

IN THE SUPREME COURT OF OHIO

JAMES SINNOTT, ET AL.,	)	CASE NO. 06-1604
)	
Plaintiffs/Appellees,	)	On Appeal from the Court of Appeals
	)	Eighth Appellate District
v.	)	Cuyahoga County, Ohio
)	
AMERICAN OPTICAL CORPORATION,	)	Court of Appeals Case No. 88062
PNEUMO ABEX LLC, Successor in)	
Interest to ABEX CORPORATION, and)	
CBS CORPORATION, f/k/a Viacom, Inc.,)	
Successor by Merger to CBS)	
CORPORATION, f/k/a WESTINGHOUSE)	
ELECTRIC CORPORATION)	
)	
Defendants/Appellants.)	

APPELLEES' BRIEF IN OPPOSITION TO BRIEF OF APPELLANTS
AMERICAN OPTICAL CORPORATION, PNEUMO ABEX LLC,
Successor in Interest to ABEX CORPORATION,
and CBS CORPORATION, f/k/a Viacom, Inc., Successor by Merger to CBS
CORPORATION, f/k/a WESTINGHOUSE ELECTRIC CORPORATION

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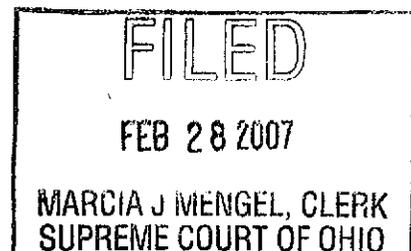


TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. STATEMENT OF THE CASE AND FACTS AND PROCEDURAL BACKGROUND 1

 A. Procedural Background of Appeal and Cuyahoga County Asbestos Cases 2

 B. Legislative Changes of H.B. 292 6

 C. Diagnoses Of Asbestos Disease Remain On The Rise 7

II. LAW AND ARGUMENT 9

 Counter-Proposition of Law:

 The Trial Court’s determination that H.B. 292 may not be retroactively applied to cases pending on the docket prior to its enactment is not a final appealable order as defined by R.C. §2505.02(A)(3) 9

 A. The Trial Court’s Order Fails To Qualify As A "Provisional Remedy" In That It Does Not Prevent A Judgment In Favor Of The Appellant Or An Adequate Remedy Following Trial 9

 B. The Standard For Review Pursuant to R.C. §2307.93(A)(3) Is The Summary Judgment Standard 14

 C. Conflict Between The Ohio Appellate Courts Exist 15

CONCLUSION 16

PROOF OF SERVICE 18

APPENDIX **Appx. Page**

Case Management Order 1

UNREPORTED CASES

Salisbury v. Smouse
(2005) 05 WL 2812754 (4th App. Dist.) 101

State v. Greer
(1991), 91 LW 3916 (9th App. Dist.) 106

CONSTITUTIONAL PROVISIONS; RULES; STATUTES

R.C. §2307.91 110
R.C. §2307.92 115
R.C. §2307.93 119
R.C. §2505.02 121

MISCELLANEOUS

National Asbestos Exposure Review, 2006, EWG Action Fund 124
Occupational Hazards, 2006 Penton Media, Inc. 136

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<u>Celebrezze v. Netzley</u> (1990) 51 Ohio St.3d 89	11
<u>City of Cincinnati v. Ohio Council 8, AFL-CIO</u> (1991) 61 Ohio St.3d 658	12
<u>Community First Bank & Trust v. Dafoe, et al.</u> (2006), 108 Ohio St.3d 472	11
<u>Cooper v. Cleveland Boat Club Limited Partnership</u> (2003), 03-LW-2190 (CA 81995 8 th App. Dist.)	11
<u>Gibson-Myers & Associates v. Pearce</u> (1999) Ohio App. Lexis 5010 (9 th App. Dist.)	12
<u>Salisbury v. Smouse</u> (2005) 05 WL 2812754 (4 th App. Dist.)	12
<u>Stahlheber v. Du Quebec, LTEE,</u> 2006-Ohio-7034	15
<u>State v. Greer</u> (1991), 91 LW 3916 (9 th App. Dist.)	13
<u>State v. Lester</u> (1975) 41 Ohio St.2d 51	13
<u>State v. Muncie,</u> 91 Ohio St.3d at 449, 746 N.E.2d 1092	12
<u>State ex rel. Lyons v. Zaleski</u> (1996), 75 Ohio St.3d 623	11
<u>State ex rel. Tollis v. Cuyahoga Cty. Court of Appeals</u> (1988), 40 Ohio St.3d 145	11
<u>Stewart v. Midwestern Indemn. Co.</u> (1989), 45 Ohio St.3d 124	11
<u>Vetter v. Twesigye</u> (2005), 05-LW-194 (CA 04AP 673 10 th App. Dist.)	11

<u>Whitehall ex rel. Wolfe v. Ohio Civil Rights Commission</u> (1995), 74 Ohio St. 3d 120	11
<u>Wilson v. AC&S, Inc.</u> , 2006-Ohio-6704	15

CONSTITUTIONAL PROVISIONS; RULES; STATUTES:

R.C. §2307.91	1
R.C. §2307.91(DD)	6
R.C. §2307.91(Z)	7
R.C. §2307.92	passim
R.C. §2307.92(B)	5
R.C. §2307.92(C)	5
R.C. §2307.92(D)	5
R.C. §2307.93	passim
R.C. §2307.93(A)	9, 10
R.C. §2307.93(A)(3)	14
R.C. §2307.93(A)(3)(c)	7
R.C. §2307.93(B)	14
R.C. §2505.02	5, 14, 16
R.C. §2505.02(A)(3)	9, 12
R.C. §2505.02(B)(4)	9, 10
R.C. §2502(B)(4)(a)	12
R.C. §2505.02(B)(4)(b)	10, 12, 13

MISCELLANEOUS

National Asbestos Exposure Review, 2006, EWG Action Fund 8

Occupational Hazards, 2006 Penton Media, Inc. 8

I. STATEMENT OF THE CASE AND FACTS AND PROCEDURAL BACKGROUND

The issue before this Court is whether Defendants/Appellants ("Appellants") have a right to immediate appellate review of a procedural ruling determining the existence of *prima facie* evidence supporting Plaintiffs' claims, prior to resolution of the case on its merits. The Eighth District Court of Appeals correctly found that the Trial Court ruling was not a final appealable order and thereby, dismissed the instant appeal as premature. Appellants, however, challenge the dismissal and seek to overturn the established body of case law requiring appellate review of cases following decisions on their merits only and seek to have this Court uphold the provisions of asbestos tort reform, for the sole purpose of delaying justice to the Plaintiffs herein and to thousands of other litigants who await trial.

Underlying the appeal, is the effect of the Asbestos Reform Act, a recently enacted asbestos "tort reform" bill, Am. Sub. H.b. 292, codified at R.C. §2307.91 *et seq.* ("H.B. 292"). The legislation that became effective as of September 2, 2004, attempts to impose new burdens upon all existing asbestos cases - - in some cases, on a retroactive basis, including both malignant and non-malignant claims, as well as establishing broad changes to the medical criteria necessary to file an asbestos personal injury case. The impact of the legislation involves the elimination of most claims without consideration of the vested rights of the litigants, in conflict with the longstanding legal principles of jurisprudence.

Despite the apparent intention of the Ohio Legislature to create medical and legal criteria to limit the number of asbestos cases filed in Ohio Courts, the adverse ruling following a summary review of medical information on one case, does not warrant an appeal to the Ohio Supreme Court.

Nor does the denial of an immediate appellate review justify the elimination of the long upheld standards used to define a final appealable order.

Appellants have asked this Court to resolve the "crisis in asbestos litigation" and to avoid the depletion of funds set aside for deserving plaintiffs. From the record before the Court, it is apparent that the Decedent, James Sinnott, suffered from asbestos-related lung cancer and died from this disease, leaving behind a wife and minor child and whose autopsy results evidenced the presence of asbestos fibers in his lung tissue. This case cannot, therefore, be considered as one of the "unending flood of asbestos cases by plaintiffs who are not sick." Equally apparent, are the concerted efforts of Defendants to avoid trial, while a Plaintiff is living and their continuing efforts to deny justice to the family left behind.

Ohio Courts have historically reserved the opportunity for immediate appellate review to the few cases that demonstrate irrefutable loss or irreparable harm. By arguing in support of the recognition of another standard for asbestos cases only, Appellants are merely attempting to create special treatment for themselves, as opposed to the same remedy available to every other litigant.

The Supreme Court should not be swayed by the Appellants' citing of the number of asbestos cases pending in Ohio, or the purported intent of the Ohio Legislature in developing new medical criteria. Evidentiary standards for pretrial rulings made by a trial court, prior to an outcome on the merits of a case, should not be disturbed to satisfy a group of special interest litigants.

A. Procedural Background of Appeal and Cuyahoga County Asbestos Cases

This appeal arose from a pretrial procedural ruling, in which the Trial Court rightly determined that Plaintiffs James and Freda Sinnott had produced a *prima facie* showing of evidence, in compliance with the new medical criteria, as set forth in R.C. §2307.93. Despite the Appellants'

assertions that the new requirements of *prima facie* threshold evidence in asbestos cases and immediate appellate review are necessary to ensure that defendant resources are protected for the "truly sick," the procedural safeguards in practice do not necessitate change. Historically, the Cuyahoga County Court of Common Pleas has established a streamlined procedure for case management and trial of the numerous pending asbestos claims and has a dedicated docket with three judges assigned to it.¹ The Trial Court's standing Case Management Order includes *inter alia* provisions for consolidated discovery, grouping of cases for trial, and the prioritization of cases based upon severity of injury. Further, long before the enactment of H.B. 292, the Court's order placed cases on an inactive status by operation of its prioritization schedule, and did not allow discovery on any other cases for the purpose of the preservation of both judicial and client resources. The non-malignant cases therefore, typically lie dormant in favor of scheduling cancer and death cases for trial, by virtue of the Court's own inherent power to control its docket. Thus, a review of the procedural history of the underlying appeal and the asbestos cases pending on the Cuyahoga County Common Pleas docket demonstrates that the claimed "asbestos crisis" that is often cited by Appellants and their proponents, is not indicative of the reality of this litigation in Cuyahoga County. Despite such lack of activity, after the enactment of H.b. 292, certain defendants sought the dismissal of non-malignant cases. The Trial Court then entertained a briefing schedule to consider the constitutional challenges to the legislation and the effect upon all cases pending on the docket and held oral hearings to consider the argument of both sides. Finally, on January 6, 2006, the Trial Court determined that H.B. 292 would impair substantive rights of litigants whose rights had already

¹See Standing Case Management Order, Appendix.

vested.² In addition, other defendants began to move for administrative dismissal of pending cancer claims, for their alleged failure to meet the medical criteria of the legislation, thereby demonstrating the fallacy of their claimed intentions to protect the limited resources and compensate the "truly sick" litigants. Similarly, the Appellants herein, continue to seek the dismissal of Plaintiffs' claims for their alleged non-compliance with the medical requirements of H.B. 292, thereby disallowing for any determination of the merits of the case during the lifetime of Plaintiff James Sinnott and into the foreseeable future. As with any other pretrial ruling, there is no statutory mechanism that establishes immediate appellate review, absent a determination of the merits of an individual case.

Further, the specific facts of the case at bar, serve to illustrate the fallacy of Appellants' claimed interest in protecting the "deserving" asbestos litigants. Plaintiff/Appellee James Sinnott, filed an initial Complaint on February 10, 2004, alleging personal injuries sustained as a result of his occupational exposure to asbestos-containing products, after forty years of employment at the Dayton Malleable Iron Foundry in Ironton, Ohio. The original Complaint named numerous Defendants, including Appellants American Optical Corporation, Pneumo Abex Corporation and CBS Corporation, as Successor-in-Interest to Westinghouse Electric. The underlying facts of the case also demonstrated that Appellee had been diagnosed with lung cancer in September 2003, for which asbestos exposure was a causal contributing factor. Appellee succumbed to his illness on August 25, 2005, however, the action is maintained by his surviving spouse, Freda Sinnott, individually and on behalf of their minor child.

During the pendency of the litigation, some of the Defendants, including Appellants American Optical and Pneumo Abex, were voluntarily dismissed from the action, pursuant to Civ. R.

²This ruling is currently on appeal to the Ohio Supreme Court in Case No. 06-1279.

41(A) and renamed at a later point, in accordance with the Ohio Savings Statute of R.C. §2505.02 and the evidence submitted through testimony. Although Appellee's cause of action accrued and the filing of his original action occurred prior to the effective date of the new legislation, Appellants sought to apply the new criteria to pending the pending action, due to the re-filing of the Amended Complaints and the addition of new parties. Although Appellee challenged the applicability of H.B. 292 to his cause of action, these issues are not pertinent to those currently before this Court and will not be addressed herein.

Following the enactment of the legislature, Appellants sought the administrative dismissal of Appellees' action, for the alleged failure to meet the heightened medical criteria requisite in H.B. 292 - - to establish a causal link between lung cancer and asbestos exposure. In opposing the dismissal, Appellees submitted the medical records of the Huntington, West Virginia Veteran's Administration Medical Center, where his illness was treated and the medical opinions of expert witnesses. The primary nature of Appellants' challenge stemmed from the failure to produce a "written report from the treating physician," in satisfaction of R.C. §2307.92(B), (C) and (D), which requires a *prima facie* showing of physical impairment. Rather, Appellants refused to accept the diagnosing medical records related to the lung cancer and actual X-ray findings of impairment, as sufficient evidence of the *prima facie* case, insisting, instead, on the necessity of having a singular written report as the sole measure of meeting the burden. In fact, in arguing that the treating hospital records and other medical evidence, including the autopsy findings of high levels of asbestos fibers in the lung tissue, Appellants have best demonstrated the true purpose of the instant challenge, which is the elimination of all asbestos claims, rather than the mere prioritization of the claims of the sick litigants. Although the measure of asbestos tort reform, contained in R.C. §2307.92, seem to allow

for appellate review of the *prima facie* determinations made by trial courts, its practice of disrupting a case from any ultimate decision on its merits, must not be upheld by the Court.

B. Legislative Changes of H.B. 292

In reviewing the decision of the Eighth District Court of Appeals on the within matter, this Court, is in essence, determining the pretrial procedure that will be followed by all pending malignancy claims in Cuyahoga County and all Ohio dockets. Therefore, a review of the broad changes to asbestos litigation and the impediments to their resolution is helpful.

Ohio's newly enacted asbestos "tort reform" bill, H.B. 292, requires that asbestos plaintiffs meet a new *prima facie* standard before their cases may proceed and specifies medical criteria by asbestos disease category. For a non-malignant asbestos claim, the Act sets forth the new requirement that the plaintiff must show an opinion from a 'competent medical authority,' defined and interpreted as treating physicians only, finding asbestos exposure as a "substantial contributing factor." The Act further establishes time deadlines for producing such medical evidence and a period in which defendants may challenge the adequacy of the evidence. The Court is then required to assess the sufficiency of each Plaintiff's *prima facie* evidence.

With regard to lung cancer cases, wherein the plaintiff has a history of smoking, broad changes to the existing evidentiary standards are established by the Act. For smoking lung cancer cases, the Act set forth the new requirement that the plaintiff must show an opinion from a "competent medical authority," defined and interpreted as treating physicians only, finding asbestos exposure as the primary cause of the lung cancer. Ohio Revised Code §2307.91 (DD) and H.B. 292 expressly define a smoker as " a person who has smoked the equivalent of a one-pack year during the *last fifteen years*, as specified in the written report of a competent medical authority." (Emphasis added.) However, the Statute by definition, has no applicability on lung cancer cases wherein the

plaintiff was a non-smoker during the recent fifteen-year period and the corresponding medical requirements for maintaining an asbestos-related claim have no relevance. The Act further defines the term "competent medical authority," as a medical doctor who is a board certified internist, pulmonary specialist, oncologist, pathologist, or occupational medicine specialist who is treating, or has treated the exposed person and established a doctor-patient relationship. R.C. §2307.91(Z). Among the other changes to the existing law, H.B. 292 states, that if a plaintiff fails to submit a *prima facie* "showing," establishing that he meets the criteria of the statute, his case will be "administratively dismissed without prejudice," but the trial court "shall maintain its jurisdiction over the case." (R.C. §2307.93 (A)(3)(c)). Such "administrative dismissal" is a new legal concept that is outside of the purview of Civil Rule 41 and has not been previously contemplated by Ohio law or practice. Accordingly, the application of these requirements to cases on a retroactive basis, imposes new procedural hurdles to pending cases, that substantially impair trial rights that have already vested upon the filing of the claim with the court. Most importantly, the basic right to have the claim remain on the docket has been wholly annihilated by the Act.

Clearly, the legislative attempt to impose a standard that has been expressly rejected by the Ohio Supreme Court, denies plaintiffs valuable due process rights and equal protection of the law and its establishment of medical criteria that is grounded in the same time and frequency standard usurps the powers of the judiciary.

C. Diagnoses Of Asbestos Disease Remain On The Rise

In the Brief of Appellants, there is much reliance on the number of asbestos cases and so-called crisis of the litigation. This Court should be acutely aware of the struggle that is being waged between the promoters of businesses and the workers who are dealing with the devastation resulting from years of exposure to harmful products during their employment. Accordingly, the Court must

be cautious to limit its findings to fact and the guidance provided by past legal principles, rather than embark upon a public policy frolic to support the supposed will of the legislature.

The glaring omission to the argument of Appellants is the government statistics that show that Ohio ranks 9th nationally in the number of asbestos-related cancers and diseases. Additionally, due to the recognized latency period prior to the onset of disease, coupled with the heavy exposure to asbestos throughout the 1970s, the epidemic is not expected to peak until the year 2015.³ Other medically accepted facts and research, document the continuing rise of asbestos-related disease and death in the United States and Canada. Recently published statistics also report that asbestos-related cancers and diseases account for one-half of all fatalities in Canada and that the numbers are expected to continue to rise.⁴

Rather than acknowledge the responsibilities owed to the plaintiffs who have suffered illness and injury from their exposure to harmful asbestos products, the Ohio legislature, swayed by the interest of the manufacturers, only have responded by limiting their rights and restricting access to the courts. Underlying this argument, is the assertion that the intentions of the legislature represent the primary consideration of this Court in determining the constitutionality of the asbestos tort reform. However, lost in the argument of the Appellants, are the countless Ohio citizens who have already suffered from the deadly exposure to asbestos and the thousands who will continue to become ill in the next decade, alone. Any legislative reform of asbestos litigation must therefore, be consistent with the longstanding protections afforded equally to all sides and not erode the basic rights of one individual group, without the highest level of judicial scrutiny. Similarly, any appellate

³National Asbestos Exposure Review, 2006, EWG Action Fund.

⁴The increased fatality rate from asbestos rose from 0.4 per 100,000 workers in 1996, to 2.1 in 2005. Occupational Hazards, 2006 Penton Media, Inc.

review of such efforts cannot be allowed to short circuit the procedure that is followed by every other case pending in Ohio courts, or the well recognized precedent favoring decisions on merits, rather than pretrial procedural rulings.

Accordingly, this Court is urged to uphold the Eighth District Court of Appeals' findings that appellate review is premature prior to the resolution of a case on the merits.

II. LAW AND ARGUMENT

COUNTER-PROPOSITION OF LAW:

A provision remedy finding a *prima facie* showing under R.C. §2307.92, is not a final appealable order under R.C. §2505.02(B)(4), because it does not prevent a judgment in favor of the appealing party as to the provisional remedy and does not leave the appealing party without a meaningful or effective remedy.

Appellants assert that the Appellate court failed to “fully consider” the nature of the trial court’s decision and misinterpreted the Order as inappropriate for immediate appellate review. Clearly dissatisfied with the prospect of proceeding to a decision on the full merits of the case, Appellants urge the acceptance of the Order as a “provisional remedy” and the continued delay of the actual determination of the entirety of the issues presented. The appellate court should not be swayed by this argument.

A. The Trial Court’s Order Fails To Qualify As A ‘Provisional Remedy’ In That It Does Not Prevent A Judgment In Favor Of The Appellant Or An Adequate Remedy Following Trial

A provisional remedy is defined in R.C. §2505.02(A)(3), in part as “a proceeding ancillary to an action, including, but not limited to, . . . a finding made pursuant to Ohio Revised Code §2307.93(A). Appellees will concede that the Trial Court’s Order of February 17, 2006, represents a determination of the *prima facie* case and the minimum requirements set forth in R.C. §2307.92 and R.C. §2307.93 and can therefore be considered a provisional remedy as enumerated by statute.

However, R.C. §2505.02(B)(4) requires that an order under appeal also satisfy two additional requirements, including both of the following:

- (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy; and
- (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims and parties in the action.

Therefore, assuming that the Order is deemed a finding under R.C. §2307.93(A) and thus grants a provisional remedy, Appellants' appeal is not authorized because the additional requirements of subsection (a) and (b) are not fulfilled. First, the Order does not prevent an ultimate judgment in favor of Appellants after a trial on the merits. In fact, the Order in no way impairs the ability of the Appellants from successfully defending against the claims at trial or from challenging asbestos exposure as the contributing cause of Appellee's lung cancer and death. Second, Appellants will maintain an adequate remedy as contemplated in R.C. §2505.02(B)(4)(b) by an appeal from any such final judgment as afforded to the normal litigant. Not only would the Appellants maintain their ability to seek appellate review of the final judgment but their contentions as to the erroneous decision of the trial court on the *prima facie* evidence as well. Accordingly, Appellants' claimed lack of a meaningful remedy if denied an immediate appeal is without merit.

Appellants are in actuality seeking to avoid the inconvenience of proceeding to trial and the risk associated with waiting for an outcome on the merits. Therefore, Appellants seek to summarily eliminate the claims of Appellees without affording the opportunity for a complete review of the case or at the very least to delay such outcome for as long as possible. Appellants' desire to avoid trial is no different than the disappointment faced by every litigant on the losing side of an issue wherein error is asserted but such inconvenience is not sufficient to render the available remedy of an appeal

in the ordinary course meaningless or ineffective. In State ex rel. Lyons v. Zaleski (1996), 75 Ohio St.3d 623, (citing, Whitehall ex rel. Wolfe v. Ohio Civil Rights Commission (1995), 74 Ohio St. 3d 120) the Ohio Supreme Court concluded that “Contentions that appeal from any subsequent adverse final judgment would be inadequate due to time and expense are without merit.” The Ohio Supreme Court has further stated:

The critical question...is whether ‘the essence’ of the claimed right is a right not to stand trial... This question is difficult because in some sense, all litigants who have a meritorious pretrial claim for dismissal can reasonably claim a right not to stand trial. But the final-judgment rule requires that except in certain narrow circumstances in which the right would be ‘irretrievably lost’ absent an immediate appeal, litigants must abide by the ...court’s judgments, and suffer the concomitant burden of a trial, until the end of the proceedings before gaining appellate review.

Celebrezze v. Netzley (1990) 51 Ohio St.3d 89.

Moreover, Ohio courts have repeatedly declined to allow for immediate review of rulings made during the pendency of a civil action and have failed to recognize numerous interlocutory decisions as final reviewable orders. See, Community First Bank & Trust v. Dafoe, et al., (2006) 108 Ohio St.3d 472, (court’s stay of an action, including an action against a party that is not bankrupt, during the determination of another party’s bankruptcy, is not a final order subject to appeal); Stewart v. Midwestern Indemn. Co. (1989) 45 Ohio St.3d 124, (a stay entered pending arbitration is not a final and appealable order); State ex rel. Tollis v. Cuyahoga Cty. Court of Appeals (1988) 40 Ohio St.3d 145, (granting of a preliminary injunction is an action for injunctive relief and not a final appealable order); Vetter v. Twesigye (2005) 05-LW-194 (CA 04AP 673 10th App. Dist.) trial court’s granting of motions for protective order and to compel discovery in dispute over ability of attorney to attend IME of plaintiff is interlocutory ruling that is not a final order affording appellate review); Cooper v. Cleveland Boat Club Limited Partnership (2003), 03-LW-2190 (CA

81995 8th App. Dist.), (denial of request for preliminary injunction is not a final order as defined by R.C. 2505.02(B)(4)(a) and not reviewable on immediate appeal.)

Conversely, the “irretrievable loss” standard entails that an appeal from a final judgment is an inadequate remedy only when the effects of an interlocutory order cannot be undone. This standard is best illuminated in State v. Muncie (2001), 91 Ohio St.3d 440, where the Ohio Supreme Court held that an order compelling the forced administration of psychotropic medication for the sole purpose of restoring sanity to stand trial was a final order because the person enduring the side effects of the drugs would have no effective remedy following final judgment. See also, Gibson-Myers & Associates v. Pearce (1999) Ohio App. Lexis 5010 (9th App. Dist.) (allowing immediate appeal of order compelling production of trade secret documents because party would have no ability to restore “cloak of secrecy” after final judgment. The narrow circumstances contemplated in these decisions are not mirrored by the purported harm of being forced to proceed to a trial on the merits after a summary evidentiary proceeding as presented in the case at bar. Accordingly, the dismissal of the instant appeal as failing to meet all three prongs required under §2505.02(A)(3) and §2505.02 (B)(4) subparts (a) and (b) should stand.

Additionally, Appellees assert that appellate review without complete factual determinations would impair the appellate court’s ability to obtain meaningful review of the case and thus violate due process rights. Ohio courts have recognized the necessity of a record on appeal that includes the trial court’s factual findings as well as conclusions of law in order for the appellate court to have an adequate basis to decide the legal issues presented. See Salisbury v. Smouse (2005) 05 WL 2812754 (4th App. Dist.), (factual findings necessary for review of decision under Pa. R. C. P. 52); City of Cincinnati v. Ohio Council 8, AFL-CIO (1991) 61 Ohio St.3d 658, (recognizing that until a developed factual record exists in the trial court, a question of law is not ripe for determination on

appeal); State v. Lester (1975) 41 Ohio St.2d 51, (appeal of petition for post conviction relief requires trial court to make factual findings on all issues presented) State v. Greer (1991) 91 LW 3916 (9th App. Dist.), (necessity of complete findings of fact and conclusions of law prior to review of petition for post conviction relief reasoning “without them, a petitioner knows no more than he lost and hence is effectively precluded from making a reasoned appeal...the failure of the trial judge to make the requisite findings prevents any meaningful judicial review, for it is the findings and conclusions which an appellate court reviews for error.”). Allowing the present appeal to go forward would almost certainly result in a piecemeal appellate process which is in express contravention of the rationale of R.C. §2505.02(B)(4)(b) and the established case law defining what constitutes a final appealable order. As set forth in Muncie, *supra*, “this division of the final order statute recognizes that, in spite of courts’ interest in avoiding piecemeal litigation, occasions may arise in which a party seeking to appeal from an interlocutory order would have no adequate remedy from the effects of that order on appeal from final judgment.” In the case at bar, although Appellants assert that absent immediate review, no adequate remedy exists, there is no evidence of irreparable harm if required to proceed to trial and a full decision on the merits. The interpretation of a mere summary evidentiary order as being final and appealable is tantamount to the elimination of the requirement that “no meaningful or effective remedy” exist and would in essence eviscerate the long standing definitions of final orders established in case law. The “proverbial bell” has not yet rung and Appellants have suffered nothing more than an unfavorable ruling on a pretrial matter. Accordingly, the decision of the Appellate Court in dismissing the instant appeal *sua sponte* must not be disturbed.

B. The Standard For Review Pursuant to R.C. §2307.93(A)(3) Is The Summary Judgment Standard

Appellants have asserted that the express language of R.C. §2307.93, mandates the immediate review of any finding made pursuant to its provisions. Ohio Courts have historically reserved the opportunity for immediate appellate review to the few cases that demonstrate irrefutable loss or irreparable harm. By arguing in support of the recognition of another standard for asbestos cases only, Appellants are merely attempting to create special treatment for themselves, as opposed to the same remedy available to every other litigant.

The very language of R.C. §2307.93, further evidences the faulty logic of Appellants' argument. Section 2307.93(B), states, in applicable part, that:

The Court shall resolve the issue of whether the plaintiff has made a prima-facie showing required by division (B), (C) or (D) of 2307.92 of the Revised Code by applying the standard for resolving a motion for summary judgment.

In the review of *prima facie* evidence and a motion for summary judgment, a trial court's review of case-specific evidence is contemplated. However, a resolution of a summary judgment has never been considered a final appealable order, or a ruling capable of immediate review, absent specific guidance from the Trial Court. Accordingly, any ruling on the *prima facie* showing in an asbestos case, which is by definition similar to a summary judgment, should not be treated any differently by the Appellate Court. Accordingly, the Appellants' attempt to apply the language of R.C. §2307.93 in this manner, does not comport with the express language of the Act, nor does it qualify as a provisional remedy under R.C. §2505.02. Thus, immediate appellate review is not authorized under the Act itself, nor the existing legal principles outlined by Ohio Courts.

C. **Conflict Between The Ohio Appellate Courts Exist**

Appellants assert that the Eighth District Court of Appeals has blatantly ignored the statutory provisions of H.B. 292, in refusing to allow appellate review absent a determination on the merits of a case and point to the recent decision of the Twelfth Appellate Court, which entered opinions on the trial court's findings, following the *prima facie* showing of evidence by plaintiffs.⁵ Although the Appellate Court determined that appellate review was authorized by R.C. §2307.93 in these cases, there are obvious factual differences which distinguish the decisions from the case at bar. In Stahlheber, the trial court was asked to review the *prima facie* evidence in support of an asbestosis claim of a decedent plaintiff, wherein **no** medical link was proffered. In fact, plaintiffs/appellees conceded the lack of medical determination that asbestos disease had played a role in the death of the named plaintiff. Accordingly, absent any evidence to the contrary, the trial court entered an administrative dismissal of the case, in its entirety. Similarly, in Wilson v. AC&S, Inc., 2006-Ohio-6704, the trial court entertained a review of the *prima facie* evidence of a plaintiff who suffered from lung cancer that had been allegedly caused by exposure to asbestos. As in the Stahlheber case, plaintiffs again conceded the lack of medical evidence in compliance with the new criteria of H.B. 292, but argued against the retroactive application of the statute. The trial court, as similarly determined by the Cuyahoga County Court of Common Pleas, found that the new burdens unfairly impacted the vested rights of plaintiffs and could not be retroactively applied. The appellate decision therefore, involved the issues of the retroactive application of R.C. §2307.92, rather than the sufficiency of *prima facie* evidence. Accordingly, its holding is not persuasive on the issues *sub judice*.

⁵See, Stahlheber v. Du Quebec, LTEE, 2006-Ohio-7034.

However, in both cases, the decisions of the trial court were tantamount to a summary judgment ruling that disposed of all remaining issues of fact and was dispositive of the outcome in its entirety. As with any summary judgment ruling that disposes of a case on all issues, immediate appellate review is always afforded, since such determination is by definition, a "final appealable order." Accordingly, these cases do not demonstrate a judicial determination that immediate appellate review of procedural decisions, absent an outcome on the merits or the resolution of all issues of fact, are appropriate. While Appellees concede that the opinion cited to express the willingness of an appellate court to review *prima facie* determinations as provisional remedies authorized by R.C. §§2307.92 and 2505.02, these decisions cannot be applied across the board to all litigants, wherein the merits of their case remain undecided. To hold otherwise would permit the creation of a standard for asbestos litigants that differs vastly to every other plaintiff in the State of Ohio and would impermissibly burden their case from reaching a resolution in perpetuity. This Court cannot, therefore, be persuaded by the limited holdings set forth by Appellants and must direct its focus to the impact of H.B. 292 on cases which continue to wait for resolution and on the plaintiffs like Appellees, who rely on the longstanding principles of fairness afforded to all litigants in the State of Ohio.

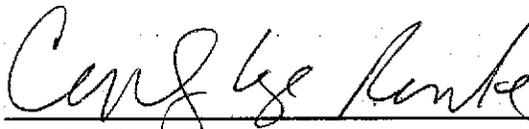
Therefore, Appellees assert that the Eighth District Court did, in fact, correctly dismiss the instant case a premature and urge this Court to uphold this decision.

III. CONCLUSION

Appellants seek the right to immediate appellate review of a procedural ruling that determined the existence of *prima facie* evidence supporting Appellees' claim under the auspices of H.B. 292. By changing the procedural and evidentiary requirements that plaintiffs must meet, H.b. 292 effectively eliminates their vested rights, in conflict with the longstanding principles of

jurisprudence, which mandate appellate review following an outcome on the merits of a case. To hold otherwise, will result in the denial of a litigant's right to have his case decided on the merits, in a timely fashion. Moreover, the very language of R.C. §2307.92, which sets forth the standard of review as that required for summary judgment, demonstrates that appellate review is limited to case-specific evidence after a resolution of all issues of fact on the merits of the case. Appellants cannot demonstrate the irreparable harm, or the irrefutable loss that is necessary for immediate appellate review. Accordingly, the decision of the Eighth District Court, finding the case as premature, should stand.

Respectfully submitted,



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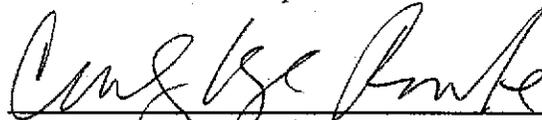
Attorneys for Appellees

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Appellees' Brief in Opposition to Brief of Appellants American Optical Corporation, Pneumo Abex LLC, Successor in Interest to Abex Corporation, and CBS Corporation, f/k/a Viacom, Inc., Successor by Merger to CBS Corporation, f/k/a Westinghouse Electric Corporation, was sent via regular U.S. Mail, postage prepaid, this 27th day of February 2007, to the following:

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APPENDIX

STATE OF OHIO) IN THE COURT OF COMMON PLEAS
) SS:
 CUYAHOGA COUNTY) JUDGE HARRY H. HANNA
 IN RE:) JUDGE LEO M. SPELLACY
)
 CUYAHOGA COUNTY) GENERAL PERSONAL INJURY
 ASBESTOS CASES) ASBESTOS CASE MANAGEMENT
) ORDER NO. 1
) (AS AMENDED October 30, 2001)

TABLE OF CONTENTS

A. PREAMBLE 1

B. GENERAL PROVISIONS 1

 1. Cases to Which This Order Applies 1

 2. The Docket 1

 3. The Complaint 1

 4. Answer 2

 5. Amended Complaints 3

 6. Cross-Claims and Third-Party Claims 4

 7. Conditions for Default Judgment 4

 8. Leaves to Plead 4

 9. Service of Documents 5

 10. Dismissals of Cross-Claims and Third-Party Complaints 5

 11. Joinder in Motions 5

 12. Multiple Counsel 6

 13. Notice of Appearance/Pro Hac Vice 6

 14. Liaison Counsel 6

 15. Attendance at Hearings 7

 16. Cooperation Among counsel Shall Not Constitute a Waiver of Privileges 7

C. CASE MANAGEMENT SCHEDULE 7

 17. Case Management Schedule 7

D. WRITTEN DISCOVERY 7

 18. Defendants' Master Consolidated Discovery Requests ("CDRs") to Plaintiffs 8

 19. Records of diagnosis 8

 20. Records Authorizations and Tax Returns 8

 21. Identification of Product Identification Witnesses and Product Identification 9

 22. X-Rays, Tissue Specimens, Examination of Same 10

 23. Discovery to Defendants 10

 24. Additional Written Discovery 11

F. DEPOSITIONS 11

 25. Defense Lead Counsel 11

 26. Depositions of Plaintiffs and of Plaintiffs' Product Identification Witnesses 11

 27. Plaintiff's De Bene Esse Depositions 15

G. MEDICAL EXAMINATIONS 16

 29. Physical Examinations 16

H. WITNESS AND EXHIBIT LISTS AND EXPERT REPORTS 17

30.	Identification of Expert and Lay Witnesses -- Reports and Prior Testimony . . .	17
31.	Final Witness and Exhibits	18
32.	Use of Prior Testimony	18
I.	PROCEDURE FOR SEEKING DISMISSAL	18
33.	Defendant's Request	18
34.	Plaintiff's Response	19
35.	Action on Refusal to Consent to Dismissal	19
J.	GROUPING OF PLAINTIFFS	19
36.	General	19
37.	Groups 1-13	20
38.	Subsequent Groups	20
39.	Exigent Cases	20
K.	SANCTIONS	20
40.	General	20
41.	Plaintiff's Failure to Comply	21
42.	Defendant's Failure to Comply	21

A. PREAMBLE

It is the goal of this Court to secure the just, efficient and economical resolution of each asbestos personal injury case now pending or hereafter filed in the Court of Common Pleas for Cuyahoga County, Ohio, and to facilitate discovery, eliminate duplication of effort, prevent unnecessary paperwork and promote judicial economy in the management of such cases.

B. GENERAL PROVISIONS

1. Cases to Which This Order Applies

This General Personal Injury Case Management Order No. 1 (as amended, October 29, 2001), read in conjunction with Standing Order Number 12, shall govern pre-trial discovery activities in all asbestos personal injury cases currently pending or to be filed in this Court from the date of this Order until further order of this Court.

2. The Docket

The Court has decided to use the Complex Litigation Automated Docket (CLAD) system provided by LEXIS-NEXIS in order to increase the efficiency of the Court. (Standing Order 10).

3. The Complaint

In order to facilitate a manageable docketing system and to insure the proper payment of filing fees, multiple plaintiff asbestos complaints shall only be accepted by the clerk if the complaint complies with the following guidelines:

- a. The caption of the complaint must indicate that it is a "Master Consolidated Asbestos Complaint."
- b. The complaint must have a space for the clerk to indicate a separate case number and judge next to each primary plaintiff (not including spouse with consortium claim).
- c. A separate regular filing fee shall be paid at the time of filing for each primary plaintiff.

d. A copy of the complaint shall be provided to the clerk for each defendant and each primary plaintiff.

e. Only one summons will be issued to each defendant listed on the "Master Consolidated Asbestos Complaint" and will apply to all case numbers listed on that complaint.

4. Answer

Defendants and Third-Party Defendants are no longer to file answers to Plaintiff's Complaints or Third-Party Complaints in asbestos litigation in Cuyahoga County, Ohio. Rather, the following procedure will apply:

a. Within sixty days after service of the Complaint, the Defendant or Third-Party Defendant shall enter an appearance which shall constitute:

i. a denial of all averments of fact in the Complaint or Third-Party Complaint, and

ii. an allegation of all affirmative defenses.

b. If any Defendant or Third-Party Defendant wishes to assert a claim for indemnification and contribution against any other party, this may also be accomplished by making a statement in the Notice of Appearance which specifically identifies the party or parties against whom the claim is asserted. Failure to assert such a claim in the Notice of Appearance does not in any way prohibit or limit a party's right to do so at a later time pursuant to the laws of the State of Ohio and the Ohio Rules of Civil Procedure.

c. In the event that a claim for indemnification and contribution is asserted, the party against whom the claim is asserted shall not file a responsive pleading. All averments of fact shall be deemed to be denied and all affirmative defenses to the claims for indemnification and contribution shall be deemed to have been raised.

d. Except for the filing of motions pursuant to Rule 12 and complaints to join a Third-Party Defendant, there shall be no further pleading after the complaint.

e. The entry of appearance shall include Counsel's E-mail address. (Amended Standing Order No. 7)

f. A cover sheet containing the names of each individual plaintiff and the corresponding case number in the Master Complaint must accompany the notice of appearance. Only one Notice of Appearance is required for each Master Complaint, but it must have the cover sheet which lists plaintiffs' names and case numbers.

5. Amended Complaints

Any defendant who is named as party in an original complaint need not serve or file a responsive pleading to any amended complaint. If an amended complaint raises additional claims or sets forth new, substantive allegations, a defendant may serve and file a response within the time prescribed by the Ohio Rules of Civil Procedure. If a defendant chooses not to respond to an amended complaint, its previously filed answer shall be deemed incorporated as the answer to the amended complaint, and any new matters shall be deemed denied. Any answers to new matters contained in an amended complaint may be limited and may incorporate by reference the previous answers of the defendant.

6. Cross-Claims and Third-Party Claims

a. Cross-claims and third-party claims for contribution and/or indemnity must be made by service of the pleading upon the party against whom the claim is asserted. The mere service of a letter advising counsel of the filing such cross-claims or third-party claims shall not be sufficient.

b. When a cross-claim for contribution and/or indemnity is served upon a defendant or third-party defendant, said defendant or third-party defendant may, within twenty-eight (28) days from service upon it, respond thereto; or it may refrain from filing a responsive pleading. A failure to respond shall be deemed a denial by that defendant of any and all liability for contribution and/or indemnity.

c. Third-party defendants shall respond to all third-party complaints.

7. Conditions for Default Judgment

Plaintiffs' counsel, prior to seeking a default judgment against a defendant represented by counsel in any asbestos case, must first notify that counsel and the defendant, in writing, of his or her intentions and reasons for seeking default judgment. The defendant shall have twenty-one (21) days from the date of receipt of the plaintiff's counsel's letter to answer or otherwise respond to the complaint.

8. Leaves to Plead

In order to eliminate the cost and administrative burden involved in docketing and tracking leaves to plead, the Court hereby suspends the requirement for any counsel to file a request, stipulation, or motion for leave to plead, provided that the response is not more than sixty (60) days late, and provided further that the opponent has not previously requested a default judgment as outlined in paragraph 4 above.

9. Service of Documents

Except as otherwise herein provided, a party serving a conventional filing need serve that conventional filing document only upon the party to whom that document is directed. All other parties shall be informed through CLAD that the document was filed and served, and shall be entitled to receive a copy of the document upon request to the filing counsel.

10. Dismissals of Cross-Claims and Third-Party Complaints

Upon the dismissal by a plaintiff of a defendant who has either asserted a cross-claim or filed a third-party complaint for contribution and/or indemnity, such defendant shall file a written Notice of Intention to Pursue Its Cross-Claims or Third-Party claims within thirty (30) days from the date of dismissal. Such Notice shall identify those defendant(s) against whom its cross-claims or third-party claims are asserted. Failure to file such Notice shall be deemed an automatic dismissal, without prejudice, of any and all cross-claims and third-party claims asserted by that defendant against all other defendants. The dismissal shall be effective on the thirtieth (30th) day following the dismissal of the defendant by the plaintiff.

11. Joinder in Motions

Each defendant shall be deemed to have joined in any other defendant's motion where the granting of the motion would benefit it or all defendants generally. Duplicative motions or motions solely adopting the reasoning of the filing defendant's motion shall not be filed. A defendant may, but is not required to, file a supplemental motion setting forth arguments directly related to that defendant's position. Should the defendant originally filing such motion be dismissed from the case(s) in which such motion was filed prior to ruling, the motion shall remain viable as to all remaining defendants in the case.

12. Multiple Counsel

Where a plaintiff or group of plaintiffs and/or a defendant or group of defendants have by notice of appearance or by the filing of a responsive pleading listed multiple counsel, notice to one attorney for a party shall constitute notice to that party. Counsel attending any court appearances shall have full authority to speak for all other counsel a party may have.

13. Notice of Appearance/Pro Hac Vice

Upon the granting of a Motion to Appear Pro Hac Vice, counsel shall file with the Clerk of Courts, a Notice of Appearance setting forth the attorney's name, address, phone number and party represented.

14. Liaison Counsel

Within fourteen (14) days of the filing of this Order, defendants' counsel shall designate one "Liaison Counsel" with respect to each plaintiffs law firm, and each plaintiffs' law firm shall designate one "Liaison Counsel" with whom the Court may communicate orally for the purpose of the prompt dissemination of information to the parties regarding administrative and scheduling matters only. Liaison counsel shall establish a system for the prompt dissemination of information to all other counsel. The Court shall serve all orders and other written communications upon all counsel of record for all parties. Defense liaison counsel are not authorized to, nor shall they, accept service of pleadings on behalf of parties other than their own respective clients, nor shall

liaison counsel be required to serve any pleadings or other papers on behalf of other parties. Defense liaison counsel are not authorized to speak for or on behalf of other parties without receiving express written authorization to do so.

15. Attendance at Hearings

No party shall waive any rights by failing to attend a hearing or a motion unless the attendance of the party has been ordered by the Court. The designation of an attorney to act as spokesperson for a group of plaintiffs or defendants shall not preclude other counsel from participating to the extent necessary to represent the individual interests of their clients, so long as such participation does not involve duplication or unnecessary delay.

16. Cooperation Among counsel Shall Not Constitute a Waiver of Privileges

No party waives the attorney-client privilege or work-product privilege by virtue of actions taken in cooperation among parties or their counsel pursuant to this or any other Order of this Court in these cases, nor by action taken by the party in pursuit of the just and efficient resolution of these cases. Because cooperation among defendants will expedite the handling of this litigation and aid judicial economy, the defendants' conduct in working jointly for the purpose of coordinating discovery or trial efforts, in the sharing of counsel, and for other purposes designed to minimize expenses shall not constitute evidence of conspiracy, concert of action, or any other wrongful conduct, and shall not be admissible as evidence for any purpose.

C. CASE MANAGEMENT SCHEDULE

17. Case Management Schedule

Discovery and trial preparation for each plaintiff shall proceed pursuant to the Case Management Schedule established for the group of plaintiffs in which such plaintiff's case is grouped. A sample Case Management Schedule is attached hereto as Exhibit A.

D. WRITTEN DISCOVERY

18. Defendants' Master Consolidated Discovery Requests ("CDRs") to Plaintiffs

Before a case can be grouped or set for trial, plaintiff shall file on CLAD and shall conventionally serve each defendant with that plaintiff's answers and responses to Defendants' Master Consolidated Discovery Requests (CDRs). Attached hereto and marked Exhibits B and C are sample Defendants' Master Consolidated Discovery Requests for living injured parties and for deceased injured parties, respectively. The Court has been advised that certain counsel for plaintiffs have heretofore provided CDR responses in formats similar to, but not identical to, Exhibits B and C. Such counsel may continue to provide CDR responses in formats previously used provided that the information requested in the Master CDRs is substantially provided.

19. Records of diagnosis

Before a case is grouped or set for trial, plaintiff shall conventionally serve on each defendant objective medical substantiation that plaintiff suffers from mesothelioma, asbestos related cancer or an asbestos related functional impairment as well as all medical records in plaintiff's possession.

20. Records Authorizations and Tax Returns

Before a case is grouped or set for trial, each plaintiff shall conventionally serve on the applicable Liaison Counsel with copies to each defendant:

- a. Executed forms authorizing the release of the allegedly exposed plaintiff's Social Security Statement of Earnings showing the names of all employers and the quarters of years worked for each employer;
- b. Executed forms authorizing the release of all medical records, all original x-ray films, CT scans, MRI images, and pathology specimens, and all reports for each of the allegedly exposed plaintiff's medical service providers;
- c. Executed forms authorizing the release of military records, veterans' affairs records, and employment records for each employer of the allegedly exposed plaintiff;

d. Executed forms authorizing the release of any workers' compensation and/or disability claim records filed by or on behalf of the allegedly exposed plaintiff with any federal, state or private organization; and

e. Copies of any or all of plaintiffs' tax returns for the preceding five (5) years if in the possession of Plaintiff; otherwise, authorizations for the release of such tax returns.

To the extent these authorizations become outdated or obsolete, defendants may request, and plaintiffs shall promptly provide, updated authorizations.

21. Identification of Product Identification Witnesses and Product Identification

Before a case is grouped or set for trial, each plaintiff shall file on CLAD the name and address of witnesses upon whose testimony such plaintiff intends to rely to establish product identification. Unless good cause be shown by motion to the Court, such witnesses shall not number more than six (6).

Counsel for such plaintiff shall identify each other plaintiff on whose behalf such product identification witness is expected to testify.

Contemporaneously with that filing, each plaintiff shall provide the identity of the products and manufacturers about which the plaintiff and each product identification witness will testify ("Product List/Work History").

The Plaintiff's Product List/Work History shall have the same force and effect as the plaintiffs' sworn, signed answers to interrogatories, with the provision that it may be used for impeachment purposes against plaintiff. Each Product List/Work History shall include:

a. The specific product name and manufacturers of products present at each job site. Should a defendant not be implicated in any of the Product List/Work Histories filed in a particular case, then plaintiffs shall set forth the specific information upon which plaintiff bases the naming of that particular defendant, including but not limited to the identity of written documents supporting product identification;

- b. Name of employers;
- c. Specific location of job site where plaintiff or product identification witness worked and where said products were seen or observed, including the name and address of the job site;
- d. The dates the plaintiff or product identification witness worked at said job site; and,
- e. The identity of any written documents supporting product identification.

22. X-Rays, Tissue Specimens, Examination of Same

Before a case is grouped or set for trial, Plaintiff's counsel shall notify each defense counsel of any original radiology or pathology materials, including, but not limited to, slides, tissue blocks or wet tissue currently in plaintiff's counsel's possession, or which has been requested by the plaintiff's counsel. The notice shall include the name and address of the provider of such x-rays or pathology.

23. Discovery to Defendants

Plaintiffs' counsel may but are not required to serve upon defendants' counsel master discovery requests, including interrogatories and/or requests for production of documents and/or requests for admissions; upon defendants' responses thereto shall be governed by the dates established under the applicable Case Management Schedule.

24. Additional Written Discovery

Additional interrogatories and requests for production of documents may be served by any party only upon leave of court. Unless otherwise agreed to in writing among or between the parties, service of and responses to request for admissions shall be governed by the applicable Ohio Rules of Civil Procedure. The parties are strongly cautioned against the filing of repetitive discovery.

F. DEPOSITIONS

25. Defense Lead Counsel

Defendants shall select one Lead Counsel for each group of cases to coordinate with counsel for plaintiffs the scheduling of depositions of the plaintiffs and the plaintiffs' product identification witnesses in that group.

26. Depositions of Plaintiffs and of Plaintiffs' Product Identification Witnesses

a. General

Counsel for the plaintiffs in each group of cases shall coordinate the scheduling of such depositions with Lead Counsel for the defendants for such group.

b. Logistics of Depositions

(i) Plaintiffs' depositions shall be taken in Cuyahoga County, Ohio, or in any other location upon which the parties may agree.

(ii) Product identification witnesses' depositions shall be taken in any location upon which the parties agree.

(iii) No more than two (2) plaintiffs' depositions shall be scheduled to take place on any one day.

(iv) All depositions shall be scheduled with at least ten (10) days notice unless such notice period is otherwise waived by all parties.

(v) For each such deposition the defendants shall identify one attorney to act as a lead counsel for the purpose of asking general questions. All defendants shall have the opportunity to examine each deponent. Every effort shall be made to avoid: (1) questions designed merely to elicit a recitation of information already contained in the relevant discovery responses provided by the plaintiff; and (2) the repetition of questions already asked of the deponent.

(vi) If a defendant conducts a deposition of a plaintiff or Product Identification Witness and during said deposition additional exposures or job sites

are developed by a defendant, plaintiff may amend the Product List/Work History to add the additional exposures or job sites developed.

If a defendant is not present at the deposition of the plaintiff or Product Identification Witness because the Product List/Work History did not include evidence that said plaintiff or Product Identification Witness would identify said defendant's products or liability at defendant's job site, then any information developed during the deposition regarding said defendant cannot be used against said defendant at trial without another party of record obtaining an order from the court based upon a showing of good cause, permitting the same.

A defendant not implicated on the product identification list for that witness need not attend the deposition of that witness, and shall have the right to later depose that witness should that defendant be implicated at the initial deposition.

(vii) Whenever a defendant attends the deposition of a plaintiff or Product Identification Witness, because said Product List/Work History indicated that witness would testify that plaintiff was exposed to that defendant's asbestos-containing product(s) or worked at a premises liability defendant's job site, and said witness during the course of the deposition is asked if he/she can identify that defendant's product(s) or job site, and exposure to plaintiff, as identified in his/her Product List/Work History, and said witness states under oath that he/she cannot identify said defendant's product(s) or job site as specified in his/her Product List/Work History and a time when plaintiff reasonably may have been exposed to that product or job site, said defendant may file a motion requesting costs for the time incurred in the preparation, travel to, and attendance at said deposition. Unless plaintiff is able to demonstrate to the court that a reasonable basis existed at the time of the filing of the Product List/Work History

upon which to believe said witness would identify said defendant's product(s) or job site and exposure to plaintiff, the court shall assess costs in an amount which the court deems to be reasonable and just under the circumstances.

(viii) With each deposition schedule, counsel for plaintiffs shall list all cases in which each deponent is then expected to testify on the issue of product identification. Defendants may conduct a thorough deposition of each product identification witness. Duplicate depositions of product identification witnesses will not be permitted, except for good cause shown. Defendants subsequently named in a case in which a plaintiff or product identification witness has already been deposed shall have the right to redepose those witnesses with regard to that defendant's products. A product identification witness who has been deposed may be redeposed if that witness is subsequently identified as a witness for another plaintiff not identified prior to the initial deposition.

(ix) It is contemplated that depositions of plaintiffs and of product identification witnesses will be completed in four hours, and every effort shall be made by all parties to conclude each such deposition in that time frame. Under exceptional circumstances, depositions may be scheduled for longer durations. If, upon receipt of the deposition schedule, it becomes apparent to defendants that the time allocated for a deposition is insufficient, Lead Counsel for defendants on such deposition shall, at least five (5) days before the scheduled date of the deposition, arrange for additional time to be allocated for such deposition, and shall so notify all parties.

(x) At the commencement of each deposition of a plaintiff or a plaintiff's product identification witness, the deponent will be furnished with a list of all the defendants represented by counsel at the deposition. Defense counsel will not be required to identify his/her client before cross-examining the deponent.

Plaintiff's counsel will be allowed to ask direct questions of the deponent after the defendants have completed their cross-examination. Plaintiff's counsel will not lead the witness nor include the name of a specific product or company in his/her direct examination of the deponent. Plaintiff's counsel will be allowed to refresh the recollection of the witness by presenting a list of products or companies so long as the list was written or dictated by the deponent – not counsel. The deponent will also be allowed to view the photo album compiled by Owens-Corning (or any other collection of photographs depicting products or labels), but there will be no conference between the witness and plaintiff's counsel during or after the photo review. At the conclusion of the direct examination, counsel for any defendant affected by the direct will be permitted to re-cross the deponent. Neither the direct nor the re-cross examinations shall be longer than fifteen (15) minutes except with the agreement of all parties represented at the deposition or with the approval of the court.

27. Plaintiff's De Bene Esse Depositions

If a discovery deposition of a plaintiff has not already been taken, the defendants shall be permitted to conduct such a deposition at least seven (7) days prior to the scheduled de bene esse deposition. Except as otherwise ordered by the Court, or by stipulation of the parties, a de bene esse deposition shall not be taken unless each of the following conditions has been met at least fourteen (14) days prior to the date of the discovery deposition:

- a. Plaintiff's counsel shall have provided written notice of the taking of the deposition, together with a statement as to the reason for the taking of the deposition;
- b. Plaintiff's counsel shall have served and filed verified answers to the Master CDRs, together with all requested documents;
- c. Plaintiff's counsel shall have provided to defendants:

(1) authorizations for the release of medical, Social Security, and workers' compensation records, and (2) copies of all discoverable medical records, reports (including reports of experts), and any pathology and radiology materials in the possession of plaintiff's counsel;

d. Plaintiff's counsel shall have provided to each defendant all employment records of plaintiff, including, but not limited to, handwritten notes, diaries and pay stubs.

28. Cancellation of Previously Scheduled Depositions

In the event of the cancellation of the deposition of any party, counsel representing the party shall notify each other counsel of the cancellation by telephone or by telecopy, during normal business hours, no less than twenty-four (24) hours prior to the scheduled deposition. In the event the deposition is cancelled with less than twenty-four (24) hours' notice without good cause, the party canceling the deposition may, upon motion, be ordered to pay the reasonable fees and expenses incurred by opposing counsel as a result of such late or inadequate notice of cancellation, including, but not limited to, court reporter fees, deposition location fees, reasonable attorney fees, travel costs and expenses.

G. MEDICAL EXAMINATIONS

29. Physical Examinations

The defendants, collectively, may require each plaintiff to undergo one medical examination relating to plaintiff's claim for injuries. The examination may include, but is not limited to: x-rays, CT scans, MRIs, pulmonary function studies, and blood tests, including arterial blood gases. No surgical or invasive procedures, such as tissue removal, shall be permitted under any circumstances. More than one physical examination of each plaintiff may be permitted, but only for good cause shown, and then only by order of the Court. The provisions of Rule 35(B) of the Ohio Rules of Civil Procedure shall apply to such examinations. All expenses for the defense medical examination and procedures shall be paid by the requesting defendants. If the examination is conducted outside the Cleveland metropolitan area, defendants shall reimburse the

plaintiff for reasonable costs of travel, lodging and food associated with the examination.

Reasonable attempts shall be made to accommodate the plaintiff's work schedule. The provisions of Ohio Revised Code Section 2317.02 shall apply with respect to the waiver of the patient-physician privilege.

H. WITNESS AND EXHIBIT LISTS AND EXPERT REPORTS

30. Identification of Expert and Lay Witnesses -- Reports and Prior Testimony

On or before the dates established in the applicable Case Management Schedule, the plaintiff and the defendants must list all exhibits expected to be used at trial; identify all expert and lay witnesses expected to be called at trial; provide reports of each medical expert witness who examined the plaintiff or the plaintiffs x-ray material or pathology, or who reviewed the plaintiff's records and is expected to testify regarding the plaintiff's diagnosis ("Consulting Medical Witness"); provide reports or prior testimony of all other expert witnesses; and provide a statement or summary of testimony for each lay witness. No expert witness will be permitted to testify whose report or prior testimony was not served within the time prescribed by the applicable Case Management Schedule. No lay witness will be permitted to testify whose statement or summary of testimony was not served within the time prescribed by the applicable Case Management Schedule.

31. Final Witness and Exhibits

Each party shall file and serve a Final Witness List and a Final Exhibit List on the day prescribed in the applicable Case Management Schedule. The final Witness List shall contain the names of the expert and lay witnesses whom the parties actually intend to call to testify at trial, whether that testimony be live, by videotape, or by written deposition. The final Exhibit List shall include those exhibits actually intended to be used at trial. The final Witness List and the Final Exhibit List may not include witnesses or exhibits not previously identified pursuant to the terms of the Case Management Schedule. The purpose of the Final Witness and Exhibit Lists is to reduce the number of witnesses and exhibits to those which will actually be needed for trial.

32. Use of Prior Testimony

If any party intends to use the prior testimony of a witness, such testimony must be identified by case name, case number, court, date, and page(s) and line(s) of transcript. A copy of all such testimony, whether by deposition or trial transcript, must be furnished upon request to any party by the date indicated in the applicable Case Management Schedule.

I. PROCEDURE FOR SEEKING DISMISSAL

33. Defendant's Request

On or before the date established in the applicable Case Management Schedule, any defendant may request any counsel for the plaintiff, in writing, by certified mail, to agree to a consent order dismissing that defendant, without prejudice, and otherwise than upon the merits. The letter shall contain the specific reasons for seeking dismissal, and may include one or more cases in a particular group of cases.

34. Plaintiff's Response

Within thirty (30) days of receiving such a dismissal letter, the plaintiff's counsel must respond, in writing, by certified mail. Such response letter shall either agree to the defendant's dismissal request, or must set forth the specific reasons for the refusal of the defendant's request for dismissal.

35. Action on Refusal to Consent to Dismissal

Upon the failure of a plaintiff's counsel to respond in writing to a defendant's letter as set forth above, defendant may petition the Court for an order of dismissal without prejudice and otherwise than upon the merits. Refusal by a plaintiff to dismiss without prejudice and otherwise than upon the merits does not preclude a defendant from filing a motion for summary judgment.

J. GROUPING OF PLAINTIFFS

36. General

All asbestos personal injury cases currently pending or hereafter filed in Cuyahoga County shall be grouped for discovery and trial preparation purposes only, in the following manner:

- a. In groups of not to exceed fifty (50) plaintiffs;
- b. Grouped according to the identity of plaintiff's counsel (e.g.: Michael Kelley, Robert E. Sweeney, etc.);
- c. Except as provided below for exigent cases, grouped in case number order within the group;
- d. Groups to rotate among plaintiffs' counsel. Each plaintiff's case will be tried individually. The status of a particular group of plaintiffs shall not affect the remaining groups and shall not accelerate or delay subsequent schedules.

37. Subsequent Groups

Subsequent groups will rotate monthly among plaintiffs' counsel. Liaison counsel for the parties shall propose to the Court the groupings and Case Management Schedules for twelve new groups every six months commencing on June 30, 2002 and December 31, 2002 and continuing each six months thereafter until all cases are grouped and scheduled.

38. Exigent Cases

In the formulation of all subsequent groups, plaintiffs' counsel may identify no more than three (3) plaintiffs per group who may be moved up out of case number order.

K. SANCTIONS

39. General

The concept of grouping plaintiffs' claims for pre-trial case management will succeed only if all counsel commit themselves to meeting the deadlines set forth in the individual Case Management Schedules. Failures to comply with these deadlines shall result in the sanctions set forth below.

40. Plaintiff's Failure to Comply

If a plaintiff fails to meet a deadline established in the applicable Case Management Schedule; fails to provide answers to defendants' authorized supplemental discovery requests;

fails to provide the witness lists; fails to provide the required report or representative testimony of an expert; fails to provide statements of the testimony of lay witnesses; absent a showing of good cause fails to appear to for deposition or for a medical examination at the time schedules; or fails to provide exhibit lists, a Notice of Failure to Comply shall be served upon plaintiff's counsel by any defendant affected by such failure. Service of such notice shall be made upon all counsel of record. A plaintiff shall have ten (10) working days after service of the Notice of Failure to Comply within which to cure the identified failure. should the plaintiff fail to cure the failure, upon motion that plaintiff's case (including the claim of his or her spouse) may be removed from its presently assigned group. Any case so removed shall be assigned to the next group of cases to be created for counsel for such plaintiff.

42. Defendant's Failure to Comply

Should any defendant fail to meet the deadlines set forth in any Case Management Schedule, the plaintiffs' counsel shall serve a Notice of Failure to Comply upon such defendant. Such defendant shall have ten (10) working days from receipt of the notification within which to comply. If the defendant fails to cure the failure, upon motion, the Court may compel compliance. If the Court finds that the defendant has thereafter failed to comply as ordered, the Court may entertain the application of the full range of sanctions permitted under Rule 37(B) of the Ohio Rules of Civil Procedure.

IT IS SO ORDERED.

DATED: 10-30-01

JJUDGE HARRY H. HANNA

JUDGE LEO M. SPELLACY

Received for filing October 30, 2001

EXHIBIT A
SAMPLE

CASE MANAGEMENT SCHEDULE

(Parenthetical references are to paragraphs of the General
Personal Injury Asbestos Case Management Order No. 1)
PLAINTIFF CASE NUMBER

PLAINTIFF	DATE BY WHICH ACTIVITY IS TO BE COMPLETED	DEFENDANT
	Starting Date (/ /200_)	
	[Day 15]	Certified mail request for dismissal without prejudice. (I.32)
Response to Certified Mail Request for dismissal without prejudice.	[Day 30]	
Depositions of employers may	[Day 35]	Depositions of

commence.		employers may commence.
Depositions of Defendants	[Day 50-Day 100]	Depositions of Plaintiff and product identification witnesses.
	[Day 115]	Motions for summary judgment to be filed and served.
File and serve opposition to motions for summary judgment or consents for dismissal.	[Day 130]	
	[Day 137]	Defendants' reply to Plaintiff's opposition to motion for summary judgment.
	[Day 145]	
		Pretrial: rulings on dispositive motions; establishment of final pretrial procedures; settlement negotiations.
	[Day 150]	Medical exam of Plaintiff may commence. (G.27)
Identify expert and lay witnesses. Provide reports of consulting medical experts and reports, or representative prior testimony, of all other experts. Provide statement of testimony for each lay witness. Provide expected exhibit list.	[Day 180]	
	[Day 270]	Identify expert and lay witnesses. Provide reports of Consulting Medical Experts and reports, or representative prior testimony, of all other experts. Provide statement of testimony for each lay witness. Provide expected exhibit list.
Exchange final witness and	[Day 300]	Exchange final wit-

Exhibit lists (H.30)

Identify prior testimony of witness intended to be used at trial.

ness and Exhibit lists (H.30)

Identify prior any testimony of any witness intended to be used at trial.

[Day 310]

Pretrial to rule on all outstanding motions; final settlement conference.

Serve written designations of page and line numbers of prior testimony to be used at trial. Serve trial brief.

[Day 315]

Serve written designations of page and line numbers of prior testimony to be used at trial. Serve at Trial.

Serve written Counterdesignation of page and line numbers of prior testimony to be used at trial.

[Day 320]

Serve written Counterdesignation of page and line numbers of prior testimony to be used at trial.

[Day 330]

Trial of each Plaintiff's case in order of case number.

EXHIBIT B

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

	)	CASE NO.
)	
Plaintiff(s),	)	JUDGE HARRY A. HANNA
	)	JUDGE LEO M. SPELLACY
v.	)	DEFENDANTS' MASTER
	)	CONSOLIDATED DISCOVERY
	)	REQUESTS TO PLAINTIFFS
)	
Defendants)	

Pursuant to Rules 33, 34 and 36 of the Ohio Rules of Civil Procedure, defendants propound the following Master Consolidated Discovery Requests including Interrogatories, and Requests for Production of Documents to each plaintiff. The interrogatories are to be answered under oath by each plaintiff listed above, and the documents requested are to be produced or objections thereto served on all defendants' attorneys within ninety (90) days of service hereof.

These Consolidated Discovery Requests are continuing in nature and require each plaintiff to file supplemental answers in accordance with Rule 26(e) of the Ohio Rules if further or different information is obtained after the initial answers and before trial, including in such supplemental answers the date upon and manner in which such further or different information came to each plaintiff's attention.

EXPLANATION AND DEFINITIONS

This document includes both interrogatories and a request for production of documents. The documents to be produced are in each instance identified by responses to the interrogatories contained herein.

As used in these interrogatories and document requests, the terms listed below are defined as follows:

(A) "You", "your", "yourself"; "plaintiff" or "plaintiffs"

means each plaintiff, each individual allegedly exposed to asbestos, and all other persons acting or purporting to act on each plaintiff's behalf.

(B) "Defendants", unless otherwise specified, means any defendant named as a party to this action, as well as any predecessors in interest to any named defendants, and all other subsidiaries or divisions of any named defendants.

(C) "Document" or "documents" means any writing of any kind, including originals and all non-identical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, inter-office and intra-office communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printer matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments of any of the foregoing tapes, tape recordings, transcripts, graphic or aural records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which each plaintiff has knowledge or which are now or were formerly in each plaintiff's actual or constructive possession, custody or control.

(D) "Possession, custody or control" includes the joint or several possession, custody or control not only by the person to whom these interrogatories and requests are addressed, but also the joint or several possession, custody or control by each or

any other person acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesman, or otherwise.

2

(E) "Relates to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(F) "Person" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons, or other association separately identifiable, whether or not such association has a separate juristic existence in its own right.

(G) "Identify", "identity" and "identification", when used to refer to an entity other than a natural person, means to state its full name, the present or last known address of its principal office or place of doing business, and the type of entity (e.g., corporation, partnership, unincorporated association).

(H) "Identify", "identity" and "identification", when used to refer to a natural person, means to state the following:

(1) the person's full name and present or last known home address, home telephone number, business address and business telephone number;

(2) The person's present title and employer or other business affiliation;

(3) the person's home address, home telephone number, business address and business telephone number at the time of the actions at which each interrogatory is directed: and

(4) his employer and title at the time of the actions at which each interrogatory is directed.

(I) "Identify", "identity" and "identification", when used to refer to a document, mean to state the following:

- (1) the subject of the document;
- (2) the title of the document;

3

(3) the type of document (e.g., letter, memorandum, telegraph, chart);

(4) the date of the document, or if the specific date thereof is unknown, the month and year or other best approximation of such date;

(5) the identity of the person or persons who wrote, contributed to, prepared or originated such document; and

(6) the present or last known location and custodian of the document.

(J) "His" means his and/or her and "he" means he and/or she.

INSTRUCTIONS

(A) With Respect to each interrogatory, in addition to supplying the information asked for and identifying the specific documents referred to, identify all documents which were referred to in preparing your answers thereto.

(B) If any document identified in an answer to an interrogatory was, but is no longer in your possession or subject to your custody or control, or was known to you, but is no longer in existence, state what disposition was made of it or what became of it.

(C) If any document is withheld from production hereunder on the basis of a claim of privilege or otherwise, identify each such document and the grounds upon which its production is being

withheld.

(D) Attached to these interrogatories and request for production of documents is a medical authorization to obtain the plaintiff's medical records. This medical authorization should be signed by the plaintiff and returned with the Answers to Interrogatories.

INTERROGATORIES

1. Please state the following:

a) Your Full name:

ANSWER:

4

b) All of the names by whom you have been know, including nicknames, maiden names or aliases:

ANSWER:

c) Your present address and the date you first resided at that address:

ANSWER:

d) The addresses at which you have resided for five (5) years prior to this date:

ANSWER:

e) Your Social Security number:

ANSWER:

f) Your date of birth:

ANSWER:

5

1. Are you employed?

ANSWER:

- a) If your answer is in the affirmative, please state your current occupation, place of employment, and the date you first became so employed:

ANSWER:

- b) If your answer is in the negative, please state your last occupation, your last place of employment, the date you last worked and your reason(s) for not working since that time:

ANSWER:

3. State the following with respect to your parents:

- a) The names of your mother and father:

ANSWER:

- b) Their dates of birth:

ANSWER:

6

- c) Their current health conditions:

ANSWER:

- d) If deceased, their date of death:

ANSWER:

- e) If deceased, their cause of death:

ANSWER:

4. Do you have any brothers and/or sisters?

ANSWER:

If your answer is in the affirmative, please state the following for each such brother and/or sister:

- a) The names and addresses of each such brother and/or sister:

ANSWER:

7

- b) The age of each such brother and/or sister:

ANSWER:

- c) The current health condition of each such brother and/or sister:

ANSWER:

- d) If deceased, the age at death for each deceased brother and/or sister:

ANSWER:

- e) If deceased, the cause of death for each deceased brother and/or sister:

ANSWER:

5. Has any member of your family ever filed a suit for an asbestos-related disease?

ANSWER:

8

If your answer is in the affirmative, please state the following:

- a) Identify the name of the family member:

ANSWER:

b) Their relationship(s) to you:

ANSWER:

c) The case name(s), court(s) and case number(s) of the lawsuit(s):

ANSWER:

6. If you are currently married, state the following:

a) The date of marriage:

ANSWER:

b) Your spouse's name:

ANSWER:

9

c) Your spouse's date of birth:

ANSWER:

d) Your spouse's Social Security number:

ANSWER:

e) Your spouse's occupation:

ANSWER:

f) The name and address of your spouse's employer:

ANSWER:

h) The amount of our spouse's average gross monthly salary:

ANSWER:

i) Whether your spouse was financially dependent upon you at the commencement of this action.

ANSWER:

j) Whether you and your spouse were ever voluntarily or legally separated?

ANSWER:

k) If applicable, state the circumstances, inclusive dates and length of time of any such legal or voluntary separation.

ANSWER:

7. Have you ever had any previous marriages?

ANSWER:

If the answer is in the affirmative, please state the following:

a) The name(s) of any former spouse(s):

ANSWER:

b) The address(es) of any former spouse(s):

ANSWER:

- d) If terminated by court order, the court(s), city or cities, and the circumstances under which the marriage or marriages were dissolved or terminated:

ANSWER:

8. Do you have any children?

ANSWER:

12

If the answer is in the affirmative, please state the following for each child:

- a) The name of each such child:

ANSWER:

- b) The address of each such child:

ANSWER:

- c) The age of each such child:

ANSWER:

- d) The occupation of each such child:

ANSWER:

- e) The current health condition, including specific medical problems, of each such child:

ANSWER:

13

- f) Whether any such child is financially dependent upon you. If so, state the name of such dependent child.

ANSWER:

- g) If any child is deceased, state his or her date of death, cause of death, and age at death:

ANSWER:

9. Is anyone who is not listed in the preceding interrogatory financially dependent upon you?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The name of each such dependent:

ANSWER:

- b) The date of birth of each such dependent:

ANSWER:

14

- c) The relationship of each such dependent to you:

ANSWER:

- d) Whether you have legal custody of each such dependent:

ANSWER:

- e) If custody was awarded to you by court decree, state the date such custody was obtained for each such dependent:

ANSWER:

If the answer is in the affirmative, please state the following:

a) The date graduated and the name of the school:

ANSWER:

15

11. Have you ever enrolled in or attended any colleges, vocational schools, union sponsored training, or correspondence courses?

ANSWER:

If the answer is in the affirmative, please state the following:

a) The name(s) and address(es) of each such institution:

ANSWER:

b) The date(s) attended:

ANSWER:

c) Courses of study:

ANSWER:

d) Degree(s) or certification received, if any, for each such enrollment or attendance:

ANSWER:

16

12. Have you ever been a member of the Armed Forces?

ANSWER:

If the answer is in the affirmative, please state the following:

a) The branch of service:

ANSWER:

b) Serial number:

ANSWER:

c) Veteran's Administration Number (if applicable):

ANSWER:

d) The dates of service ending with the date of last discharge:

ANSWER:

17

e) The highest rank or grade held:

ANSWER:

f) The type of discharge:

ANSWER:

g) The type of technical education or training received and the length of such training:

ANSWER:

i) Whether you were ever exposed to asbestos, or asbestos-containing products during your military service.

ANSWER:

- j) If answer is affirmative, please describe in detail the manner in which you were exposed, the type of duties being performed, and the product to which you were exposed.

ANSWER:

13. Have you ever been convicted of a crime other than a traffic offense?

ANSWER:

If the answer is in the affirmative, please state fully in detail the following:

- a) The date(s), place(s), court(s) and nature(s) conviction:

ANSWER:

14. Have you filed a suit for damages for any injuries?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) Names and addresses of all the plaintiffs, defendants and their attorneys for each such action:

ANSWER:

- b) The case number, court, place and date of filing for each such action:

ANSWER:

- c) The nature and extent of injuries claimed for each such action:

ANSWER:

- d) The present status of each suit, and if concluded, the final result, including the amount of any settlements or judgments for each such action:

ANSWER:

15. Have you ever filed a Workers' Compensation Claim?

ANSWER:

If your answer is in the affirmative, please state the following:

20

- a) The claim number for each and every claim:

ANSWER:

- b) The employer under which each and every claim was filed:

ANSWER:

- c) State the allowed conditions for each and every claim:

ANSWER:

- d) State the amount of any compensation received for each and every claim:

ANSWER:

- e) The present status of each and every claim:

ANSWER:

21

16. Have you ever used cigarettes, cigars, or pipe or other tobacco products of any kind?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The dates and time periods during which each type of tobacco product was smoked or used:

ANSWER:

- b) The types of tobacco products you smoked or used and as to each such product whether the smoke was inhaled or was not inhaled:

ANSWER:

- c) The daily frequency with which tobacco products were smoked or used (i.e., 2 packs of cigarettes daily, 3 cigars daily, 2 pipefuls daily, etc.):

ANSWER:

- d) For any time period during which use of tobacco products stopped, state the dates during which your use ceased and the reasons why the use stopped:

ANSWER:

22

- e) For any time period when the use of tobacco products began after a period of having stopped, state the reasons for restarting:

ANSWER:

- f) If you ever smoked cigarettes, please state the average number of packs per day and brand so consumed in each of the following periods from 1930 to the present time:

ANSWER

- | | | | | |
|-----|---------------|-------|----------|-------|
| 1. | 1930 to 1935 | _____ | Brand(s) | _____ |
| 2. | 1936 to 1939 | _____ | Brand(s) | _____ |
| 3. | 1940 to 1945 | _____ | Brand(s) | _____ |
| 4. | 1946 to 1949 | _____ | Brand(s) | _____ |
| 5. | 1950 to 1955 | _____ | Brand(s) | _____ |
| 6. | 1956 to 1959 | _____ | Brand(s) | _____ |
| 7. | 1960 to 1965 | _____ | Brand(s) | _____ |
| 8. | 1966 to 1969 | _____ | Brand(s) | _____ |
| 9. | 1970 to 1975 | _____ | Brand(s) | _____ |
| 10. | 1976 to 1979 | _____ | Brand(s) | _____ |
| 11. | 1980 to 1985 | _____ | Brand(s) | _____ |
| 12. | 1986 to pres. | _____ | Brand(s) | _____ |

- g) If advice was ever given to you by any physician to stop smoking or using tobacco products, identify each physician who gave such advice, the dates on which the advice was given and also state whether the advice was followed:

ANSWER:

23

- h) Are you aware of the United States Surgeon General's warning placed on all cigarette packages and advertisements:

ANSWER:

- i) If the answer to subpart (h) is in affirmative, please indicate the date on which you first became aware of such warning:

ANSWER:

j) Did you stop smoking at the time you became aware of such warning?

ANSWER:

17. Has any diagnosis and/or prognosis of your medical condition been made as a result of any illness or conditions allegedly sustained as a result of any exposure to asbestos or asbestos-containing products?

ANSWER:

If the answer is in the affirmative, please state the following:

a) Each and every diagnosis which has been made:

ANSWER:

24

b) The date(s) of any such diagnosis:

ANSWER:

c) Identify each person making any such diagnosis:

ANSWER:

d) The prognosis made for each and every diagnosis:

ANSWER:

e) Identify each person making any such prognosis:

ANSWER:

f) The date of last prognosis regarding any diagnosis:

ANSWER:

- f) The date the condition or conditions diagnosed first manifested symptoms:

ANSWER:

18. For each and every symptom, indication, malaise, or affliction which you contend to be directly or indirectly related to any asbestos-related disease, disability or physical condition, please state the following:

- a) The nature and description of such symptom:

ANSWER:

- b) The date, time, place and manner in which such symptom first manifested itself or was made known to you, including all pertinent information as to the source of such knowledge:

ANSWER:

- c) Whether you contend such symptom is related in any fashion to your exposure to asbestos, and the nature and extent of such relationship:

ANSWER:

- d) All facts and opinions on which you rely in alleging that the symptoms identified are related to exposure to asbestos:

ANSWER:

19. Has any diagnosis and/or prognosis of your medical condition been made as a result of any illness or conditions allegedly sustained as a result of any exposure to silica or silica-containing products?

ANSWER:

If the answer is in the affirmative, please state the following:

a) Each and every diagnosis which has been made:

ANSWER:

b) The date(s) of any such diagnosis:

ANSWER:

c) Identify each person making any such diagnosis:

ANSWER:

27

d) The prognosis made for each and every diagnosis:

ANSWER:

e) Identify each person making any such prognosis:

ANSWER:

f) The date of last prognosis regarding any diagnosis:

ANSWER:

g) The date the condition or conditions diagnosed first manifested symptoms:

ANSWER:

28

b) The date, time, place and manner in which such symptom first manifested itself or was made known to you, including all pertinent information as to the source of such knowledge:

ANSWER:

- c) Whether you contend such symptom is related in any fashion to your exposure to silica, and the nature and extent of such relationship:

ANSWER:

- d) All facts and opinions on which you rely in alleging that the symptoms identified are related to exposure to silica.

ANSWER:

21. Have you ever been hospitalized, operated upon, or confined to an institution, including nursing homes or extended care facilities?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) Names and addresses of all hospitals or institutions involved:

ANSWER:

29

- b) The beginning and ending dates of each period of hospitalization or institutionalization;

ANSWER:

- c) The nature of the illness, injury or complaint for which you were admitted;

ANSWER:

- d) The names and addresses and relationship to you of all persons who treated or examined you:

ANSWER:

22. With respect to each physician, not listed in the preceding interrogatory, who examined or treated you during your lifetime to date, state the following:

a) Identify each physician and his address;

ANSWER:

b) List the complaint you had that caused you to see each particular physician;

ANSWER:

30

c) The type of examination, the diagnosis and type of treatment that each doctor gave you;

ANSWER:

d) The date or dates on which you were examined, diagnosed and treated by each particular physician:

ANSWER:

23. Have you ever had x-rays taken of your chest other than at any of the institutions listed previously, including x-rays performed by the Armed Forces, employers or unions?

ANSWER:

If the answer is in the affirmative, please state the following for each set of x-rays taken:

a) Name and address of the office or hospital where each set of x-rays was taken:

ANSWER:

31

b) The reason(s) why such x-rays were taken;

ANSWER:

c) Whether anything was reported to you, and the nature of any such report(s), as being the ex-ray diagnosis;

ANSWER:

d) Who paid to have the x-rays taken;

ANSWER:

e) The names and addresses of any physicians, hospitals, clinics, or other persons to whom copies of x-ray reports were sent:

ANSWER:

24. Have you ever had a pulmonary function test ("PFT") or breathing test?

ANSWER:

32

If the answer is in the affirmative, please state for each such test:

a) Name and address of the office or hospital where each such PFT or breathing test was taken:

ANSWER:

b) The reason(s) why such PFT or breathing test was taken;

ANSWER:

c) Whether anything was reported to you, and the nature of any such report(s), as being the PFT or breathing test diagnosis:

ANSWER:

25. Have you ever had any of the following conditions? Please place an "X" next to the appropriate answer and state the date of diagnosis for each such condition:

	Yes	No	Date of Diagnosis
a) bronchitis			
b) emphysema			
c) asthma			
d) tuberculosis			
e) Chronic Obstructive Pulmonary Disease			

33

f) pneumonia			
g) high blood pressure			
h) heart trouble			
i) skin cancer			
j) diverticulitis			
k) colitis			
l) ulcers			
m) polyps			
n) jaundice			
o) arthritis			
p) gout			

26. Have you used any drugs or medicines during the past ten (10) years in connection with any injury, complaint or illness?

ANSWER:

If your answer is in the affirmative, please state fully in detail:

a) A description of each item, including its name and dosage:

ANSWER:

34

b) Identify the physician who prescribed each item, if any:

ANSWER:

c) The injury, complaint or illness for which each item was prescribed or used:

ANSWER:

d) The dates during which each item was used:

ANSWER:

27. Have you ever been discharged, or voluntarily left a job, or changed residence due to health reasons?

ANSWER:

If the answer is in the affirmative, please state in detail the dates, places and circumstances:

ANSWER:

35

28. Have you ever received financial benefits (other than wages), either directly or indirectly, from any source at any time in your lifetime (including but not limited to government agencies, illness or disability wages from employers, life or health insurance companies, service providers or others)?

ANSWER:

If the answer is in the affirmative, please indicate the following:

- a) The date of each such payment(s):

ANSWER:

- b) The source of each such payment(s):

ANSWER:

- c) The time period and amount of each such payment(s):

ANSWER:

- d) The reason for each such payment(s):

ANSWER:

36

- e) The identity of all persons, including but not limited to physicians, insurance carriers, government employees or others who participated in the determination of each such payment(s):

ANSWER:

29. Please identify each of your employers in whose employ you claim you were exposed to asbestos. Include in your answer the following:

- a) the name, address and telephone number for each such employer;

ANSWER:

- b) For each such employer, indicate the jobsite, address and inclusive dates of claimed exposure:

ANSWER:

- c) Your job title and work description for each such employment of claimed exposure:

ANSWER:

- d) The dates of such employment of claimed exposure:

ANSWER:

37

- e) The length of time you spent on each jobsite:

ANSWER:

- f) The manufacturer, or if the manufacturer is unknown, the trade name and/or the generic type of each and

every product which you believe contained asbestos, to which you were exposed during each such employment, and the dates from the first exposure to the last exposure:

ANSWER:

g) Whether the jobs were inside work or outside work:

ANSWER:

30. For each exposure to asbestos and to products you believe contained asbestos that are listed in the answer to Interrogatory 29, please state the name and address of each co-worker who has knowledge that these exposures occurred.

ANSWER:

38

31. Please identify each of your employers in whose employ you claim you were exposed to silica. Include in your answer the following:

a) The name, address and telephone number for each such employer;

ANSWER:

b) For each such employer, indicate the jobsite, address and inclusive dates of claimed exposure:

ANSWER:

c) Your job title and work description for each such employment of claimed exposure:

ANSWER:

e) The length of time you spent on each jobsite:

ANSWER:

- f) The manufacturer, or if the manufacturer is unknown, the trade name and/or the generic type of each and every product which you believe contained silica, to which you were exposed during each such employment, and the dates from the first exposure to the last exposure:

ANSWER:

- g) Whether the jobs were inside work or outside work:

ANSWER:

- h) For each job, whether it involved new construction, repair, replacement or tear-out (specify which):

ANSWER:

32. For each exposure to silica and to products you believe contained silica that are listed in the answer to Interrogatory 31, please state the name and address of each co-worker who has knowledge that these exposures occurred.

ANSWER:

33. Please state whether safety equipment such as respirators or masks to reduce exposure to asbestos and/or silica material was provided or required by any of your employers (specify which):

ANSWER:

If the answer is in the affirmative, please state:

- a) Whether you used the masks or respirators:

ANSWER:

- b) If so, identify the jobsites at which you used such masks or respirators:

ANSWER:

34. State whether showers were provided for each such employment:

ANSWER:

35. State whether separate lockers for work and personal clothing were provided for each such employment:

ANSWER:

41.

36. Have you ever been a member of any trade or labor union?

ANSWER:

For each and every membership please list the following:

a) The union, including the local designation for each such union membership:

ANSWER:

b) The beginning and ending dates of membership(s) and the reasons why such membership(s) was terminated:

ANSWER:

c) The types of work authorized to perform by virtue of each and every membership:

ANSWER:

d) The places, dates and offices held or the committees on which you served in both the local and international union(s) for each such membership:

ANSWER:

- e) Whether union meetings are or were regularly attended in reference to each such membership:

ANSWER:

- f) The names of each and every publication(s) received from the unions and the dates and frequency with which they were received:

ANSWER:

- g) The frequency with which such publications are or were read (i.e., regularly, occasionally, rarely):

ANSWER:

37. State whether the you were exposed to asbestos or asbestos-containing products which were manufacturer, sold, produced, prepared or distributed by any entity not named as a defendant in this lawsuit. If so, identify the manufacturer, the product and the dates of exposure.

ANSWER:

38. Have you ever been exposed to asbestos or asbestos-containing products outside the workplace?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The date of each such exposure:

ANSWER:

- b) The place of each such exposure:

ANSWER:

- d) The trade name(s) and/or manufacturer(s) of the asbestos containing product(s) for each such exposure:

ANSWER:

- e) The names and addresses of each individual with knowledge to corroborate each such exposure:

ANSWER:

44

39. State whether you have ever received any instruction, recommendations or warnings of any kind regarding each asbestos-containing product to which you were exposed (i.e., printed on container or package, tag, covering, or instruction sheet accompanying the product, etc.):

ANSWER:

40. State whether you ever received any instructions or recommendations by your employer or superior at any time regarding the safety precautions to be taken when using each asbestos-containing product to which you were exposed, including, but not limited to, the creation, inhalation or ingestion of dust.

ANSWER:

41. Did you at any time receive, have knowledge of, or possess any advice, publication, warning, order, directive, requirement or recommendation, written or oral, which purported to either advise or warn you of the possible harmful effects of exposure to or inhalation of, asbestos, asbestos-containing materials, silica, or silica-containing materials?

ANSWER:

42. Did you at any time receive, have knowledge of, or possess any advice, publication, warning, order, directive, requirement or recommendation, either written or oral, which purported to advise or recommend techniques, methods or equipment which would serve to reduce or guard against such potentially harmful exposure?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The nature and exact working of such advice, warning, recommendation etc.:

ANSWER:

- b) The complete identity of each source of such advice, warning or recommendation, etc.:

ANSWER:

- c) The date, time, place and manner and circumstances when each such advice, warning, recommendation, etc. was given:

ANSWER:

- e) Identify each and every co-worker or similar member of your trade and occupation who also received the same or similar advice, warning, recommendation, etc.:

ANSWER:

- 43. Have you ever provided testimony, or been SPRINT interviewed in a lawsuit?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The name of the case and case number for which each such testimony or SPRINT interview was given:

ANSWER:

- b) The nature of each such proceeding and/or testimony:

ANSWER:

- c) The approximate date when each such testimony and/or SPRINT interview was given:

ANSWER:

44. Have you ever been exposed to radiation medically, incidentally or occupationally?

ANSWER:

47

If the answer is in the affirmative, describe the circumstances of exposure and date or dates of exposure:

ANSWER:

45. State the nature, extent and frequency of any physical examinations which any of your employers required or made available to you, and the frequency (with specific dates) with which you submitted to such examinations.

ANSWER:

46. Please state whether you have obtained any judgments, settlements, or compromises, payments from or entered into any agreements with any person or entity arising from exposure to asbestos, asbestos-containing products, silica or silica containing products.

ANSWER:

If the answer is in the affirmative, please state:

- a) The amount of such each and every judgment, settlement, compromise or payment:

ANSWER:

48

- b) The date upon which each such judgment, settlement, compromise or payment was received:

ANSWER:

- c) The person or entity from whom such judgment, settlement, compromise or payment was received:

ANSWER:

47. Please state whether you have entered into any agreement with any party or non-party to this litigation regarding future claims or payments resulting from your alleged exposure to asbestos, asbestos-containing products, silica or silica-containing products.

ANSWER:

If the answer is in the affirmative, please state:

- a) The amount of consideration for each such agreement:

ANSWER:

- b) The date upon which each agreement was entered into:

ANSWER:

49

- c) The person or entity with whom each such agreement was reached:

ANSWER:

- d) The dates upon which each such payment is to be received:

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Identify and produce all literature or other documents which relate to the product or products, allegedly containing asbestos and/or silica, to which you claim you were exposed which are in your possession or in the possession of your

attorney.

2. Identify and produce your complete work history including the location of each and every jobsite at which you worked wherein you claim you were exposed to asbestos and/or silica. For each such jobsite, state the dates you were present, the length of time you spent at each jobsite, the name and manufacturers of each asbestos-containing product to which you were exposed at each jobsite, the name of your employer, the type of work you performed, and the names and addresses of each co-worker with whom you worked.
3. Identify and produce all literature or other documents in your possession or in the possession of your attorney, that constitute or relate to advice, warnings, orders, directives, requirements or recommendations, which purported to advise you of the possible harmful effects of exposure to asbestos or asbestos-containing products, or of techniques, methods, or equipment which would serve to reduce or guard against such exposure.
4. Identify and produce all literature or other documents which relate to your claim of conspiracy as to each defendant named in this lawsuit.
5. Identify and produce all medical records and reports in your possession or in the possession of your attorney.
6. Copies of all bills and receipts for medical services, drugs, medication, doctors' fees or other expenses incurred as a result of the injuries you allege you received relevant to this lawsuit.

50

7. All documents regarding any and all x-ray screening and the results thereof.
8. Identify and produce tax returns for the last ten (10) years, a Social Security Statement of Earnings, and any other documents relating to income earned in the last ten (10) years which are in your possession or in the possession of your attorney.
9. Identify and produce all non-medical expert reports which are in your possession or in the possession of your attorney.
10. Identify and produce all documents and prior testimonies of which you have knowledge which relate to your allegation that you are entitled to receive punitive or exemplary damages.
11. Identify and produce the names and full addresses of all persons you expect to call as expert witnesses at trial, including a summary of the testimony that each witness is expected to give.
12. Identify and produce the names and full addresses of all non-experts you expect to call as witnesses at trial including a summary of the testimony that each witness is

expected to give.

13. Documents in your possession constituting or relating to your employment history including, but not limited to, documents which would indicate the place(s) or department(s) of your employer(s) in which you worked, the dates worked, and the names of co-workers with whom you worked at each job or jobsite.
14. Any lists which have been prepared or which have been prepared by others on your behalf which indicate the types of products to which you claim you were exposed, and the names of the manufacturers, installers, distributors, sellers, suppliers and outside contractors of those products.
15. All documents pertaining to union memberships, meetings or events relating to the discussions or warnings given concerning hazardous exposures in the workplace and precautions to be taken.
16. Any and all documents or photographs you have reviewed or will review in preparation for any testimony you may give in this case or as a co-worker in any other case.
17. Identify and product all documents, other than those previously identified in your responses to these requests, that you expect to offer as evidence at trial.
18. Copies of all documents supporting the itemization of damages you claim in this suit.

51

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

TO: _____

This is authority for you to permit any attorney of record, or his or her agent, or any records service or its agents, to copy, inspect, and examine any and all records, charts, reports, pathology materials, original x-rays, x-ray reports, in your possession pertaining to all examinations and treatments rendered to:

NAME: _____ *

SS #: _____

DOB: _____

* _____

DATE: _____

This authorization shall remain valid for a period of eight months from the date set forth herein and authorize the provider

to honor all requests for records and/or other materials made within that period of time.

STATE OF OHIO)
) SS:
COUNTY OF _____)

SWORN AND TO SUBSCRIBED before me, a notary public in and for said county and state on this _____ day of _____, 19____.

NOTARY PUBLIC

PHOTOCOPIES OF THIS AUTHORIZATION SHALL BE MADE AND SHALL HAVE THE SAME AUTHORITY AS THE ORIGINAL

*Name of party seeking to provide his or her medical release.

52

AUTHORIZATION FOR RELEASE OF WORKERS' COMPENSATION INFORMATION

TO: _____

This is authority for you to permit any attorney of record, or any agent of any attorney of record, to copy, inspect, and examine any and all records, correspondence, medical reports, in your possession pertaining to any and all Workers' Compensation claims involving:

NAME: _____
SS#: _____
DOB: _____
CLAIM NO: _____

PHOTOCOPIES OF THIS AUTHORIZATION SHALL BE MADE AND SHALL HAVE THE SAME AUTHORITY AS THE ORIGINAL.

DATE: _____

STATE OF OHIO)
) ss:
COUNTY OF _____)

SWORN TO AND SUBSCRIBED before me, a notary public in and for said county and state on this _____ day of _____, 19____.

NOTARY PUBLIC

EXHIBIT C

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

IN RE:	:	
	:	
	:	
ASBESTOS LITIGATION	:	
	:	
	:	DEFENDANT'S MASTER
	:	CONSOLIDATED DISCOVERY
	:	REQUESTS TO PLAINTIFFS
	:	FOR DEATH CASES

Pursuant to Rules 33, 34 and 36 of the Ohio Rules of Civil Procedure, defendants propound the following Master Consolidated discovery Requests including Interrogatories, Requests for Admissions and Requests for Production of Documents to each plaintiff. The Interrogatories are to be answered under oath by each plaintiff listed above; the Requests for Admissions are to be answered or objected to by the each plaintiff or his attorney; and the documents requested are to be produced or objections thereto served on all defendants' attorneys within twenty-eight (28) days of service hereof.

These Consolidated Discovery Requests are continuing in nature and require each plaintiff to file supplemental answers in accordance with Rule 26(e) of the Ohio Rules if further or different information is obtained after the initial answers and before trial, including in such supplemental answers the date upon and manner in which such further or different information came to each plaintiff's attention.

1

EXPLANATION AND DEFINITIONS

This document includes both interrogatories and a request for production of documents. The documents to be produced are

in each instance identified by responses to the interrogatories contained herein.

As used in these interrogatories and document requests, the terms listed below are defined as follows:

(A) "You", "your", "yourself", "plaintiff" or "plaintiffs" means each plaintiff, each individual allegedly exposed to asbestos, (the decedent, if applicable), and all other persons acting or purporting to act on each plaintiff's behalf.

(b) "Defendants", unless otherwise specified, means any defendant named as a party to this action, as well as any predecessors in interest to any named defendants, and all other subsidiaries or divisions of any named defendants.

(C) "Document" or "documents" means any writing of any kind, including originals and all nonidentical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation correspondence, memoranda, notes, desk calendars, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alteration, modifications, changes and amendments of any of the foregoing tapes, tape recordings, transcripts, graphic or aural records or representations of any kind, and electronic, mechanical or electric records or representations of any kind, of which each plaintiff has knowledge or which are

now or were formerly in each plaintiff's actual or constructive possession, custody or control.

(D) "Possession, custody or control" includes the joint or several possession, custody or control not only by the person to whom these interrogatories and requests are addressed, but also the joint or several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether as employee, attorney, accountant, agent, sponsor, spokesman, or otherwise.

(E) "Relates to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(F) "Person" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons, or other association separately identifiable, whether or not such association has a separate juristic existence in its own right.

(G) "Identify", "identity" and "identification", when used to refer to an entity other than a natural person, means to state its full name, the present or last known address of its principal office or place of doing business, and the type of entity (e.g., corporation, partnership, unincorporated association).

(H) "Identify", "identity" and "identification", when used to refer to a natural person, means to state the following:

(1) the person's full name and present or last known home address, home telephone number, business address and business telephone number;

(2) The person's present title and employer or other business affiliation;

(3) the person's home address, home telephone number, business address and business telephone number at the time of the actions at which each interrogatory is directed: and

(4) his employer and title at the time of the actions at which each interrogatory is directed.

(I) "Identify", "identity" and "identification", when used to refer to a document, mean to state the following:

- (1) the subject of the document;
- (2) the title of the document;
- (3) the type of document (e.g., letter, memorandum, telegraph, chart);
- (4) the date of the document, or if the specific date thereof is unknown, the month and year or other best approximation of such date;
- (5) the identity of the person or persons who wrote, contributed to, prepared or originated such document; and
- (6) the present or last known location and custodian of the document.

(J) "His" means his and/or her and "he" means he and/or she.

INSTRUCTIONS

(A) With respect to each interrogatory, in addition to supplying the information asked for and identifying the specific documents referred to, identify all documents which were referred to in preparing your answers thereto.

(B) If any document identified in an answer to an interrogatory was, but is no longer in your possession or subject to your custody or control, or was known to you, but is no longer in existence, state what disposition was made of it or what became of it.

(C) If any document is withheld from production hereunder on the basis of a claim of privilege or otherwise, identify each such document and the grounds upon which its production is being

withheld.

(D) Attached to these interrogatories and request for production of documents is

4

a medical authorization to obtain the decedent's medical records. This medical authorization should be signed by the plaintiff and returned with the Answers to Interrogatories.

INTERROGATORIES

1. Please state the following:

A) Your full name:

ANSWER:

b) All of the names by whom you have been know, including nicknames, maiden names or aliases:

ANSWER:

c) Your present address and the date you first resided at that address:

ANSWER:

d) The addresses at which you have resided for five (5) years prior to this date:

ANSWER:

e) Your Social Security number:

5

ANSWER:

f) Your date of birth:

ANSWER:

2. If this is a death claim, please state the following:

a) The decedent's full name:

ANSWER:

b) All of the names by which the decedent has been known, including nicknames, maiden names or aliases:

ANSWER:

c) The decedent's last address:

ANSWER:

d) The decedent's Social Security number:

ANSWER:

6

e) The decedent's date and place of birth:

ANSWER:

f) The decedent's date and place of death:

ANSWER:

g) Your relationship to the decedent:

ANSWER:

h) The Probate Court and case number for the decedent's estate:

ANSWER:

3. Are you employed?

ANSWER:

- a) If your answer is in the affirmative, please state your current occupation, place of employment, and the date you first became so employed:

ANSWER:

7

- b) If your answer is in the negative, please state your last occupation, your last place of employment, the date you last worked, and your reason(s) for not working since that time:

ANSWER:

4. Please state the following:

- a) The decedent's last occupation:

ANSWER:

- b) Decedent's last place of employment:

ANSWER:

- c) The date decedent last worked:

ANSWER:

- d) The reason(s) decedent stopped working:

ANSWER:

5. State the following with respect to decedent's parents:

8

a) The names of decedent's mother and father:

ANSWER:

b) Their dates of birth:

ANSWER:

c) Their current health conditions:

ANSWER:

d) If deceased, their date of death:

ANSWER:

e) If deceased, their cause of death:

ANSWER:

6. Did decedent have any other brothers and/or sisters?

ANSWER:

9

If your answer is in the affirmative, please state the following for each such brother and/or sister:

a) The names and addresses of each such brother and/or sister:

ANSWER:

b) The age of each such brother and/or sister:

ANSWER:

- c) The current health condition of each brother and/or sister:

ANSWER:

- d) If deceased, the age at death for each deceased brother and/or sister:

ANSWER:

- e) If deceased, the cause of death for each deceased brother and/or sister:

ANSWER:

7. Has any member of decedent's family ever filed a suit for an asbestos-related

10

disease?

ANSWER:

If your answer is in the affirmative, please state the following:

- a) Identify the name of the family member:

ANSWER:

- b) Their relation(s) to the decedent:

ANSWER:

- c) The case name(s), court(s) and case number(s) of the lawsuit(s):

ANSWER:

8. If you are currently married, state the following:

a) The date of marriage:

ANSWER:

b) Your spouse's name:

ANSWER:

11

c) Your spouse's date of birth:

ANSWER:

d) Your spouse's Social Security number:

ANSWER:

e) Your spouse's occupation:

ANSWER:

f) The name and address of your spouse's employer:

ANSWER:

g) Whether your spouse is employed full-time or part-time:

ANSWER:

h) the amount of our spouse's average gross monthly salary:

ANSWER:

- i) Whether your spouse was financially dependent upon you at the

12

commencement of this action:

ANSWER:

9. Was decedent married at the time of his death?

ANSWER:

10. If the answer to the immediately preceding interrogatory is affirmative, please state with respect to the spouse to whom decedent was married at the time of his death:

ANSWER:

- a) The date of marriage:

ANSWER:

- b) The spouse's name:

ANSWER:

- c) The spouse's date of birth:

ANSWER:

- d) The spouse's Social Security number:

ANSWER:

13

- e) The spouse's present occupation:

ANSWER:

f) The name and address of spouse's current employer:

ANSWER:

g) Whether spouse is currently employed full-time or part-time:

ANSWER:

h) The amount of the spouse's average gross monthly salary:

ANSWER:

i) Whether the spouse was financially dependent upon the decedent at the time of his death:

ANSWER:

j) Whether decedent and the spouse were ever voluntarily or legally separated?

14

ANSWER:

k) If applicable, state the circumstances inclusive dates and length of time of any such legal or voluntary separation.

ANSWER:

11. Has the decedent ever had any previous marriages?

ANSWER:

If the answer is in the affirmative, please state the following:

a) The name(s) of any former spouse(s):

ANSWER:

b) The address(es) of any former spouse(s):

ANSWER:

c) The date of termination of any previous marriages:

ANSWER:

15

d) If terminated by court order, the court(s), city or cities, and the circumstances under which the marriage or marriages were dissolved or terminated:

ANSWER:

12. Did the decedent have children?

ANSWER:

If the answer is in the affirmative, please state the following for each child:

a) The name of each such child:

ANSWER:

b) The address of each such child:

ANSWER:

c) The age of each such child:

ANSWER:

16

d) The occupation of each such child:

ANSWER:

e) The current health condition, including specific medical problems of each such child:

ANSWER:

f) Whether any such child was financially dependent upon the decedent at the time of death. If so, state the name of such dependent child.

ANSWER:

g) If any child is deceased, state his or her date of death, cause of death, and age at death:

ANSWER:

13. Was any who is not listed in the preceding interrogatory financially dependent upon decedent at time of his death?

ANSWER:

17

If the answer is in the affirmative, please state the following:

a) The name of each such dependent:

ANSWER:

b) The date of birth of each such dependent:

ANSWER:

c) The relationship to the decedent of each such dependent:

ANSWER:

d) Whether the decedent had legal custody of each such dependent:

ANSWER:

- e) If custody was awarded to the decedent by court decree, state the date such custody was obtained for each such dependent:

ANSWER:

14. Did decedent graduate from high school?

18

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The date graduated and the name of the school:

ANSWER:

15. Has decedent ever enrolled or attended any colleges, vocational schools, union sponsored training, or correspondence courses?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The name(s) and address(es) of each such institution:

ANSWER:

- b) The date(s) attended:

ANSWER:

- c) Courses of study:

ANSWER:

- d) Degree(s) or certification received, if any, for each such enrollment or attendance:

ANSWER:

16. Has decedent ever been a member of the Armed Forces?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The branch of service:

ANSWER:

- b) Serial number:

ANSWER:

- c) Veteran's Administration Number (if applicable):

ANSWER:

- d) The dates of service ending with the date of last discharge:

ANSWER:

- e) The highest rank or grade held:

ANSWER:

- f) The type of discharge:

ANSWER:

- g) The type of technical education or training received and the length of such training:

ANSWER:

- h) Whether any injury occurred while in the service (explain):

ANSWER:

- i) Whether decedent was ever exposed to asbestos, or asbestos-containing products during his military service.

ANSWER:

21

- j) If the answer is affirmative, please describe in detail the manner in which decedent was exposed, the type of duties being performed, and the product to which decedent was exposed.

ANSWER:

17. Has decedent ever been convicted of a crime other than a traffic offense?

ANSWER:

If the answer is in the affirmative, please state fully in detail the following:

- a) The date(s), place(s), court(s) and nature(s) of each conviction:

ANSWER:

18. Has decedent ever filed a suit for damages for any personal injuries?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) Names and addresses of all the plaintiffs, defendants and their attorneys for each such action:

ANSWER:

22

- b) The case number, court, place and date of filing for each such action:

ANSWER:

- c) The nature and extent of injuries claimed for each such action:

ANSWER:

- d) The present status of each suit, and if concluded, the final result, including the amount of any settlements or judgments for each such action:

ANSWER:

19. Have you ever filed a Workers' Compensation Claim?

ANSWER:

If your answer is in the affirmative, please state the following:

- a) The claim number for each and every claim:

ANSWER:

- b) The employer under which each and every claim was filed:

ANSWER:

c) State the allowed conditions for each and every claim:

ANSWER:

d) State the amount of any compensation received for each and every claim:

ANSWER:

e) The present status of each and every claim:

ANSWER:

20. Has the decedent ever filed a Worker's Compensation Claim?

ANSWER:

If the answer is in the affirmative, please state the following:

a) The claim number for each and every claim:

ANSWER:

b) The employer under which each and every claim was filed:

ANSWER:

c) State the allowed conditions for each and every claim:

ANSWER:

d) State the amount of any compensation received for each and every claim:

ANSWER:

e) The present status of each and every claim:

ANSWER:

21. Did the decedent ever use cigarettes, cigars, or pipe or other tobacco products of any kind?

ANSWER:

If the answer is in the affirmative, please state the following:

a) The dates and time periods during which each type of tobacco products was smoked or used:

25

ANSWER:

b) The types of tobacco products decedent smoked or used and as to each such product whether the smoke was inhaled or was not inhaled:

ANSWER:

c) The daily frequency with which tobacco products were smoked or used (i.e., 2 packs of cigarettes daily, 3 cigars daily, 2 pipefuls daily, etc.):

ANSWER:

d) For any time period during which use of tobacco products stopped, state the dates during which decedent's use ceased and the reasons why the use stopped:

ANSWER:

- e) For any time period when the use of tobacco products began after a period of having stopped, state the reasons for restarting:

ANSWER:

- f) If decedent ever smoked cigarettes, please state the average number of packs per day and brand so consumed in each of the following periods from 1930

26

to the present time:

ANSWER:

- | | | | | |
|-----|---------------|-------|----------|-------|
| 1. | 1930 to 1935 | _____ | Brand(s) | _____ |
| 2. | 1936 to 1939 | _____ | Brand(s) | _____ |
| 3. | 1940 to 1945 | _____ | Brand(s) | _____ |
| 4. | 1946 to 1949 | _____ | Brand(s) | _____ |
| 5. | 1950 to 1955 | _____ | Brand(s) | _____ |
| 6. | 1956 to 1959 | _____ | Brand(s) | _____ |
| 7. | 1960 to 1965 | _____ | Brand(s) | _____ |
| 8. | 1966 to 1969 | _____ | Brand(s) | _____ |
| 9. | 1970 to 1975 | _____ | Brand(s) | _____ |
| 10. | 1976 to 1979 | _____ | Brand(s) | _____ |
| 11. | 1980 to 1985 | _____ | Brand(s) | _____ |
| 12. | 1986 to pres. | _____ | Brand(s) | _____ |

- g) If advice was ever given by any physician to decedent to stop smoking or using tobacco products, identify each physician who gave such advice, the dates on which the advice was given, and also state whether the advice was followed:

ANSWER:

- h) Was decedent aware of the United States Surgeon General's warning placed on all cigarette packages and advertisements:

ANSWER:

- i) If the answer to subpart (h) is in the affirmative, please indicate the date on which the decedent first became aware of such warning:

ANSWER:

- j) Did the decedent stop smoking at the time he became aware of such warning?

ANSWER:

- 22. Has any diagnosis and/or prognosis of decedent's medical condition been made as a result of any illness or conditions allegedly sustained as a result of any exposure to asbestos or asbestos-containing products?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) Each and every diagnosis which has been made:

ANSWER:

- b) The date(s) of any such diagnosis:

ANSWER:

- c) Identify each person making any such diagnosis:

ANSWER:

- d) The prognosis made for each and every diagnosis:

ANSWER:

e) Identify each person making any such prognosis:

ANSWER:

f) The date of last prognosis regarding any diagnosis:

ANSWER:

g) The date the condition or conditions diagnosed first manifested symptoms:

ANSWER:

23. For each and every symptom, indication, malaise, or affliction which you contend to be directly or indirectly related to any asbestos-related disease, disability or physical condition, please state the following:

a) The nature and description of such symptom:

ANSWER:

29

b) The date, time, place and manner in which such symptom first manifested itself or was made known to you, including all pertinent information as to the source of such knowledge:

ANSWER:

c) Whether you contend such symptom is related in any fashion to decedent's exposure to asbestos, and the nature and extent of such relationship:

ANSWER:

d) All facts and opinions on which you rely in alleging that the symptoms identified are related to exposure to asbestos:

ANSWER:

24. Has any diagnosis and/or prognosis of decedent's medical condition been made as a result of any illness or conditions allegedly sustained as a result of any exposure to silica or silica-containing products?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) Each and every diagnosis which has been made:

30

ANSWER:

- b) The date(s) of any such diagnosis:

ANSWER:

- c) Identify each person making any such diagnosis:

ANSWER:

- d) The prognosis made for each and every diagnosis:

ANSWER:

- e) Identify each person making any such prognosis:

ANSWER:

- f) The date of last prognosis regarding any diagnosis:

ANSWER:

- g) The date the condition or conditions diagnosed first manifested symptoms:

ANSWER:

25. For each and every symptom, indication, malaise, or affliction which you contend to be directly or indirectly related to any alleged silicosis or silica-related disease, disability or physical condition, please state the following:

- a) The nature and description of such symptom:

ANSWER:

- b) The date, time, place and manner in which such symptom first manifested itself or was made known to you, including all pertinent information as to the source of such knowledge:

ANSWER:

- c) Whether you contend such symptom is related in any fashion to decedent's exposure to silica, and the nature and extent of such relationship:

ANSWER:

- d) All facts and opinions on which you rely in alleging that the symptoms identified are related to exposure to silica:

ANSWER:

26. Has the decedent ever been hospitalized, operated upon, or confined to an institution, including nursing homes or extended care facilities?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) Names and addresses of all hospitals or institutions involved;

ANSWER:

- b) The beginning and ending dates of each period of hospitalization or institutionalization;

ANSWER:

- c) The nature of the illness, injury or complaint for which decedent was admitted;

ANSWER:

- d) The names and addresses and relationship to decedent of all persons who treated or examined decedent:

ANSWER:

33

- 27. With respect to each physician, not listed in the preceding interrogatory, who examined or treated the decedent during his lifetime to date, state the following:

- a) Identify each physician and his address;

ANSWER:

- b) List the complaint decedent had that caused him to see each particular physician;

ANSWER:

- c) The type of examination, the diagnosis and type of treatment that each doctor gave decedent;

ANSWER:

- d) The date or dates on which decedent was examined, diagnosed and treated by each particular physician;

ANSWER:

28. Has the decedent ever had x-rays taken of his chest other than at any of the institutions listed previously, including x-rays performed by the Armed forces, employers or unions?

ANSWER:

34

If the answer is in the affirmative, please state the following for each set of x-rays taken:

- a) name and address of the office or hospital where each set of x-rays was taken;

ANSWER:

- b) the reason(s) why such x-rays were taken;

ANSWER:

- c) whether anything was reported to decedent, and the nature of any such report(s), as being the x-ray diagnosis;

ANSWER:

- d) who paid to have the x-rays taken;

ANSWER:

- e) the names and addresses of any physicians, hospitals, clinics, or other persons to whom copies of x-ray reports were sent:

ANSWER:

29. Has decedent ever had a pulmonary function test ("PFT") or breathing test?

ANSWER:

If the answer is in the affirmative, please state for each such test:

- a) name and address of the office or hospital where each such PFT or breathing test was taken;

ANSWER:

- b) the reason(s) why such PFT or breathing test was taken;

ANSWER:

- c) whether anything was reported to decedent, and the nature of any such report(s), as being the PFT or breathing test diagnosis for such agreement:

ANSWER:

30. Please identify each of decedent's employers in whose employ you claim decedent was exposed to asbestos. Include in your

answer the following:

- a) The name, address and telephone number for each such employee;

ANSWER:

- b) For each such employer, indicate the jobsite, address and inclusive dates of claimed exposure:

ANSWER:

- c) Decedent's job title and work description for each such employment of claimed exposure:

ANSWER:

d) The dates of such employment of claimed exposure:

ANSWER:

e) The length of time you spent on each jobsite:

ANSWER:

f) The manufacturer, or if the manufacturer is unknown, the trade name and/or the generic type of each and every product which decedent believed contained asbestos, to which decedent was exposed during each such employment, and the dates from the first exposure to the last exposure:

ANSWER:

g) whether the jobs were inside work or outside work:

ANSWER:

h) For each job, whether it involved new construction, repair, replacement or

37

tear-out (specify which):

ANSWER:

31. For each exposure to asbestos and to products decedent believed contained asbestos that are listed in the answer to Interrogatory 29, please state the name and address of each co-worker who has knowledge that these exposures occurred.

ANSWER:

32. Please identify each of decedent's employers in whose employee decedent claimed exposure to silica. Include in your answer the following:

a) the name, address and telephone number for each such employer;

ANSWER:

- b) For each such employer, indicate the jobsite, address and inclusive dates of claimed exposure:

ANSWER:

- c) Decedent's job title and work description for each such employment of claimed exposure:

ANSWER:

38

- d) The dates of such employment of claimed exposure:

ANSWER:

- e) The length of time decedent spent on each jobsite:

ANSWER:

- f) The manufacturer, or if the manufacturer is unknown, the trade name and/or the generic type of each and every product which decedent believed contained silica, to which decedent was exposed during each such employment, and the dates from the first exposure to the last exposure:

ANSWER:

- g) Whether the jobs were inside work or outside work:

ANSWER:

- h) For each job, whether it involved new construction, repair, replacement or tear-out (specify which):

ANSWER:

33. For each exposure to silica and to products decedent believed contained silica that are listed in the answer to Interrogatory 31, please state the name and address of

39

each co-worker who has knowledge that these exposures occurred.

ANSWER:

34. Please state whether safety equipment such as respirators or masks to reduce exposure to asbestos and/or silica material was provided or required by any of decedent's employers (specify which):

ANSWER:

If the answer is in the affirmative, please state:

- a) whether decedent used the masks or respirators:

ANSWER:

- b) If so, identify the jobsites at which decedent used such masks or respirators:

ANSWER:

35. State whether showers were provided for each such employment:

ANSWER:

40

36. State whether separate lockers for work and personal clothing were provided for each such employment:

ANSWER:

37. Has decedent ever been a member of any trade or labor union?

ANSWER:

For each and every membership please list the following:

- a) The union, including the local designation for each such union membership:

ANSWER:

- b) The beginning and ending dates of membership(s) and the reasons why such membership(s) was terminated:

ANSWER:

- c) The types of work authorized to perform by virtue of each and every membership:

ANSWER:

41

- d) The places, dates and offices held or the committees on which decedent served in both the local and international union(s) for each such membership:

ANSWER:

- e) Whether union meetings are or were regularly attended in reference to each such membership:

ANSWER:

- f) The names of each and every publication(s) received from the unions and the dates and frequency with which they were received:

ANSWER:

- g) The frequency with which such publications are or were read (i.g., regularly, occasionally, rarely):

ANSWER:

38. State whether the decedent was exposed to asbestos or asbestos-containing products which were manufactured, sold, produced, prepared or distributed by any entity not named as a defendant in this lawsuit. If so, identify the manufacturer, the product and the dates of exposure.

ANSWER:

42

39. Has decedent ever been exposed to asbestos or asbestos-containing products outside the workplace?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The date of each such exposure:

ANSWER:

- b) The place of each such exposure:

ANSWER:

- c) The frequency of each such exposure:

ANSWER:

- d) The trade name(s) and/or manufacturer(s) of the asbestos containing product(s) for each such exposure:

ANSWER:

43

- e) The names and addresses of each individual with knowledge to corroborate each such exposure:

ANSWER:

40. State whether decedent has ever received any instructions, recommendations or warning of any kind regarding each asbestos-containing product to which decedent was exposed (i.e., printed on container or package, tag, covering, or instruction sheet accompanying the product, etc.):

ANSWER:

41. State whether decedent ever received any instructions or recommendations by decedent's employer or superior at any time regarding the safety precautions to be taken when using each asbestos-containing product to which decedent was exposed, including, but not limited to, the creation, inhalation or ingestion of dust.

ANSWER:

42. Did decedent at any time receive, have knowledge of, or possess any advice, publication, warning, order, directive, requirement or recommendation, written or oral, which purported to either advise or warn decedent of the possible harmful effects of exposure to, or inhalation or, asbestos, asbestos-containing materials, silica, or silica-containing materials?

ANSWER:

43. Did decedent at any time receive, have knowledge of, or possess any advice, publication, warning, order, directive, requirement or recommendation, either written or oral, which purported to advise or recommend techniques, methods or equipment

44

which would serve to reduce or guard against such potentially harmful exposure?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The nature and exact wording of such advice, warning, recommendation etc.:

ANSWER:

- b) The complete identity of each source of such advice, warning or recommendation, etc.:

ANSWER:

- c) The date, time, place and manner and circumstances when each such advice, warning, recommendation, etc. was given:

ANSWER:

- d) Identify each and every witness to the receipt of such advice, warning, recommendation, etc.:

ANSWER:

45

- e) Identify each and every co-worker or similar member of decedent's trade and occupation who also received the same or similar advice, warning, recommendation, etc.:

ANSWER:

44. Has decedent ever provided testimony, or been SPRINT interviewed in a lawsuit?

ANSWER:

If the answer is in the affirmative, please state the following:

- a) The name of the case and case number for which each such testimony or SPRINT interview was given:

ANSWER:

- b) The nature of each such proceeding and/or testimony:

ANSWER:

- c) The approximate date when each such testimony and/or SPRINT interview was given:

ANSWER:

46

45. Has decedent ever been exposed to radiation medically, incidentally or occupationally?

ANSWER:

If the answer is in the affirmative, describe the circumstances of exposure and date or dates of exposure:

ANSWER:

46. State the nature, extent and frequency of any physical examinations which any of decedent's employers required or made available to decedent and the frequency (with specific dates) with which decedent submitted to such examinations.

ANSWER:

47. Please state whether decedent had obtained any judgments, settlements, or compromises, payments from or entered into any agreements with any person or entity arising from exposure to asbestos, asbestos-containing products, silica or silica-containing products.

ANSWER:

If the answer is in the affirmative, please state:

- a) The amount of such each and every judgment, settlement, compromise or payment:

ANSWER:

- b) the date upon which each such judgment, settlement, compromise or payment was received:

ANSWER:

- c) The person or entity from whom such judgment, settlement, compromise or payment was received:

ANSWER:

- 48. Please state whether decedent had entered into any agreement with any party or non-party to this litigation regarding future claims or payments resulting from decedent's alleged exposure to asbestos, asbestos-containing products, silica or silica-containing products.

ANSWER:

If the answer is in the affirmative, please state:

- a) the amount of consideration for each such agreement:

ANSWER:

- b) The date upon which each agreement was entered into:

ANSWER:

- c) The person or entity with whom each such agreement was reached:

ANSWER:

- d) The dates upon which each such payment is to be received:

ANSWER:

e) The date upon which each agreement was entered into:

ANSWER:

f) The person or entity with whom such agreement was reached:

ANSWER:

g) The dates upon which payment is to be received:

ANSWER:

49

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Identify and product all literature or other documents which relate to the product or products, allegedly containing asbestos and/or silica, to which you claim decedent was exposed which are in your possession or in the possession of your attorney.
2. Identify and product a complete work history of the decedent including the location of each and every jobsite at which decedent worked wherein plaintiff claims decedent was exposed to asbestos and/or silica. For each such jobsite, state the dates decedent was present, the name of decedent's employer, the type of work decedent performed and the names and addresses of each co-worker with whom decedent worked.
3. Identify and product all literature or other documents, in your possession or in the possession of your attorney, that constitute or relate to advice, warnings, orders, directives, requirements or recommendations, which purported to advise the decedent of the possible harmful effects of exposure to asbestos or asbestos-containing products, or of techniques, methods, or equipment which would serve to reduce or guard against such exposure.
4. Identify and produce all literature or other documents which relate to your claim of conspiracy as to each defendant named in this lawsuit.
5. Identify and product all medical records and reports, including autopsy report and death certificate, in your possession or in the possession of your attorney.
6. If this a death claim, identify and produce the appropriate probate papers which designate the appointment of the fiduciary of the decedent's estate in your possession or in the possession of your attorney.

7. Identify and product tax returns for the last ten (10) years, a Social Security Statement of Earnings, and any other documents relating to income earned in the last ten (10) years which are in your possession or in the possession of your attorney.
8. Identify and produce all non-medical experts reports which are in your possession or in the possession of your attorney.
9. Identify and product all documents and prior testimonies of which you have knowledge which relate to your allegation that you are entitled to receive punitive or exemplary damages.
10. Identify and product the names and full addresses of all persons you expect to call as expert witnesses at trial, including a summary of the testimony that each witness is expected to give.

50

11. Identify and produce the names and full addresses of all non-experts you expect to call as witnesses at trial including a summary of the testimony that each witness is expected to give.
12. Identify and produce all documents, other than those previously identified in your responses to these requests, that you expect to offer as evidence at trial.

51

AUTHORIZATION FOR RELEASE OF WORKERS' COMPENSATION INFORMATION

TO: _____

This is authority for you to permit any attorney of record, or any agent of any attorney of record, to copy, inspect, and examine any and all records, correspondence, medical reports, in your possession pertaining to any and all Workers' compensation claims involving:

NAME: _____
 SS#: _____
 DOB: _____
 CLAIM NO: _____

PHOTOCOPIES OF THIS AUTHORIZATION SHALL BE MADE AND SHALL HAVE
THE SAME AUTHORITY AS THE ORIGINAL.

DATE: _____

STATE OF OHIO)
) ss:
COUNTY OF _____)

SWORN TO AND SUBSCRIBED before me, a notary public in and
for said county and state on this _____ day of _____, 19 ____.

NOTARY PUBLIC

2 of 2 DOCUMENTS



Cited

As of: Feb 27, 2007

BETTY SALISBURY, Plaintiff-Appellee, vs. RONALD SMOUSE, Et al., Defendants-Appellants.

Case No. 05CA737

COURT OF APPEALS OF OHIO, FOURTH APPELLATE DISTRICT, PIKE COUNTY

2005 Ohio 5733; 2005 Ohio App. LEXIS 5167

October 26, 2005, Released

DISPOSITION: **[**1]** JUDGMENT REVERSED AND CAUSE REMANDED.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff landowner sued defendants, a couple who received a remainder interest in the land and the couple to which some of the land was transferred. The Pike County Court of Common Pleas (Ohio) entered a general judgment for the landowner and set forth the boundary line. Defendants filed separate motions for issuance of findings of fact and conclusions of law, pursuant to Ohio R. Civ. P. 52, which were denied. Defendants appealed.

OVERVIEW: Defendants argued that the trial court erred by overruling their motions requesting separate findings of fact and conclusions of law. The appellate court held that the trial court erred by failing to grant the Ohio R. Civ. P. 52 motions. The trial court's judgment entry acted as a general judgment in favor of the landowner but it did not include findings of fact separate from its conclusions of law. Defendants were entitled to compliance with their timely request and the trial court's ruling that it had already sufficiently provided separate findings of fact and conclusions of law was simply erroneous. The only evidence that the trial court cited for its decision was the surveys it attached to its judgment, which were not formally part of the record and the trial court did not explain how they became included in the record. The trial court erred by attaching evidence outside the record to its judgment entry as the exhibits at-

tached to the judgment entry were prepared almost seven months after the hearing. Because the evidence was not presented at the hearing, it was not properly part of the record. Defendants had a right to examine and question the evidence at trial.

OUTCOME: The judgment of the trial court was reversed and the cause was remanded.

LexisNexis(R) Headnotes

Civil Procedure > Appeals > Dismissals of Appeals > Involuntary Dismissals

[HN1] It is within an appellate court's judicial discretion to dismiss an appeal for a party's failure to comply with the Ohio Appellate Rules. Judicial discretion is defined as the option which a judge may exercise between the doing and not doing of a thing which cannot be demanded as an absolute legal right, guided by the spirit, principles, and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case. An appellate court must carefully and cautiously exercise this discretion before dismissing a case on purely procedural grounds.

Civil Procedure > Trials > Bench Trials

[HN2] See Ohio R. Civ. P. 52.

Civil Procedure > Trials > Bench Trials
Civil Procedure > Appeals > Standards of Review >
General Overview

[HN3] The purpose of separately stating findings of fact and conclusions of law is to create a record that enables a reviewing court to give meaningful review. Ohio R. Civ. P. 52 expressly provides that an opinion or memorandum of decision that contains separate findings of fact and conclusions of law may satisfy its requirements. A trial court's decision reciting various facts and a legal conclusion satisfies the requirements of Ohio R. Civ. P. 52 when, taken together with other parts of the trial court's record, the decision forms an adequate basis upon which to decide the legal issue presented upon appeal. A trial court's failure to comply with Ohio R. Civ. P. 52 is reversible error.

Civil Procedure > Judicial Officers > Judges > Successors

Civil Procedure > Judgments > Relief From Judgment > Motions for New Trials

[HN4] See Ohio R. Civ. P. 63(B).

Civil Procedure > Appeals > Dismissals of Appeals > Involuntary Dismissals

[HN5] Ohio R. App. P. 12(A)(2) provides that a reviewing court may disregard an assignment of error if the party asserting it fails to cite any legal authority in support. However, application of this rule is discretionary.

Civil Procedure > Appeals > Dismissals of Appeals > Involuntary Dismissals

[HN6] It is a fundamental tenet of Ohio law that reviewing courts dispose of cases on their merits, rather than on procedural technicalities.

COUNSEL: Charles H. Wilson, Jr., West Union, Ohio, for Appellants. n1

Robert N. Rosenberger and Jerome D. Catanzaro, CATANZARO & ROSENBERGER, Waverly, Ohio, for Appellee.

n1 At trial Appellants Smouse and Appellants McRoberts had different counsel. However, Appellants McRoberts trial counsel took office as judge on the Pike County Court of Common Pleas and withdrew from the case. All Appellants now have the same counsel for appeal.

JUDGES: BY: Roger L. Kline. BY: Matthew W. McFarland. Abele, P.J.: Not Participating. Kline, J. & McFarland, J.: Concur in Judgment and Opinion.

OPINION:

DECISION AND JUDGMENT ENTRY

Per Curiam:

[*P1] Defendants-Appellants appeal the Pike County Court of Common Pleas judgment in favor of Appellee's property boundary claims. Appellants argue that the trial court erred when it denied their timely filed motions for separately stated findings of fact and conclusions of law. Because we find that the trial court's judgment entry did not contain sufficient findings of fact and conclusions of law, we agree. Appellants also argue that the trial court erred when it attached evidence outside the record to its judgment [**2] entry. Because we find that the evidence attached to the entry was not introduced at trial, and was actually prepared after trial, we agree. Accordingly, we reverse the judgment and remand this cause for further proceedings consistent with this opinion.

I.

[*P2] Appellee filed a complaint alleging that she owned two tracts of land situated in Union Township, Pike County, Ohio. She alleged that Appellants Robert and Phyllis Smouse (hereinafter "Appellants Smouse") received a remainder interest in a 79-acre tract, which included Appellee's two tracts of land. Appellants Smouse then divided their acre tract, retained a portion belonging to Appellee, and transferred a portion, which Appellee also owned, to Appellants Myron and Roseanna McRoberts (hereinafter "Appellants McRoberts").

[*P3] The trial court held a hearing on this matter on April 15-16, 2003, and on August 15, 2003. At the hearing, Appellee submitted surveys arranged by Henry, Crabtree & Smith, which were generally dated in April 2003.

[*P4] On January 3, 2004, the trial court filed its judgment entry finding in Appellee's favor. Appellee's attorney submitted that entry and it bears his signature, as well [**3] as the trial judge's signature. Attached to the entry are four surveys prepared by Humbert M. Crabtree. Mr. Crabtree signed and dated these surveys on March 10, 2004, almost seven months after the last hearing date.

[*P5] In its judgment entry, the trial court entered a general judgment and issued seven specific orders, which declared title belonged to Appellee and set forth the boundary line. The entry is devoid of any findings of fact

or conclusions of law, except that it generally refers to the attached surveys and recorded deeds.

[*P6] On January 7, 2005, Appellants McRoberts filed a motion requesting that the trial court issue separate findings of fact and conclusions of law pursuant to Civ.R. 52. The memorandum accompanying the motion expressly drew the court's attention to its reliance on surveys not introduced at trial, and apparently prepared well after the hearing. Appellants Smouse filed a similar motion on January 10, 2005. The trial court denied both motions on the basis that its judgment entry contained sufficient findings of fact and conclusions of law.

[*P7] Appellants Smouse and McRoberts appeal and assign the following assignments [**4] of error:

[*P8] "[I.] THE TRIAL COURT ERRED WHEN IT FAILED TO STATE IN WRITING THE CONCLUSIONS OF FACT FOUND SEPARATELY FROM THE CONCLUSIONS OF LAW WHEN TIMELY REQUESTED TO DO SO IN WRITING BY THE DEFENDANTS."

[*P9] "[II.] THE TRIAL COURT ERRED WHEN IT ADOPTED INTO ITS JUDGMENT ENTRY EVIDENCE AND DOCUMENTS THAT WERE PREPARED AND FILED BY COUNSEL FOR PLAINTIFF SUBSEQUENT TO THE LAST HEARING IN THIS CASE. [III.] THE JUDGMENT ENTRY OF JANUARY 3, 2005 IS UNSUPPORTED BY OR IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II.

[*P10] Before we address Appellants' assignments of error, we must deal with a threshold issue. Appellee argues that Appellants failed to comply with App.R. 16(A)(6) by failing to provide a statement of facts in their appellate brief. Appellee urges this court to dismiss the appeal for this error.

[*P11] [HN1] It is within our judicial discretion to dismiss an appeal for a party's failure to comply with the Appellate Rules. *DeHart v. Aetna Life Ins. Co.* (1982), 69 Ohio St.2d 189, 431 N.E.2d 644. Judicial discretion is defined as "the option which a judge may exercise between the doing and not doing of a thing which [**5] cannot be demanded as an absolute legal right, guided by the spirit, principles, and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case." *Id.*, quoting *Krupp v. Poor* (1970), 24 Ohio St.2d 123, 265 N.E.2d 268, paragraph two of the syllabus. We must carefully and cautiously exercise this discretion before dismissing a case on purely procedural grounds. *Id.*

[*P12] Here, Appellants failed to include a statement of facts as required by App.R. 16(A)(6). However, "it is a fundamental tenet of judicial review in Ohio that courts should decide cases on the merits." *DeHart*, supra, at 192, citing *Cobb v. Cobb* (1980), 62 Ohio St.2d 124, 403 N.E.2d 991. Because we can sufficiently discern the facts supporting Appellants' assignments of error from the record, we reject Appellee's request for dismissal and proceed to the merits of this appeal.

III.

[*P13] In Appellants' first assignment of error, they argue that the trial court erred by overruling their motions requesting separate findings of fact and conclusions of law. Appellee argues that [**6] Civ.R. 52 only applies to cases in which the trial court immediately renders a verbal judgment at the conclusion of a hearing.

[*P14] Civ.R. 52 provides, in pertinent part: [HN2] "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ.R. 58, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law."

[*P15] [HN3] The purpose of separately stating findings of fact and conclusions of law is to create a record that enables a reviewing court to give meaningful review. *Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 2005 Ohio 1835, 828 N.E.2d 153, at P22. (Citations omitted.) Civ.R. 52 expressly provides that an opinion or memorandum of decision that contains separate findings of fact and conclusions of law may satisfy its requirements. [**7] *Mahlerwein*, supra, at P22; *Cunningham*, supra, at P25. A trial court's decision reciting various facts and a legal conclusion satisfies the requirements of Civ.R. 52 when, taken together with other parts of the trial court's record, the decision forms an adequate basis upon which to decide the legal issue presented upon appeal. *Stone v. Davis* (1981), 66 Ohio St.2d 74, 85, 419 N.E.2d 1094; *In re Schoeppner* (1976), 46 Ohio St.2d 21, 23, 345 N.E.2d 608. A trial court's failure to comply with Civ.R. 52 is reversible error. *Mahlerwein*, supra, at P22, citing *In re Adoption of Gibson*, 23 Ohio St.3d 170, 172, 23 Ohio B. 336, 492 N.E.2d 146.

[*P16] Here, the trial court's judgment entry acted as a general judgment in favor of the prevailing party. The entry did not include findings of fact separate from its conclusions of law. Appellants' timely filed their Civ.R. 52 motions, and were entitled to have the trial court comply with their request. The trial court's ruling that it had already sufficiently provided separate findings

of fact and conclusions of law is simply erroneous. Its judgment is general in nature. The only [**8] evidence the trial court cited for its decision was the surveys it attached to its judgment. However, these surveys were not formally part of the record and the trial court did not explain how they became included in the record.

[*P17] We disagree with Appellee's argument that Civ.R. 52 is only meant for cases in which a trial court verbally enters judgment immediately following closing arguments at the hearing. The plain language of the Rule fails to support this argument. Also, Appellee fails to cite any precedent in support of this argument, and our review of Ohio case law has found none.

[*P18] Appellants request that this court issue relief in the form of an order for a new trial pursuant to Civ.R. 63(B). The basis for this request is that the trial judge who presided over this case is no longer on the Pike County Court of Common Pleas. The current judge in that court is Appellants McRoberts' trial counsel. Appellants argue that because the trial court judge has a conflict of interest, the only proper form of relief is an order for a new trial. We disagree.

[*P19] Civ.R. 63(B) provides: [HN4] "If [**9] for any reason the judge before whom an action has been tried is unable to perform the duties to be performed by the court after a verdict is returned or findings of fact and conclusions of law are filed, another judge designated by the administrative judge, or in the case of a single-judge division by the Chief Justice of the Supreme Court, may perform those duties; but if such other judge is satisfied that he cannot perform those duties, he may in his discretion grant a new trial."

[*P20] The proper relief in this case is a reversal and a remand for further proceedings consistent with this opinion. If the judge presiding over the Pike County Court of Common Pleas has a conflict of interest, which we believe he does, he can recuse himself and a visiting judge can be appointed to hear the case. If the visiting judge cannot perform the duty of providing separate findings of fact and conclusions of law, he or she can then grant a new trial pursuant to Civ.R. 63(B). Accordingly, we sustain Appellants' first assignment of error, but reject their claim for a new trial as relief.

II.

[*P21] In Appellants' second assignment of error, they argue that the [**10] trial court erred when it adopted into its judgment entry exhibits that Appellee failed to introduce at trial, and which were prepared after trial. Specifically, Appellants contend that they were not permitted the opportunity to review, cross-examine, and challenge these exhibits. Appellee argues that: (1) Appellants failed to cite any legal authority for this assignment

of error; (2) Appellants cannot cross-examine a judgment entry; and (3) the exhibits support her claim of adverse possession.

[*P22] We first address Appellee's argument that Appellants failed to assign any legal authority in support of this assigned error. [HN5] App.R. 12(A)(2) provides that a reviewing court *may* disregard an assignment of error if the party asserting it fails to cite any legal authority in support. However, application of this rule is discretionary. As we noted above, [HN6] it is a fundamental tenet of Ohio law that reviewing courts dispose of cases on their merits, rather than on procedural technicalities. Here, the error claimed is so fundamentally egregious to our Rules of Evidence, that we reject Appellee's request and proceed to consider the merits of the assigned error. [**11]

[*P23] Our review of the record shows that the exhibits attached to the judgment entry were prepared in March 2004, almost seven months after the hearing. While Appellee did introduce surveys into evidence at trial, those surveys do not appear to be identical to the ones attached to the judgment entry. Interestingly, Appellee's attorney prepared and submitted the judgment entry at issue.

[*P24] Because this evidence was not presented at the hearing, it is not properly part of the record. Appellants had a right to examine and question this evidence at trial. Instead, this evidence was surreptitiously placed before the trial court in a judgment entry proposal. We find that the trial court erred by attaching evidence outside the record to its judgment entry.

[*P25] We note that it is possible that the trial court attached these exhibits to serve as a legal description accompanying the trial court's order. In *Martin v. Schaad*, Washington App. No. 02CA65, 2004 Ohio 124, we found that surveys not admitted into evidence, but prepared *after* the trial court issued its order defining a property boundary, merely serve as legal descriptions of that order [**12] for recording purposes. *Id.* at P2.

[*P26] The case at bar is distinguishable from *Martin*. Here, the trial court's order defining the property boundary line and adoption of the surveys were contemporaneous. Also, the surveys were actually prepared ten months prior to the trial court's judgment. Thus, it is difficult to discern whether the trial court actually relied on these surveys as evidence in issuing its order, or merely used the surveys as a legal description of a judgment rendered on the evidence actually admitted at trial. This serves as a reminder that separate findings of fact and conclusions of law can be very necessary for meaningful and fair appellate review. Given the background of this case, and the trial court's failure to issue separate findings of fact and conclusions of law, we find that the at-

tachment of these surveys constitutes consideration of evidence outside of the record.

[*P27] Appellee contends that Appellants' argument is fallible because a judgment entry cannot be cross-examined. However, Appellants are not arguing that they were denied an opportunity to cross-examine the actual judgment entry. Instead, they assert that they had the right [**13] to *review and cross-examine the evidence attached to the judgment entry.*

[*P28] Appellee also makes a tenuous argument that because the exhibits support her case the trial court did not err when it attached them to its judgment entry. This argument ignores our Rules of Evidence. We reject it without further review.

[*P29] Accordingly, we sustain Appellants' second assignment of error.

III.

[*P30] In their third assignment of error, Appellants' argue that the judgment is against the manifest weight of the evidence. Based on our previous dispositions, we find this assignment moot and decline to address it.

[*P31] In conclusion, we find that the trial court erred when it failed to grant Appellants' Civ.R. 52 motions. We also find that the trial court erred when it attached evidence outside of the record to its judgment entry. Accordingly, we reverse the trial court's judgment and remand this cause for further proceedings consistent with this opinion.

JUDGMENT REVERSED AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE REVERSED and the cause remanded to the trial court for further proceedings consistent [**14] with this opinion and that the Appellants recover of Appellee costs herein be taxed.

The Court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this Entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, P.J.: Not Participating.
Kline, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court,

BY: Roger L. Kline

BY: Matthew W. McFarland

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

91-LW-3916 (9th)

STATE OF OHIO, Plaintiff-Appellee
v.
PAUL W. GREER, Defendant-Appellant

C. A. NO. 14696
9th District Court of Appeals of Ohio, Summit County.
Decided on February 20, 1991.

DECISION AND JOURNAL ENTRY

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

QUILLIN, P. J.

Defendant-appellant, Paul W. Greer, appeals the denial of his petition for post-conviction relief from his conviction on two counts of aggravated murder, R.C. 2903.01(A) and R.C. 2903.01(B), with a death penalty specification, and one count of aggravated robbery R.C. 2911.01(A)(1). Because the trial court made insufficient findings of fact and conclusions of law, we reverse and remand so that the trial court may enter proper findings and conclusions or proceed to a hearing.

On November 15, 1989, Greer filed a petition for post-conviction relief asserting twenty-eight causes of action. On June 22, 1990, the trial court dismissed Greer's petition with the following order:

"THIS DAY, to-wit: The 22nd day of June, A.D., 1990, this matter is before the Court on Defendant's petition to vacate or set aside sentence pursuant to P.C. 2953.21 and on Plaintiff's Motion to dismiss and on the various supplemental documents submitted by each party.

"Upon consideration the court denies Defendant's request for hearing. Further, Defendant's petition for post-conviction relief is DENIED on the basis of res judicata. See, state ex rel. Carrion v. Harris (1988): 40 Ohio St. 19. Defendant has raised issues which either were, or could have been raised in his previous appeals.

"It is so ORDERED."

Greer now appeals.

Assignments of Error

"I The trial court erred in summarily dismissing appellant Greer's post-conviction petition without according him an evidentiary hearing.

"II. Appellant Greer was denied the effective assistance of counsel at his capital trial in violation of the Fifth, sixth, Eighth and Fourteenth Amendments to the United States Constitution and Sections 9, 10 and 16, Article I of the Ohio Constitution.

"III. The excusal of two black prospective jurors for cause by the trial judge and the use of two peremptory challenges by the prosecution on two black prospective jurors

- 91-LW-3916 (9th)

violated Mr. Greer's right of due process, equal protection and right against cruel and unusual punishment as guaranteed by the Fifth, sixth, Eighth and fourteenth Amendments of the United States Constitution and Sections 2, 5, 9, 10 and 16, Article I of the Ohio Constitution.

"IV The trial court erred by refusing to permit appellant Greer's expert to examine certain physical evidence.

"V. The trial court's appointment of a psychologist who considers only one of seven statutory mitigating factors violates an indigent defendant's right of due process, equal protection, assistance of counsel and right against cruel and unusual punishment as guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and Sections 2, 9, 10 and 16, Article I of the Ohio Constitution.

"VI. Mr. Greer received ineffective assistance of counsel on his direct appeals.

"VII. The trial court should have appointed an independent expert to examine the physical evidence.

"VIII. Mr. Greer's death penalty is in violation of international law and Article VI of the United States Constitution.

"IX. The trial court erred in issuing no findings of fact and conclusions of law in regard to appellant Greer's petition for post-conviction relief.

"X. The trial court erred in failing to grant appellant Greer's motion to incorporate prior proceedings at trial and appellate stages.

R.C. 2953:21 sets forth the procedure to be followed by trial courts when considering a petition for post-conviction relief:

"(C) Before granting a hearing, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition to the petition and supporting affidavits, all the files and records pertaining to the proceedings against the petitioner, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. Such court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal.

"(E) Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues, hold the hearing, and make and file written findings of fact and conclusions of law upon entering judgment.***."

In all cases where the trial court dismisses a petition for post-conviction relief, the court is required to make and file findings of fact and conclusions of law with respect to such dismissal. R.C. 2953.21(C).

The importance of the findings of fact and conclusions of law was emphasized in State v. Mapson (1982), 1 Ohio St. 3d 217, 219:

"This court's holding that findings fact and conclusions of law are part and parcel of a judgment denying post-conviction relief fosters the orderliness of this process.

"Important policy considerations also underlie this decision. The obvious reasons for requiring findings are '*** to apprise petitioner of the grounds for the judgment of the trial court and to enable the appellate courts to properly determine appeals in such a cause.' Jones v. State (1966), 8 Ohio St. 2d 21, 22 [37 O.O. 2d 357]. The existence of findings and conclusions are essential in order to prosecute an appeal. Without them, a petitioner knows no more than he lost and hence is effectively precluded from making a reasoned appeal. In addition, the failure of a trial judge to make the requisite findings prevents any meaningful judicial review, for it is the findings and the conclusions which an appellate court reviews for error.

"This court noted in Lester, at page 56, that the general purpose of P.C. 2953.21 is to provide judicial review of the allegations raised in a prisoner's petition, in order to provide a remedy for violation of constitutional rights.' In order for this purpose to remain meaningful and viable, findings must be held to be a necessary and essential part of a judgment denying post-conviction relief ."

In the present case, Greer's petition for post-conviction relief alleged twenty-eight causes of action. The trial court's curt order dismissed the entire petition on the basis of res judicata citing State, ex rel Carrion, v. Harris (1988), 40 Ohio St. 3d 19.

In Carrion, the Ohio Supreme Court held that a terse order, such as that before us, was sufficient in that case to defeat a mandamus action to compel the trial court to issue findings of fact and conclusions of law as required by R.C. 2953.21(C). There is a significant difference, however, between findings of fact and conclusions of law which are sufficient to make an order final and thus immune from a mandamus action, and findings and conclusions which are erroneous and thus reversible on direct appeal.

Where there has been a direct appeal of a conviction, followed by a petition for post-conviction relief, a trial court must resist the natural urge to summarily dismiss the petition on res judicata grounds.

In the present case, there are claims of trial error which are clearly barred by res judicata (e.g. faulty jury instructions). Likewise there are claims of error which are clearly not barred by res judicata (e.g. ineffective appellate counsel. Manning v. Alexander (C.A. 6, 1990), 912 F. 2d 878).

Furthermore, Greer has attempted to blunt the res judicata defense to many of the alleged trial errors by claiming ineffective assistance of trial and appellate counsel, and by alleging facts dehors the record of the first trial. See State v. Cooperrider (1983), 4 Ohio St. 3d 226, 228.

The trial court failed to address all the causes of action alleged by Greer. The better practice, and the most time conserving in the long run, is for the trial court to address each cause of action alleged by a petitioner. This practice will tend to avoid the pitfalls illustrated in Mapson, supra.

The judgment is reversed and the cause remanded for further consideration by the trial court.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this court, directing the County of Summit Common Pleas Court to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to appellee. Exceptions.

CACIOPPO, J. REECE, J. CONCUR

LYNN SLABY, Prosecuting Attorney, City-County Safety Bldg., Akron, OH 44308 for Plaintiff.

SCOTT Z. JELEN and WILLIAM S. LAZAROW, Asst. Public Defenders, 8 E. Long St., 11th Floor, Columbus, OH 43266 for Defendant.

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§ 2307.91. Definitions.

As used in sections 2307.91 to 2307.96 of the Revised Code:

(A) "AMA guides to the evaluation of permanent impairment" means the American medical association's guides to the evaluation of permanent impairment (fifth edition 2000) as may be modified by the American medical association.

(B) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these minerals that have been chemically treated or altered.

(C) "Asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos.

(D) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(E) "Board-certified internist" means a medical doctor who is currently certified by the American board of internal medicine.

(F) "Board-certified occupational medicine specialist" means a medical doctor who is currently certified by the American board of preventive medicine in the specialty of occupational medicine.

(G) "Board-certified oncologist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of medical oncology.

(H) "Board-certified pathologist" means a medical doctor who is currently certified by the American board of pathology.

(I) "Board-certified pulmonary specialist" means a medical doctor who is currently certified by the American board of internal medicine in the subspecialty of pulmonary medicine.

(J) "Certified B-reader" means an individual qualified as a "final" or "B-reader" as defined in 42 C.F.R. section 37.51(b), as amended.

(K) "Certified industrial hygienist" means an industrial hygienist who has attained the status of diplomate of the American academy of industrial hygiene subject to compliance with requirements established by the American board of industrial hygiene.

(L) "Certified safety professional" means a safety professional who has met and continues to meet all requirements established by the board of certified safety professionals and is authorized by that board to use the certified safety professional title or the CSP designation.

(M) "Civil action" means all suits or claims of a civil nature in a state or federal court, whether cognizable as cases at law or in equity or admiralty. "Civil action" does not include any of the

following:

- (1) A civil action relating to any workers' compensation law;
 - (2) A civil action alleging any claim or demand made against a trust established pursuant to 11 U.S.C. section 524(g);
 - (3) A civil action alleging any claim or demand made against a trust established pursuant to a plan of reorganization confirmed under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Chapter 11.
- (N) "Exposed person" means any person whose exposure to asbestos or to asbestos-containing products is the basis for an asbestos claim under section 2307.92 of the Revised Code.
- (O) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.
- (P) "FVC" means forced vital capacity that is maximal volume of air expired with maximum effort from a position of full inspiration.
- (Q) "ILO scale" means the system for the classification of chest x-rays set forth in the international labour office's guidelines for the use of ILO international classification of radiographs of pneumoconioses (2000), as amended.
- (R) "Lung cancer" means a malignant tumor in which the primary site of origin of the cancer is inside the lungs, but that term does not include mesothelioma.
- (S) "Mesothelioma" means a malignant tumor with a primary site of origin in the pleura or the peritoneum, which has been diagnosed by a board-certified pathologist, using standardized and accepted criteria of microscopic morphology and appropriate staining techniques.
- (T) "Nonmalignant condition" means a condition that is caused or may be caused by asbestos other than a diagnosed cancer.
- (U) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies and that there is no other more likely explanation for the presence of the fibrosis.
- (V) "Physical impairment" means a nonmalignant condition that meets the minimum requirements specified in division (B) of section 2307.92 of the Revised Code, lung cancer of an exposed person who is a smoker that meets the minimum requirements specified in division (C) of section 2307.92 of the Revised Code, or a condition of a deceased exposed person that meets the minimum requirements specified in division (D) of section 2307.92 of the Revised Code.
- (W) "Plethysmography" means a test for determining lung volume, also known as "body plethysmography," in which the subject of the test is enclosed in a chamber that is equipped to measure pressure, flow, or volume changes.
- (X) "Predicted lower limit of normal" means the fifth percentile of healthy populations based on age, height, and gender, as referenced in the AMA guides to the evaluation of permanent impairment.
- (Y) "Premises owner" means a person who owns, in whole or in part, leases, rents, maintains, or controls

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privately owned lands, ways, or waters, or any buildings and structures on those lands, ways, or waters, and all privately owned and state-owned lands, ways, or waters leased to a private person, firm, or organization, including any buildings and structures on those lands, ways, or waters.

(Z) "Competent medical authority" means a medical doctor who is providing a diagnosis for purposes of constituting prima-facie evidence of an exposed person's physical impairment that meets the requirements specified in section 2307.92 of the Revised Code and who meets the following requirements:

(1) The medical doctor is a board-certified internist, pulmonary specialist, oncologist, pathologist, or occupational medicine specialist.

(2) The medical doctor is actually treating or has treated the exposed person and has or had a doctor-patient relationship with the person.

(3) As the basis for the diagnosis, the medical doctor has not relied, in whole or in part, on any of the following:

(a) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition in violation of any law, regulation, licensing requirement, or medical code of practice of the state in which that examination, test, or screening was conducted;

(b) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that was conducted without clearly establishing a doctor-patient relationship with the claimant or medical personnel involved in the examination, test, or screening process;

(c) The reports or opinions of any doctor, clinic, laboratory, or testing company that performed an examination, test, or screening of the claimant's medical condition that required the claimant to agree to retain the legal services of the law firm sponsoring the examination, test, or screening.

(4) The medical doctor spends not more than twenty-five per cent of the medical doctor's professional practice time in providing consulting or expert services in connection with actual or potential tort actions, and the medical doctor's medical group, professional corporation, clinic, or other affiliated group earns not more than twenty per cent of its revenues from providing those services.

(AA) "Radiological evidence of asbestosis" means a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as at least 1/1 on the ILO scale.

(BB) "Radiological evidence of diffuse pleural thickening" means a chest x-ray showing bilateral pleural thickening graded by a certified B-reader as at least B2 on the ILO scale and blunting of at least one costophrenic angle.

(CC) "Regular basis" means on a frequent or recurring basis.

(DD) "Smoker" means a person who has smoked the equivalent of one-pack year, as specified in the written report of a competent medical authority pursuant to sections 2307.92 and 2307.93 of the Revised Code, during the last fifteen years.

(EE) "Spirometry" means the measurement of volume of air inhaled or exhaled by the lung.

(FF) "Substantial contributing factor" means both of the following:

(1) Exposure to asbestos is the predominate cause of the physical impairment alleged in the asbestos claim.

(2) A competent medical authority has determined with a reasonable degree of medical certainty that without the asbestos exposures the physical impairment of the exposed person would not have occurred.

(GG) "Substantial occupational exposure to asbestos" means employment for a cumulative period of at least five years in an industry and an occupation in which, for a substantial portion of a normal work year for that occupation, the exposed person did any of the following:

(1) Handled raw asbestos fibers;

(2) Fabricated asbestos-containing products so that the person was exposed to raw asbestos fibers in the fabrication process;

(3) Altered, repaired, or otherwise worked with an asbestos-containing product in a manner that exposed the person on a regular basis to asbestos fibers;

(4) Worked in close proximity to other workers engaged in any of the activities described in division (GG)(1), (2), or (3) of this section in a manner that exposed the person on a regular basis to asbestos fibers.

(HH) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of the inert and insoluble gas in the lung is then compared to the concentration of that type of gas in the spirometer.

(II) "Tort action" means a civil action for damages for injury, death, or loss to person. "Tort action" includes a product liability claim that is subject to sections 2307.71 to 2307.80 of the Revised Code. "Tort action" does not include a civil action for damages for a breach of contract or another agreement between persons.

(JJ) "Total lung capacity" means the volume of air contained in the lungs at the end of a maximal inspiration.

(KK) "Veterans' benefit program" means any program for benefits in connection with military service administered by the veterans' administration under title 38 of the United States Code.

(LL) "Workers' compensation law" means Chapters 4121., 4123., 4127., and 4131. of the Revised Code.

HISTORY: 150 v H 292, § 1, eff. 9-2-04.

The provisions of §§ 3 and 4, H.B. 292 (150 v -), read as follows:

SECTION 3. * * * (B) In enacting sections 2307.91 to 2307.98 of the Revised Code, it is the intent of the General Assembly to: (1) give priority to those asbestos claimants who can demonstrate actual physical harm or illness caused by exposure to asbestos; (2) fully preserve the rights of claimants who were exposed to asbestos to pursue compensation should those claimants become impaired in the future as a result of such exposure; (3) enhance the ability of the state's judicial systems and federal judicial systems to supervise and control litigation and asbestos-related bankruptcy proceedings; and (4) conserve the scarce resources of the defendants to allow compensation of cancer victims and others who are physically impaired by exposure to asbestos while securing

the right to similar compensation for those who may suffer physical impairment in the future.

SECTION 4. (A) As used in this section, "asbestos," "asbestos claim," "exposed person," and "substantial contributing factor" have the same meanings as in section 2307.91 of the Revised Code.

(B) The General Assembly acknowledges the Supreme Court's authority in prescribing rules governing practice and procedure in the courts of this state, as provided by Section 5 of Article IV of the Ohio Constitution.

(C) The General Assembly hereby requests the Supreme Court to adopt rules to specify procedures for venue and consolidation of asbestos claims brought pursuant to sections 2307.91 to 2307.95 of the Revised Code.

(D) With respect to procedures for venue in regard to asbestos claims, the General Assembly hereby requests the Supreme Court to adopt a rule that requires that an asbestos claim meet specific nexus requirements, including the requirement that the plaintiff be domiciled in Ohio or that Ohio is the state in which the plaintiff's exposure to asbestos is a substantial contributing factor.

(E) With respect to procedures for consolidation of asbestos claims, the General Assembly hereby requests the Supreme Court to adopt a rule that permits consolidation of asbestos claims only with the consent of all parties, and in absence of that consent, permits a court to consolidate for trial only those asbestos claims that relate to the same exposed person and members of the exposed person's household.

§ 2307.92. Minimum medical requirements for tort action alleging asbestos claim.

(A) For purposes of section 2305.10 and sections 2307.92 to 2307.95 of the Revised Code, "bodily injury caused by exposure to asbestos" means physical impairment of the exposed person, to which the person's exposure to asbestos is a substantial contributing factor.

(B) No person shall bring or maintain a tort action alleging an asbestos claim based on a nonmalignant condition in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.93 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to asbestos is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(1) Evidence verifying that a competent medical authority has taken a detailed occupational and exposure history of the exposed person from the exposed person or, if that person is deceased, from the person who is most knowledgeable about the exposures that form the basis of the asbestos claim for a nonmalignant condition, including all of the following:

(a) All of the exposed person's principal places of employment and exposures to airborne contaminants;

(b) Whether each principal place of employment involved exposures to airborne contaminants, including, but not limited to, asbestos fibers or other disease causing dusts, that can cause pulmonary impairment and, if that type of exposure is involved, the general nature, duration, and general level of the exposure.

(2) Evidence verifying that a competent medical authority has taken a detailed medical and smoking history of the exposed person, including a thorough review of the exposed person's past and present medical problems and the most probable causes of those medical problems;

(3) A diagnosis by a competent medical authority, based on a medical examination and pulmonary function testing of the exposed person, that all of the following apply to the exposed person:

(a) The exposed person has a permanent respiratory impairment rating of at least class 2 as defined by and evaluated pursuant to the AMA guides to the evaluation of permanent impairment.

(b) Either of the following:

(i) The exposed person has asbestosis or diffuse pleural thickening, based at a minimum on radiological or pathological evidence of asbestosis or radiological evidence of diffuse pleural thickening. The asbestosis or diffuse pleural thickening described in this division, rather than solely chronic obstructive pulmonary disease, is a substantial contributing factor to the exposed person's physical impairment, based at a minimum on a determination that the exposed person has any of the following:

(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal;

(III) A chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader at least 2/1 on the ILO scale.

(ii) If the exposed person has a chest x-ray showing small, irregular opacities (s, t) graded by a certified B-reader as only a 1/0 on the ILO scale, then in order to establish that the exposed person has asbestosis, rather than solely chronic obstructive pulmonary disease, that is a substantial contributing factor to the exposed person's physical impairment the plaintiff must establish that the exposed person has both of the following:

(I) A forced vital capacity below the predicted lower limit of normal and a ratio of FEV1 to FVC that is equal to or greater than the predicted lower limit of normal;

(II) A total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal.

(C) (1) No person shall bring or maintain a tort action alleging an asbestos claim based upon lung cancer of an exposed person who is a smoker, in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.93 of the Revised Code, that the exposed person has a physical impairment, that the physical impairment is a result of a medical condition, and that the person's exposure to asbestos is a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(a) A diagnosis by a competent medical authority that the exposed person has primary lung cancer and that exposure to asbestos is a substantial contributing factor to that cancer;

(b) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the exposed person's first exposure to asbestos until the date of diagnosis of the exposed person's primary lung cancer. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Either of the following:

(i) Evidence of the exposed person's substantial occupational exposure to asbestos;

(ii) Evidence of the exposed person's exposure to asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information about the exposed person's occupational history and history of exposure to asbestos.

(2) If a plaintiff files a tort action that alleges an asbestos claim based upon lung cancer of an exposed person who is a smoker, alleges that the plaintiff's exposure to asbestos was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (C)(1)(c) of this section, and alleges that the plaintiff lived with the other person for the period of time specified in division (GG) of section 2307.91 of the Revised Code, the plaintiff is considered as having satisfied the requirements specified in division (C)(1)(c) of this section.

(D) (1) No person shall bring or maintain a tort action alleging an asbestos claim that is based upon a wrongful death, as described in section 2125.01 of the Revised Code of an exposed person in the absence of a prima-facie showing, in the manner described in division (A) of section 2307.93 of the Revised Code, that the death of the exposed person was the result of a physical impairment, that the death and physical impairment were a result of a medical condition, and that the deceased person's

exposure to asbestos was a substantial contributing factor to the medical condition. That prima-facie showing shall include all of the following minimum requirements:

(a) A diagnosis by a competent medical authority that exposure to asbestos was a substantial contributing factor to the death of the exposed person;

(b) Evidence that is sufficient to demonstrate that at least ten years have elapsed from the date of the deceased exposed person's first exposure to asbestos until the date of diagnosis or death of the deceased exposed person. The ten-year latency period described in this division is a rebuttable presumption, and the plaintiff has the burden of proof to rebut the presumption.

(c) Either of the following:

(i) Evidence of the deceased exposed person's substantial occupational exposure to asbestos;

(ii) Evidence of the deceased exposed person's exposure to asbestos at least equal to 25 fiber per cc years as determined to a reasonable degree of scientific probability by a scientifically valid retrospective exposure reconstruction conducted by a certified industrial hygienist or certified safety professional based upon all reasonably available quantitative air monitoring data and all other reasonably available information about the deceased exposed person's occupational history and history of exposure to asbestos.

(2) If a person files a tort action that alleges an asbestos claim based on a wrongful death, as described in section 2125.01 of the Revised Code, of an exposed person, alleges that the death of the exposed person was the result of living with another person who, if the tort action had been filed by the other person, would have met the requirements specified in division (D)(1)(c) of this section, and alleges that the exposed person lived with the other person for the period of time specified in division (GG) of section 2307.91 of the Revised Code in order to qualify as a substantial occupational exposure to asbestos, the exposed person is considered as having satisfied the requirements specified in division (D)(1)(c) of this section.

(3) No court shall require or permit the exhumation of a decedent for the purpose of obtaining evidence to make, or to oppose, a prima-facie showing required under division (D)(1) or (2) of this section regarding a tort action of the type described in that division.

(E) No prima-facie showing is required in a tort action alleging an asbestos claim based upon mesothelioma.

(F) Evidence relating to physical impairment under this section, including pulmonary function testing and diffusing studies, shall comply with the technical recommendations for examinations, testing procedures, quality assurance, quality control, and equipment incorporated in the AMA guides to the evaluation of permanent impairment and reported as set forth in 20 C.F.R. Pt. 404, Subpt. P, App. 1, Part A, Sec. 3.00 E. and F., and the interpretive standards set forth in the official statement of the American thoracic society entitled "lung function testing: selection of reference values and interpretive strategies" as published in American review of respiratory disease, 1991:144:1202-1218.

(G) All of the following apply to the court's decision on the prima-facie showing that meets the requirements of division (B), (C), or (D) of this section:

(1) The court's decision does not result in any presumption at trial that the exposed person has a physical impairment that is caused by an asbestos-related condition.

(2) The court's decision is not conclusive as to the liability of any defendant in the case.

(3) The court's findings and decisions are not admissible at trial.

(4) If the trier of fact is a jury, the court shall not instruct the jury with respect to the court's decision on the prima-facie showing, and neither counsel for any party nor a witness shall inform the jury or potential jurors of that showing.

HISTORY: 150 v H 292, § 1, eff. 9-2-04.

See provisions, §§ 3 and 4, H.B. 292 (150 v -), following RC § 2307.91.

§ 2307.93. Filing of prima-facie evidence; challenge by defendant; administrative dismissal without prejudice.

(A) (1) The plaintiff in any tort action who alleges an asbestos claim shall file, within thirty days after filing the complaint or other initial pleading, a written report and supporting test results constituting prima-facie evidence of the exposed person's physical impairment that meets the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code, whichever is applicable. The defendant in the case shall be afforded a reasonable opportunity, upon the defendant's motion, to challenge the adequacy of the proffered prima-facie evidence of the physical impairment for failure to comply with the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code. The defendant has one hundred twenty days from the date the specified type of prima-facie evidence is proffered to challenge the adequacy of that prima-facie evidence. If the defendant makes that challenge and uses a physician to do so, the physician must meet the requirements specified in divisions (Z)(1), (3), and (4) of section 2307.91 of the Revised Code.

(2) With respect to any asbestos claim that is pending on the effective date of this section, the plaintiff shall file the written report and supporting test results described in division (A)(1) of this section within one hundred twenty days following the effective date of this section. Upon motion and for good cause shown, the court may extend the one hundred twenty-day period described in this division.

(3) (a) For any cause of action that arises before the effective date of this section, the provisions set forth in divisions (B), (C), and (D) of section 2307.92 of the Revised Code are to be applied unless the court that has jurisdiction over the case finds both of the following:

(i) A substantive right of a party to the case has been impaired.

(ii) That impairment is otherwise in violation of Section 28 of Article II, Ohio Constitution.

(b) If a finding under division (A)(3)(a) of this section is made by the court that has jurisdiction over the case, then the court shall determine whether the plaintiff has failed to provide sufficient evidence to support the plaintiff's cause of action or the right to relief under the law that is in effect prior to the effective date of this section.

(c) If the court that has jurisdiction of the case finds that the plaintiff has failed to provide sufficient evidence to support the plaintiff's cause of action or right to relief under division (A)(3)(b) of this section, the court shall administratively dismiss the plaintiff's claim without prejudice. The court shall maintain its jurisdiction over any case that is administratively dismissed under this division. Any plaintiff whose case has been administratively dismissed under this division may move to reinstate the plaintiff's case if the plaintiff provides sufficient evidence to support the plaintiff's cause of action or the right to relief under the law that was in effect when the plaintiff's cause of action arose.

(B) If the defendant in an action challenges the adequacy of the prima-facie evidence of the exposed person's physical impairment as provided in division (A)(1) of this section, the court shall determine from all of the evidence submitted whether the proffered prima-facie evidence meets the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code. The court shall resolve the issue of whether the plaintiff has made the prima-facie showing required by division (B), (C), or (D) of section 2307.92 of the Revised Code by applying the standard for resolving a motion for summary judgment.

(C) The court shall administratively dismiss the plaintiff's claim without prejudice upon a finding of failure to make the prima-facie showing required by division (B), (C), or (D) of section 2307.92 of the Revised Code. The court shall maintain its jurisdiction over any case that is administratively dismissed under this division. Any plaintiff whose case has been administratively dismissed under this division may move to reinstate the plaintiff's case if the plaintiff makes a prima-facie showing that meets the minimum requirements specified in division (B), (C), or (D) of section 2307.92 of the Revised Code.

HISTORY: 150 v H 292, § 1, eff. 9-2-04.

See provisions, §§ 3 and 4, H.B. 292 (150 v -), following RC § 2307.91.

§ 2505.02. Final order.

(A) As used in this section:

(1) "Substantial right" means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division (A)(3) of section 2307.93 of the Revised Code.

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action;

(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234 [2305.23.4], 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018 [5111.01.8], and the enactment of sections 2305.113 [2305.11.3], 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131 [2305.13.1], 2315.18, 2315.19, and 2315.21 of the Revised Code.

(C) When a court issues an order that vacates or sets aside a judgment or grants a new trial, the court, upon the request of either party, shall state in the order the grounds upon which the new trial is granted or the judgment vacated or set aside.

(D) This section applies to and governs any action, including an appeal, that is pending in any court on July 22, 1998, and all claims filed or actions commenced on or after July 22, 1998, notwithstanding any provision of any prior statute or rule of law of this state.

HISTORY: GC § 12223-2; 116 v 104; 117 v 615; 122 v 754; Bureau of Code Revision, 10-1-53; 141 v H 412 (Eff 3-17-87); 147 v H 394. Eff 7-22-98; 150 v H 342, § 1, eff. 9-1-04; 150 v H 292, § 1, eff. 9-2-04; 150 v S 187, § 1, eff. 9-13-04; 150 v H 516, § 1, eff. 12-30-04; 150 v S 80, § 1, eff. 4-7-05.

The provisions of § 6 of 151 v S 124 read as follows:

SECTION 6. It is the intent of the General Assembly in amending sections 101.23, 101.83, 101.84, 101.85, 101.86, 122.011, 122.40, 123.151, 149.56, 307.674, 340.02, 1501.04, 1502.04, 1502.05, 1502.11, 1502.12, 1506.30, 1506.34, 1506.35, 1517.02, 1517.23, 1518.01, 1518.03, 1551.35, 3358.10, 3375.61, 3375.62, 3383.01, 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.07, 3383.08, 3383.09, 3746.09, 3746.35, 3747.02, 3748.01, 3748.02, 3748.04, 3748.05, 3748.16, 3929.482, 3929.85, 3931.01, 3955.05, 3960.06, 4117.01, 4121.442, 4167.09, 4167.25, 4167.27, 4731.143, 4741.03, 4755.481, 4981.03, 5123.35, and 5123.352 of the Revised Code in this act to confirm the amendments to those sections and the resulting versions of those sections that took effect on December 30, 2004, in accordance with Section 10 of Am. Sub. H.B. 516 of the 125th General Assembly. It also is the intent of the General Assembly, in part, in amending Section 4 of Am. Sub. H.B. 516 of the 125th General Assembly in this act to confirm the text of that uncodified section of law as it took effect on December 30, 2004, in accordance with Section 10 of Am. Sub. H.B. 516 of the 125th General Assembly. This act does not affect, and shall not be construed as affecting, the other amendments, enactments, or repeals of codified or uncodified law made by Am. Sub. H.B. 516 of the 125th General Assembly which took effect on December 30, 2004, in accordance with Section 10 of that legislation, all of which it is the intent of the General Assembly to confirm in this act, including, but not limited to, the following amendments, enactments, or repeals pertaining to the implementation of the report of the Sunset Review Committee and related purposes set forth in Am. Sub. H.B. 516's title: the amendments to sections 122.133, 164.07, 1517.05, 2505.02, 3746.04, 3929.682, and 4582.12 of the Revised Code, the repeals of sections 122.09, 125.24, 149.32, 149.321, 149.322, 1502.10, 1506.37, 1517.03, 1517.04, 3354.161, 3355.121, 3357.161, 3375.47, 3746.08, 3747.04, 3747.05, 3747.06, 3747.061, 3747.07, 3747.08, 3747.09, 3747.10, 3747.11, 3747.12, 3747.13, 3747.14, 3747.15, 3747.16, 3747.17, 3747.18, 3747.19, 3747.20, 3747.21, 3747.22, 3748.09, 3929.71, 3929.72, 3929.721, 3929.73, 3929.75, 3929.76, 3929.77, 3929.78, 3929.79, 3929.80, 3929.81, 3929.82, 3929.83, 3929.84, 4121.443, 4167.26, 5101.93, 5119.81, 5119.82, and 5123.353 of the Revised Code, the enactments of uncodified law in its Sections 3, 6, 9, 10, 11, and 12, and the repeals of Section 6 of Am. Sub. S.B. 163 of the 124th General Assembly, Section 6 of Sub. S.B. 27 of the 124th General Assembly, Section 10 of Sub. H.B. 548 of the 123rd General Assembly, Section 3 of Am. H.B. 280 of the 121st General Assembly, Section 27 of Sub. H.B. 670 of the 121st General Assembly, Section 3 of Am. S.B. 208 of the 120th General Assembly, and Section 3 of Sub. H.B. 508 of the 119th General Assembly. The General Assembly, thus, further declares this section and the related provisions of Sections 1 and 3 of this act to be remedial legislation solely intended to confirm the operation on and after December 30, 2004, of the amendments, enactments, and repeals of codified and uncodified law made by Am. Sub. H.B. 516 of the 125th General Assembly.

The effective date is set by section 10 of H.B. 516 (150 v -).

The provisions of § 11 of H.B. 516 (150 v -) and § 7 of S.B. 80 (150 v -) both read as follows:

SECTION 11 [7]. Section 2505.02 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. H.B. 292, Am. Sub. H.B. 342, and Sub. S.B. 187 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Effect of Amendments

150 v S 80, effective April 7, 2005, added "or any changes ... of the Revised Code" to the end of (B)(6); and made

minor stylistic changes.

150 v H 516, effective December 30, 2004, corrected internal references.

150 v S 187, effective September 13, 2004, added (B)(6) and made related changes; and, in (D), specified the effective date twice.

150 v H 292, effective September 2, 2004, added "or prima-facie 2307.92 ... of the Revised Code" to the end of (A)(3); specified the effective date twice in (D); and made minor stylistic changes.

150 v H 342, effective September 1, 2004, added "or prima-facie 2307.85 ... of the Revised Code" to the end of (A)(3); specified the effective date twice in (D); and made minor stylistic changes.

Asbestos

think again.



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understanding asbestos

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Section 1:

The Asbestos Epidemic in America

The highly politicized controversy in Washington over asbestos litigation has overshadowed a quiet and directly related crisis in public health: an epidemic of asbestos-caused diseases in the United States that claims the life of one out of every 125 American men who die over the age of 50.

Ten thousand Americans die each year -- a rate approaching 30 deaths per day -- from diseases caused by asbestos, according to a detailed analysis of government mortality records and epidemiological studies by the EWG Action Fund. Asbestos kills thousands more people than skin cancer each year, and nearly the number that are slain in assaults with firearms. The suite of diseases linked to asbestos exposure overwhelmingly affect older men.

Deaths from Asbestos-related diseases

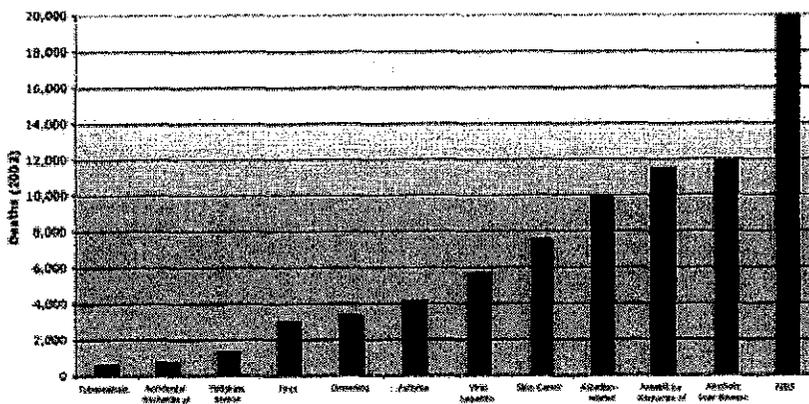
Disease	Number of deaths per year
Mesothelioma ¹	2,509
Asbestosis ²	1,398
Lung Cancer ³	4,800
Gastro-intestinal cancer ⁴	1,200
Total	9,907

Footnotes

documents, data, & maps

-  [document gallery](#)
the industry's own words
-  [asbestos deaths](#)
official government data
-  [people seeking justice](#)
those harmed deserve help
-  [contaminated places](#)
gov't priority exposure sites
-  [contaminated places](#)
where it was shipped

Asbestos-related deaths are at an epidemic scale in the United States

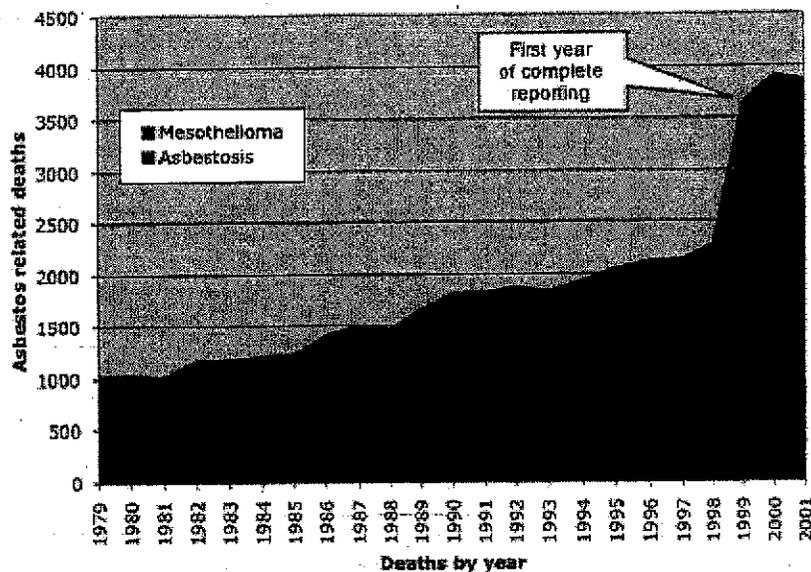


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Even more disturbing, deaths from asbestos in the United States appear to be increasing. Mesothelioma and asbestosis mortality rose steadily from 1979 through 1998. Asbestosis mortality, however, rose at more than three times the rate of mesothelioma, at 7.8 percent per year, compared to 2.3 percent annually for mesothelioma over the 24-year period 1979-2001.

Banner photograph © Bill Ravanesi
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Deaths From Asbestos Diseases are Increasing



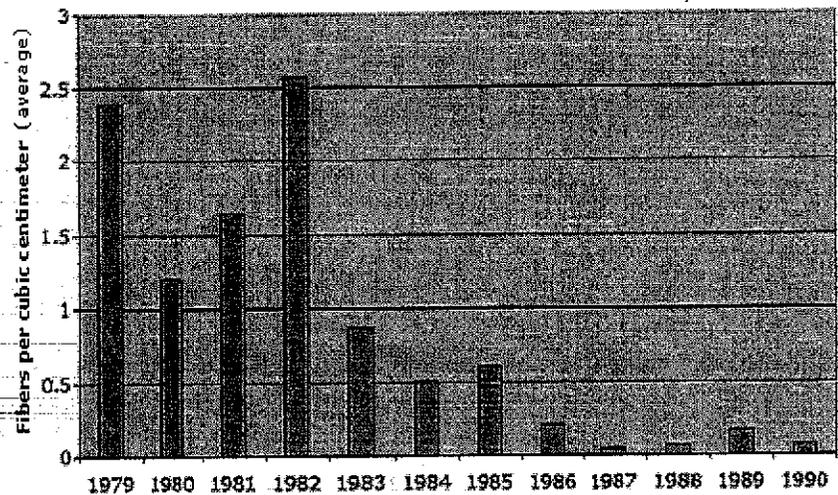
Source: EWG Action Fund. Compiled from Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS), multiple cause of death file 1979-2001. Does not include asbestos-caused mortality from lung or gastrointestinal cancer.

As in the United Kingdom (Treasure 2004) and Australia (Leigh 2003), there are many reasons to believe that the peak of the U.S. asbestos disease epidemic may not be reached for a decade or more.

Asbestos use and exposure crested in the United States in the mid 1970s when a number of factors converged: more than 3,000 consumer and industrial products on the market at that time contained asbestos; asbestos product factories were polluting nearby neighborhoods; asbestos workers were heavily exposed on the job and were bringing home substantial amounts of asbestos dust to their wives and children; and asbestos was commonly used in public buildings and workplaces for soundproofing, fireproofing, and insulation. Meaningful workplace safeguards were not in place until at least 1980, and for many industries, such as construction, levels in excess of the pre-1980 standard persist even today (NIOSH 2002).

Asbestos diseases have a 20 to 50 year latency period, meaning that a substantial portion of individuals exposed in the 1960s and 1970s are just now showing up as disease or mortality statistics. Better tracking accounts for the dramatic increase in mesothelioma mortality reported in 1999, but lung cancer deaths from asbestos are not reported at all, and asbestosis is still dramatically underreported even in worker populations where asbestos exposure is well established (Markowitz 1997). And asbestos has not been banned. It remains heavily used in brake shoes and other products, directly exposing auto mechanics and others who work with the materials, and indirectly exposing consumers and workers' families. In addition, millions of people are exposed at home or in their workplace by the monumental quantities of asbestos that remain in the built environment -- the attic insulation in 30 million American homes, for instance -- following decades of heavy use.

Asbestos exposures remained high through the early 1980s



Source: EWG Action Fund, compiled from Occupational Safety and Health Administration health inspection data (1979 - 1998). Data includes 19,000 samples from 670 industries.

EWG Action Fund projects that over the next decade, four asbestos-related diseases — mesothelioma, asbestosis, lung cancer and gastrointestinal cancer — will claim the lives of over 100,000 Americans. The epidemic is national in scope, affecting every state ([View map](#)). And for every life that asbestos claims, many more will be compromised by an array of serious, if nonfatal, asbestos-caused illnesses.

The EWG Action Fund's projections, while specific to the United States, are consistent with the assessments of other experts who assert the industrialized world is in an epidemic of asbestos-induced cancer that has yet to reach its peak. In January, 2004, an article in the *British Medical Journal* characterized one form of asbestos-induced cancer, mesothelioma, as an epidemic that is not expected to peak in Britain until 2015 to 2020, when it will claim an estimated 2000 lives per year (Treasure 2004). The authors assert that 100,000 people alive now in the developed world will die of mesothelioma alone. Scientists in Australia expect mesothelioma deaths on that continent to peak in about 2010 and to claim 18,000 lives by 2020 (Leigh 2003). In the United States, mesothelioma accounts for about one quarter of all asbestos fatalities.

The analysis on this site presents the most detailed national and state-level estimates ever presented on the disturbingly -- and surprisingly -- high death toll from just two causes of asbestos fatalities, mesothelioma and asbestosis. The magnitude of this public health crisis raises profound questions about the wisdom and fairness of doing anything to cut off any avenue that might provide assistance or protection to the tens of thousands of Americans who become sick and die from asbestos exposure.

Mounting mesothelioma and asbestosis mortality

To develop our projections, EWG Action Fund researchers began by examining 25 years-worth of U.S. government data on asbestos mortality derived from death certificates. We found that deaths have been increasing steadily for the past 20 years and are still on the rise for the two asbestos diseases where data are available (see figure 2). Between 1979 and 2001, at least 43,000 Americans died from the signature asbestos cancer, mesothelioma, and an often-fatal non-cancer disease of the lungs called asbestosis. The actual number of deaths from

these two diseases could easily be twice as high due to chronic misdiagnoses of both diseases (Markowitz 1997) and the absence of federal tracking for mesothelioma for nearly all of the time period analyzed.

In 2001, almost 1,500 people died with asbestosis listed as the primary or contributing cause of death, a 50 percent increase since 1990 and 340 percent increase since 1980 (NCHS, 2003). Between 1990 and 1999, the National Institute for Occupational Safety and Health estimates that a total of 114,506 years of potential life lost was due to asbestosis (NIOSH, 2002). The estimated number of discharges from non-federal hospitals for asbestosis has also increased dramatically, about four-fold, since 1990 and numbered 20,000 in 1999 (NIOSH 2002).

Mesothelioma was not tracked as a cause of death by federal health officials until 1999. Prior to that time, the National Center for Health Statistics (NCHS) and National Institute for Occupational Safety and Health (NIOSH) tried to estimate the number of deaths due to malignant mesothelioma by using "malignant neoplasm of pleura" (NIOSH) or "malignant neoplasms of the pleura or peritoneum" (NCHS) as surrogate measures because other studies show that a high percentage of these tumors are mesotheliomas. Scientists now know that estimates of mesothelioma based on these surrogate indicators dramatically underestimated the number of deaths due to mesothelioma. The first year that federal officials began tracking mesothelioma as a distinct cause of death, official mortality more than doubled. In 1998, the last year surrogate indicators were used, the estimated number of mesothelioma deaths was 935. One year later, when malignant mesothelioma was specifically coded as a cause of death, the number of deaths was 2,343.

More than 100,000 asbestos deaths in the next decade

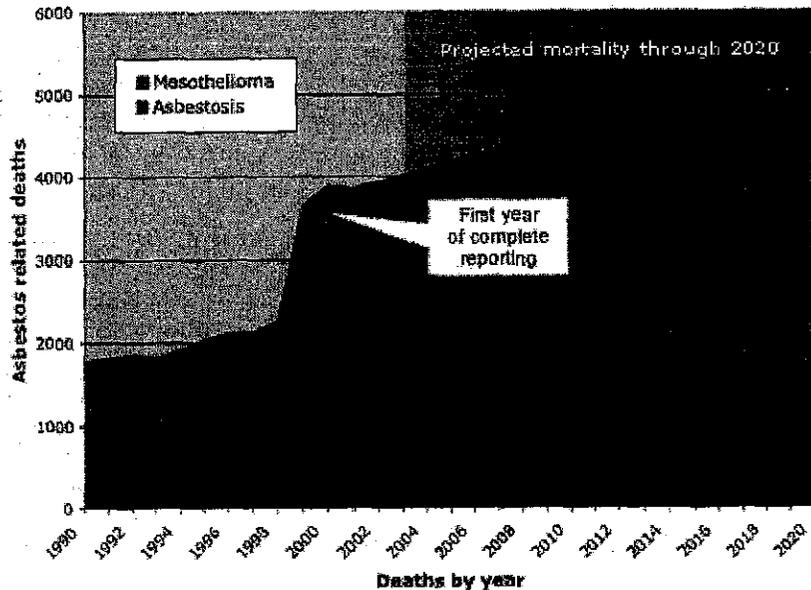
To estimate future mortality we considered two scenarios. The first scenario assumes that mortality rates for mesothelioma and asbestosis will increase at the average rate observed in the 1990s (1990-1998) — a 4.4 percent annual increase for asbestosis and a 3.5 percent annual rate for mesothelioma. The second assumes half the rate of increase during that time.

Asbestos cancers and the fatal forms of asbestosis have a 20 to 50 year latency period, with the majority occurring at least 30 years after initial exposure. Exposure to asbestos peaked in about 1975 or 1980. Extrapolating out from this peak exposure period, one would expect asbestos mortality to crest sometime in the next 20 years.

If the increase in mortality that occurred in the 1990s continues for the next ten years there will be 3,776 deaths from mesothelioma and 2,536 deaths from asbestosis reported to the federal government in 2014. This rate of increase would produce 6,312 deaths annually for the two diseases one decade from now, up from 3,864 reported by the government in 2001. Overall, a mortality increase at this rate over the next decade would yield 22,000 deaths from asbestosis and 35,000 deaths from mesothelioma.

The second scenario [see graph below] assumes a growth rate in asbestosis and mesothelioma mortality of half the 1990-1998 rate. Projecting this growth rate over the next ten years we estimate 44,600 deaths from asbestosis and mesothelioma from 2004 through 2013, with 1,922 asbestosis deaths and 3,025 mesothelioma fatalities in 2014.

Asbestos mortality will likely peak around 2015 reflecting heavy exposures in the 1970s



Mortality projections for these two diseases are fraught with complexities, and above all are creatures of the underlying assumptions. But the available data on asbestos mortality and use do not indicate that we have reached the peak incidence. The widely varying latency periods for disease onset, sometimes more than 50 years after exposure, make it impossible to know when the cohorts of people—mostly working men—who were exposed in the 1960's, 70s and 80s might develop mesothelioma or asbestosis. Also, because so many exposures continue in unregulated, unmonitored settings, either on the job or in homes, schools or workplaces, no one can be sure when asbestos contamination will taper off, reducing death rates in succeeding decades.

The fact that these two signature asbestos-caused diseases could easily kill 60,000 Americans, 80 percent of them men, over the coming decade is ample cause for strong public health measures, including medical and financial assistance for those stricken and their families. The threat from other deadly asbestos-caused cancers only raises the stakes.

Asbestos and other forms of cancer

Though there is no debate about whether asbestos causes lung cancer, other confounding causes of the disease make it impossible to identify the exact number of asbestos-caused lung cancer illnesses and deaths. The best estimates for asbestos-caused lung cancer deaths over the past two decades range from 5,000 to 10,000 per year (AIA 1980, Nicholson 1982), accounting for between 100,000 and 200,000 fatalities during that time.

Asbestos has been determined to cause gastro-intestinal cancer by the Occupational Safety and Health Administration (OSHA 1994), and the World Health Organization International Agency for Research on Cancer (WHO 1989). According to the OSHA medical surveillance guidelines for asbestos exposure: "These studies have shown a definite association between exposure to asbestos and an increased incidence of lung cancer, pleural and peritoneal mesothelioma, gastrointestinal cancer, and asbestosis" (OSHA 1994). Estimates vary for the number of asbestos-caused GI cancers annually. The best national estimates average about 1,200 asbestos-caused gastro-intestinal cancers per year (Nicholson 1982, Lillienfeld 1988).

When deaths from these four diseases are combined, EWG Action Fund estimates that asbestos is killing at least 10,000 Americans a year, and will cause the deaths of at least 100,000 Americans over the next decade. At least that number will die during subsequent decades, even if remaining uses of asbestos were banned immediately. And a greater number than that will be disabled by asbestos as asbestosis slowly progresses through their lungs, scarring more and more tissue, making it increasingly impossible for them to breathe.

Experts testifying before the United States Senate in the summer of 2003 predicted between 43,000 to 70,000 mesothelioma deaths over the 27 year life of the proposed federal asbestos trust fund, as well as up to 240,000 total cancer cases, and up to 1.6 million compensated non-cancer claims (Peterson, 2003). By any measure the magnitude of future asbestos death and injury is enormous.

Unsafe exposures persist today

The ongoing increase in asbestos mortality is due largely to the fact that asbestos-caused cancers and other diseases take at least twenty years and often fifty years or more after initial exposure to appear. Massive asbestos exposures from the 1960s through the 1980s are just beginning to show up as mortality statistics today. Asbestos will continue to cause diseases and death as long as it is used.

Even in workplaces where asbestos is regulated, hazardous conditions persist. In 1994, OSHA adopted tighter workplace exposure limits for asbestos (0.1 fibers/cc or 0.1 fibers/ml), fourteen years after they were recommended by NIOSH (NIOSH 2002). The mere existence of this standard, however, has not translated into safe working conditions for men and women in trades with significant asbestos exposure, such as construction, manufacturing, and mining.

In 1999, asbestos air levels exceeded the far weaker pre-1980 "permissible exposure limit" at 13 percent of construction and 5.6 percent of manufacturing sites monitored (NIOSH 2002). This pre-1980 limit, which was established by the Mine Safety and Health Administration (MSHA) and still applies to mining, is 20 times less protective than the 1994 OSHA standard (0.1 f/cc vs. 2 f/cc). Between 19 and 91 percent of all mining sites sampled between 1982 and 1991 exceeded the 1994 OSHA standard. In 1991, 32.4 percent of mining sites sampled exceeded this level.

Even full compliance with the OSHA standard does not mean that workers will not die from asbestos caused cancer and other diseases. The preamble to the OSHA standard itself estimates that one in every 300 workers will develop lung cancer from exposure at the legal limit (OSHA 1986). A more recent assessment concludes that one in every 200 workers will develop lung cancer if they are exposed to a career's worth of asbestos at the OSHA "safe" level. One in 500 will develop asbestosis under a similar exposure scenario (Stayner 1997). The federal government estimates that 1.3 million Americans currently are exposed to asbestos on the job (OSHA 2004).

Asbestos mortality by state

California, Florida, New York, Pennsylvania, and Texas totaled the most asbestosis and mesothelioma fatalities from 1979 through 2001, at between 3,800 and 5,900 deaths each. In nine of the top ten states, the number of combined mesothelioma and asbestosis fatalities is increasing every year. Seventeen states had more than 1,000 asbestos fatalities from these two diseases during these years, and no states reported zero deaths. Only two states, Wyoming and Alaska, had less than 100 deaths from asbestosis and mesothelioma during the 23 year period where data are available.

LINK: [View maps with state and county mortality data.](#)

Asbestos mortality by county

The top counties for reported asbestos mortality from mesothelioma and asbestosis are Los Angeles County, California; Cook County, Illinois; Philadelphia County, Pennsylvania; King County, Washington; and Harris County, Texas. These counties had from 400 to 1,200 deaths from these two diseases during the time period analyzed.

Several counties stand out with a high number of asbestos-related fatalities, while their states ranked lower overall. Massachusetts, Michigan, Maryland, and Arizona were not in the top ten states for asbestos mortality, but four counties within these states (Wayne County, Michigan; Middlesex County, Massachusetts; Baltimore County, Maryland; and Maricopa County, Arizona), ranked in the top 20 out of more than 2,000 counties reporting asbestos mortalities.

LINK: [View maps with state and county mortality data.](#)

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Notes from Table

¹ Mesothelioma reported as the cause or contributor to death on death certificates, average 1999 through 2001. Assumes 100 percent of mesothelioma deaths are accurately identified and reported. Centers for Disease Control, National Center for Health Statistics, Multiple Cause of Death Files, 1999-2001.

² Asbestosis reported as a cause or contributor to death on death certificates, average 1999-2001. Some experts estimate that 50 percent of asbestosis mortality is misdiagnosed and not reported (Markowitz 1997). Centers for Disease Control, National Center for Health Statistics, Multiple Cause of Death Files, 1999-2001.

³ Lung Cancer (Nicholson 1982). Assumes zero non-occupational lung cancer deaths from asbestos exposure in the home or environment.

⁴ Gastro-intestinal cancer (OSHA 1994), (WHO 1989), (Lilienfeld 1988), (Nicholson 1982).

[Return to table](#)

[Next Page](#)

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Banner photograph © Bill Ravanese
About the photographer

Government Statistics on deaths due to Asbestos related diseases

When the government began tracking mesothelioma as a cause of death, mortality nationwide more than doubled, from 935 in 1998, to 2,343 in 1999.

*The low number in the range represents 20 years of mortality data when mesothelioma incidence was reported based on total deaths from cancers that were thought to be mesothelioma. The high number in the range is the number of mesothelioma cases from 1979 through 2001, assuming that the incidence was twice that reflected by government statistics.

See the [national map](#)

Rank	State	Asbestosis	Mesothelioma*	Total Deaths		
	U.S. Total	19,758	23,965 to 40,411	43,073 to 59,519	map	graph
1	California	2,088	2,276 to 3,795	4,273 to 5,792	map	graph
2	Florida	1,095	1,976 to 3,432	3,025 to 4,481	map	graph
3	New York	750	1,912 to 3,374	2,626 to 4,088	map	graph
4	Pennsylvania	1,728	1,348 to 2,215	3,046 to 3,913	map	graph
5	Texas	1,343	1,349 to 2,325	2,651 to 3,627	map	graph
6	New Jersey	1,783	1,045 to 1,775	2,775 to 3,505	map	graph
7	Illinois	422	1,291 to 2,201	1,697 to 2,607	map	graph
8	Washington	970	806 to 1,387	1,730 to 2,311	map	graph
9	Ohio	578	1,046 to 1,745	1,609 to 2,308	map	graph

10	Virginia	790	599 to 972	1,362 to 1,735	map	graph
11	Massachusetts	759	613 to 973	1,355 to 1,715	map	graph
12	Michigan	329	823 to 1,377	1,140 to 1,694	map	graph
13	North Carolina	503	534 to 917	1,027 to 1,410	map	graph
14	Maryland	633	453 to 747	1,074 to 1,368	map	graph
15	Oregon	430	431 to 721	838 to 1,128	map	graph
16	Wisconsin	177	548 to 914	716 to 1,082	map	graph
17	Tennessee	229	447 to 786	671 to 1,010	map	graph
18	Minnesota	238	439 to 713	668 to 942	map	graph
19	Alabama	507	248 to 410	741 to 903	map	graph
20	Louisiana	357	340 to 540	680 to 880	map	graph
21	Missouri	236	388 to 640	618 to 870	map	graph
22	South Carolina	308	326 to 556	628 to 858	map	graph
23	Indiana	124	428 to 698	550 to 820	map	graph
24	Mississippi	408	204 to 363	606 to 765	map	graph
25	Iowa	91	369 to 670	457 to 758	map	graph
26	Georgia	239	319 to 527	549 to 757	map	graph
27	West Virginia	410	184 to 296	585 to 697	map	graph
28	Arizona	210	293 to 473	492 to 672	map	graph
29	Connecticut	249	249 to 411	495 to 657	map	graph
30	Kentucky	118	316 to 538	429 to 651	map	graph
31	Colorado	133	267 to 456	395 to 584	map	graph
32	Kansas	95	265 to 450	354 to	map	graph

				539		
33	Oklahoma	104	232 to 397	334 to 499	map	graph
34	Maine	219	168 to 263	376 to 471	map	graph
35	Arkansas	121	155 to 274	273 to 392	map	graph
36	New Hampshire	107	127 to 210	231 to 314	map	graph
37	Rhode Island	101	115 to 197	212 to 294	map	graph
38	Delaware	169	80 to 126	244 to 290	map	graph
39	Nebraska	65	129 to 210	194 to 275	map	graph
40	Idaho	84	96 to 156	179 to 239	map	graph
41	New Mexico	62	107 to 170	168 to 231	map	graph
42	Montana	70	92 to 148	160 to 216	map	graph
43	Utah	59	98 to 154	155 to 211	map	graph
44	Nevada	69	88 to 129	153 to 194	map	graph
45	Hawaii	59	79 to 135	137 to 193	map	graph
46	North Dakota	32	66 to 115	94 to 143	map	graph
47	Vermont	29	46 to 77	75 to 106	map	graph
48	South Dakota	7	56 to 95	61 to 100	map	graph
49	District Of Columbia	14	41 to 73	54 to 86	map	graph
50	Wyoming	32	35 to 54	65 to 84	map	graph
51	Alaska	25	23 to 31	46 to 54	map	graph

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Occupational Hazards





Print - Work-Related Deaths on the Rise in Canada

December, 28 2006

As many as five Canadians a day are dying from accidents on the job and from long-term exposure to agents such as asbestos, according to a new report.

By Katherine Torres

The report – titled "Five Deaths a Day: Workplace Fatalities in Canada, 1993-2005" – found that workplace fatalities in Canada have climbed to 1,097 in 2005, which is an 18 percent increase from 2004. In 2005, according to the report, the incidence of workplace fatalities in Canada was 6.8 per 100,000 workers, up from 5.9 per 100,000 in 1993.

"This rate represents one death for every 15,000 workers," the report says. "This upward trend is disturbing."

The report, which was conducted by the Ottawa-based Center for the Study of Living Standards, used statistics compiled by the Association of Workers' Compensation Boards of Canada from 1993 through 2005.

Dr. Andrew Sharpe, executive director of the center, concluded that Canada can do better for its workers.

"The numbers – and rates – of workplace fatalities are troubling," Sharpe said. "Other countries are making progress in this area and we are not."

In addition to increased fatality rates, the report also found that workers in certain industries are at greater risk of dying from workplace causes. The most dangerous industry in which to work is fishing and trapping (52 fatalities per 100,000 workers, or one out of every 1,900 workers in 2004), followed by:

- Mining, quarrying and oil wells (46.9 per 100,000 workers, or one out of 2,100 workers);
- Logging and forestry (33.3 per 100,000 per workers, or one out of 3,000 workers); and
- Construction (20.2 per 100,000 workers, or one out of 5,000 workers).

Finance and insurance was the least dangerous industry, with only 0.3 fatalities per 100,000 workers or one death for every 333,000 workers.

According to the report's findings, fatality rates varied across the country. The province of Newfoundland accounted for the highest workplace fatality rate with an average incidence rate of 11.9 fatalities per 100,000 workers.

Upward Trend Driven by Occupational Diseases

According to the report, the rise in the incidence rate of work-related fatalities was almost entirely driven by the increased workplace fatality rate from occupational disease, up from 1.5 to 3.4 per 100,000 workers between 1996 and 2005 (pre-1996 data are not available).

The increased fatality rate from asbestos, up from 0.4 per 100,000 workers in 1996 to 2.1 in 2005 accounted for the lion's share of the increased incidence from occupational disease, the report says.

accounted for the lion's share of the increased incidence from occupational disease, the report says.

According to the report, cancers, asbestos-related diseases and other illnesses account for half of all fatalities in Canada.

"Asbestos is a particular concern because Canada continues to mine and export the mineral," the Center for the Study of Living Standards said in a press release. "Many OECD countries have banned it. Given how asbestos-related diseases develop slowly over time, fatalities are expected to continue to rise."

Other highlights of the report include:

- Men are much more likely to die on the job than women. In 2005, the incidence of workplace death was 30 times higher among men than women – 12.4 deaths per 100,000 male workers vs. 0.4 deaths per 100,000 female workers.
- Older workers are much more likely to experience a workplace-related fatality than a younger worker. In 2005, the incidence rate rises from 1.8 deaths per 100,000 workers for the 15-to-19-year-old age group to 18.1 deaths per 100,000 workers for the 60-to-64-year-old age group.
- Workplace fatalities occur as a result of both accidents and occupational diseases. In 2005, out of the 1,097 workplace fatalities, 491 (44.8 percent) were from accidents and 557 (50.8 percent) from occupational diseases. Asbestos-related deaths alone accounted for about 340 deaths in 2005 – 61 percent of deaths from occupational diseases and 31 percent of total workplace fatalities.

The report can be accessed at the Center for the Study of Living Standards' Web site.

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