizations and expert reports. Defendants shall make best efforts to timely respond to discovery requests directed to them. The deadline for production of defense medical and liability reports shall be 10 days before the date of the date-certain jury selection.

One-week trial slots are established for each month of each year. There will be a primary case scheduled with designated "back-up" cases, which are expected to be ready to proceed to trial should the primary case settle. In the event the primary case settles, the first back-up will be substituted as the new primary case to be tried; this process shall be repeated

until all back-up cases have been resolved. Counsel will be notified by the Court of the order of cases identified for trial and Notices of Trial Attachment will be served on counsel.

Within seven days of being assigned a trial date, as either the primary case or as a back-up case, all counsel and parties must notify the court of any scheduling conflicts, including trial attachments and pre-paid vacations, by electronically filing a conflict letter. The Court will not recognize any untimely conflict notifications. Failure to notify the Court of scheduling conflicts may result in the imposition of appropriate sanctions. To electronically file the conflict letter, access the “Existing Case” section of the court’s electronic filing system, select “Conference Submissions” as the filing category, and select “Trial Pool Conflict Letter” as the document type. The assigned trial judge may serve additional orders or instructions on the parties proceeding to trial.

#### **IX. STIPULATIONS OF DISMISSAL**

A. If a plaintiff has agreed to stipulate to the dismissal of a defendant, the defendant (the “Stipulated Defendant”) shall prepare a stipulation of dismissal.

B. The Stipulated Defendant shall circulate the stipulation of dismissal to all defense counsel by letter, stating that any party has 10 days from the date of the letter to object to the dismissal of the Stipulated Defendant.

C. If a party objects to the dismissal of the Stipulated Defendant, the objecting party shall notify the Stipulated Defendant in writing stating the basis for the objection.

D. If, after the expiration of the 10-day period, no objections are received by the Stipulated Defendant, the stipulation of dismissal may be electronically filed with the Court as unopposed.

E. The electronically filed stipulation of dismissal must be accompanied by a cover letter stating no objections have been raised within the 10-day period.

F. Service of the Court-approved stipulation of dismissal shall be effectuated via the Court's electronic filing system on all parties of record.

G. Any defendant who settles with the plaintiff and desires to have the matter marked discontinued as to that defendant may follow this procedure or, in the alternative, file a motion as set forth in Rule 229(b) of the Pennsylvania Rules of Civil Procedure.

#### **X. DEADLINES FOR CASES THAT MOVE TO NEW TRIAL GROUPS**

If any case is moved, with the consent of the Court, from its original projected trial group to a later projected trial group, all discovery and motions deadlines for the later projected group will apply. Any summary judgment motions filed before moving the case will remain open and need not be re-filed.

#### **XI. SANCTIONS**

The Court expects all counsel to amicably resolve any issues that arise as a result of the implementation of this order. The Court may make exceptions to any procedures or protocols set forth in this order in special situations, *sua sponte* or on written request, electronically filed with service upon all parties, of counsel upon showing extraordinary cause.

Failure to comply with any deadlines set forth in this Case Management Order may, upon application to the Court or after the issuance of a rule to show cause, result in the imposition of appropriate sanctions, including dismissal.

**BY THE COURT:**

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**JOSHUA ROBERTS  
MASS TORT TEAM LEADER**

## EXHIBIT “A”





86100000100658

IN RE:

:: COURT OF COMMON PLEAS

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:: PHILADELPHIA COUNTY

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:: OCTOBER TERM, 1986

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:: No. 0001

ASBESTOS LITIGATION

DOCKETED  
COMPLEX LIT CENTER

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J. STEWART

**ORDER GOVERNING REMOTE DEPOSITIONS**

In an effort to enable the parties to proceed with discovery efficiently and with necessary regard for the health and safety of witnesses, court reporters/videographers, counsel, and parties during the ongoing COVID-19 pandemic, the Court enters this Order concerning remote depositions:

1. If the witness and counsel who represents the witness, or who represents the party on whose behalf the witness is testifying, propose to be present in the same location (*i.e.*, same room or home) during the deposition, this proposed arrangement shall be set forth in the Notice of Deposition that will be timely served on all counsel and unrepresented parties.

2. If counsel representing the party or witness intends to be present at the deposition location, then the other side shall be permitted one attorney at the deposition location with the witness.

3. The defendants will coordinate their efforts to ensure that only one defense counsel is in attendance at any deposition where plaintiff counsel intends to attend in person. The defense counsel in attendance at the deposition location shall be deemed to represent only the interests of his or her clients. Counsel for the remaining defendants will attend remotely.

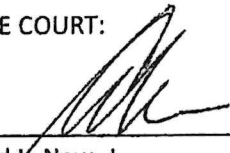
4. Due to the technological difficulties that sometimes occur during remote depositions, the parties may agree that all objections to deposition questions (except any instructions not to answer) are reserved until the time of trial. If such an agreement is made, no party shall be deemed to have waived any objections that otherwise would have been made during the course of the deposition.

5. Notwithstanding Paragraphs 2 and 3, in the event that a remote deposition of a witness is physically located in a County in Pennsylvania or State with limitations on gatherings which are less restrictive than those applicable to Philadelphia County, additional counsel for a defendant(s) may attend in person consistent with such limitations, if any.

6. All in person attendees at remote depositions will comply with any applicable federal, state, and local orders concerning appropriate personal protective equipment and social distancing.

7. This Order shall remain in effect until further Order from the Court.

BY THE COURT:

  
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Arnold L. New, J.

Dated: Jan 11, 2021

## EXHIBIT “B”

IN RE: : COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
ASBESTOS LITIGATION :  
: OCTOBER TERM, 1986  
: No. 0001  
:

ORDER

AND NOW, this *5<sup>th</sup>* day of *April*, 2010, to facilitate a more effective and efficient procedure in the above-captioned mass tort program, it is hereby ORDERED that the Master Case Management Order for Asbestos-Related Personal Injury Claims, dated June 12, 2006, is hereby amended as follows:

For asbestos-related personal injury claims listed for trial in 2010 and thereafter, plaintiffs shall serve responses to the attached Interrogatories and Requests for Production of Documents of Defendants Addressed to Plaintiffs Relating to Bankruptcy Trust Filings by the deadline for service of plaintiffs' responses to Defendants' Master Interrogatories and Requests for

Asbestos Litigation Phila. Ccp Vs. A.C.&S. I-ORDER

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J. STEWART



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Production Directed to Plaintiffs. If additional documentation or claims are subsequently submitted, Plaintiffs' responses will be supplemented prior to plaintiff's deposition and thirty (30) days prior to trial.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S. Mazer', is written over a horizontal line.

SANDRA MAZER MOSS  
COORDINATING JUDGE  
COMPLEX LITIGATION CENTER

vs.

: COURT OF COMMON PLEAS OF  
: PHILADELPHIA COUNTY  
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: \_\_\_\_\_ TERM, \_\_\_\_\_  
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: NO.  
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: ASBESTOS CASE  
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**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
OF DEFENDANTS ADDRESSED TO PLAINTIFFS RELATING TO  
BANKRUPTCY TRUST FILINGS**

Defendants address the following Interrogatories and Requests for Production of Documents to Plaintiffs pursuant to the Pennsylvania Rules of Civil Procedure, and demands that responses under oath be filed and served within thirty (30) days. These discovery requests are continuing in character, and require the filing of supplemental responses if Plaintiffs obtain further or different information after the initial responses.

**INTERROGATORIES**

1. Has the plaintiff or decedent, or his/her attorneys, agents, or representatives made or submitted any applications or claims to any 524(g) asbestos bankrupt trusts for an alleged asbestos-related disease or injury?

**RESPONSE:**