FILE NAME: Ford (FD)

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DOCUMENT DESCRIPTION: Legal - Ford's Supplemental Response to Plaintiff's first set of Request for Production

NO. A-940,143

HAROLD KINTZ

vs

IN THE DISTRICT COURT OF
ORANGE COUNTY, TEXAS
128TH JUDICIAL DISTRICT

ALLIEDSIGNAL INC. ALLIEDSIGNAL AUTOMOTIVE AFTERMARKET BRAKE a division of Alliedsignal Inc., GARRETT AUTOMOTIVE, a division of Alliedsignal Inc., ARMSTRONG WORLD INDUSTRIES, INC., THE CESSNA AIRCRAFT COMPANY, CHRYSLER CORPORATION, DANA CORPORATION, THE FLINTKOTE COMPANY, FORD MOTOR COMPANY, GAF CORPORATION, GENERAL MOTORS CORPORATION, HI-LO AUTO SUPPLY, L.P., THE HOME DEPOT, INC., MCCAULEY LUMBER COMPANY, MCCORD CORPORATION, MCCORD PAYEN, INC. and UNITED STATES GYPSUM COMPANY

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FORD MOTOR COMPANY'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S FIRST SET OF REQUEST FOR PRODUCTION

This is the supplemental response of the Defendant, Ford Motor Company ("Ford") to Plaintiff's First Set of Request for Production ("Plaintiff's Requests").

PRELIMINARY STATEMENT

Ford's Supplemental Response to Plaintiff's Requests has been prepared in full compliance with the Texas Court Rules, pursuant to a reasonable and duly diligent search for information properly requested. For many years Ford has had at any time hundreds of thousands of employees in different locations throughout the world. In conducting its business Ford has created every year millions of documents that have been kept in numerous different locations and have been moved frequently from site to site as employees have changed jobs. Accordingly, Ford does not, and could not possibly, represent that its responses constitute all of the information requested. Rather, as required by the Texas Court Rules, Ford's responses reflect all responsive information identified by Ford before

the date of the responses pursuant to a reasonable and duly diligent search and investigation conducted in connection with these requests. To the extent that the requests purport to require more, Ford objects on the grounds that (a) the requests seek to compel Ford to conduct a search beyond the scope of permissible discovery contemplated by the Texas Rules of Civil Procedure and (b) compliance with the requests would impose an undue burden and expense.

Furthermore, in compliance with the Texas Court Rules, Ford responds to Plaintiff's Requests only with respect to information and/or documents in Ford's possession, custody, or control. Some or all of Plaintiff's Requests purport to call for information or documents not in the possession, custody or control of Ford but in the possession, custody, or control of other, separate legal entities. To the extent that Plaintiff's Requests attempt to require Ford to obtain information and/or documents not in Ford's possession, custody, or control, Ford objects on the grounds that they (a) seek to compel Ford to conduct a search beyond the scope of permissible discovery contemplated by the Texas Court Rules and (b) impose an undue burden and expense on Ford.

Ford does not concede that any of its responses will be admissible evidence at trial. Further, Ford does not waive any objections, whether or not stated herein, to use such answers at trial.

When Ford uses any terms or phrases that Plaintiff has purported to define, such terms and phrases should be given either (a) the meanings set out by Ford herein or in the individual responses or (b) in cases of ordinary words that Plaintiff has attempted to define in a manner inconsistent with their meanings, the ordinary meaning of such words.

Additionally, Ford in its own on-going searches for information which may be relevant to asbestos litigation has accumulated approximately 20,000 pages of non-privileged

documents. To the extent that Plaintiff's requests may seek information that may be contained in these documents, Ford will make them available for inspection and copying at Plaintiff's expense at its offices in Dearborn, Michigan, at a mutually agreeable time during regular business hours. Ford objects to sorting through these documents and copying and mailing them to Plaintiff in answer to these requests, since to do so would require the expenditure of thousands of dollars, hundreds of hours of human effort, and would in all likelihood take several weeks, if not months, to complete.

SUPPLEMENTAL RESPONSES TO INDIVIDUAL REQUESTS

REQUEST FOR PRODUCTION NO. 1

Copies of at least ten depositions or trial transcripts taken since July, 1988 for all expert and fact witnesses listed by the DEFENDANT in this case. The Defendant does not have to produce copies of the requested documents if this Plaintiff's attorney was present for the deposition or trial testimony of the witness. The Defendant does not have to provide copies of the requested documents if they were previously copies of the requested documents if they were previously produced. Further, Defendant does not have to produce documents for witnesses that they strike from their lists prior to this production being due. However, this request remains in effect for all Defendants who have not yet listed witnesses and for witnesses that may be listed before trial in this case. Further, this request is only for depositions and trial transcripts where testimony related in whole or in part to asbestos, asbestos related diseases, asbestos products and materials and/or asbestos litigation. This request does not include any such deposition or trial testimony for, Dr. Keith Wilson nor Dr. Paul Stevens or Corwin Hinshaw.;

RESPONSE:

Objections: Lack of Relevance. Burden. Overly Broad. Lack of Particularity. Privileged. Premature.

SUPPLEMENTAL RESPONSE:

REQUEST FOR PRODUCTION NO. 6

All documents reflecting how and when DEFENDANT first learned of the health hazards associated with asbestos exposure.

RESPONSE:

Objections: Lack of Relevance. Burden. Overly Broad Lack of Particularity. Premature.

SUPPLEMENTAL RESPONSE:

Without waiving any of the previously stated objections, Ford cannot state when a Ford employee first had knowledge of such information. It is known, however, that the initial knowledge of a suggestion of potential hazards associated with asbestos-lined brakes came in a telephone call from Dr. Selikoff to Dr. Roy Gealer of Ford Research and Engineering in April 1975.

REQUEST FOR PRODUCTION NO. 11

All books pamphlets, memoranda, written materials, or any other documents of any kind or character in the DEFENDANT's possession prior to 1980 that would indicate that asbestos fibers, when inhaled, can be hazardous to the health of human beings.

RESPONSE:

Objections: Lack of Relevance. Burden. Overly Broad lack of Particularity. Premature.

SUPPLEMENTAL RESPONSE:

Without waiving any of the previously stated objections, Ford states that in the early 1970's Arnold Anderson and Roy Gealer of Ford's Scientific Research Staff conducted tests to determine the quantity of asbestos fibers liberated from brake linings during the braking process. They concluded that over 99.98% of the asbestos fibers in brake linings decomposed during the braking process into other materials. Their results were published in a 1973 SAE paper by A. Anderson and R. Gealer entitled "Asbestos Emissions From Brake Dynamometer Tests."

In 1973, Ford's Industrial Hygiene Department conducted air sampling tests on brake linings being cleaned by brake mechanics using air hoses. They determined that asbestos levels were well below existing or proposed O.S.H.A standards. This testing was done by Mr. Anderson and Henry Lick, under the supervision of Paul Toth, the then manager of Industrial Hygiene.

Ford states that commencing in the early 1970's, Ford participated in and provided partial funding for studies done by Dr. Irving Selikoff and others at what is now the Mt. Sinai School of Medicine in New York, which work was reported on in a paper entitled "Asbestos Exposure During Brake Lining and Maintenance and Repair," published in Environmental Research, Vol. 12, pp. 110-128 (1976). The work done was a study of the environmental pollution, if any, caused by asbestos in brake linings. The study came to focus on the occupational exposure of mechanics during brake repair and maintenance. Ford's Research and Engineering Department and Industrial Hygiene Department were advised of the study.

In addition, Ford issued an August 3, 1973, memorandum to Plant Safety Engineers directing that brake drums be cleaned using industrial type vacuum cleaners. The memo directed that air hoses should not be used to clean brake drums. Simultaneously, Maintenance Bulletin 137 was issued by the Plant Engineering Office to the same effect.

On October 24, 1975, Ford Technical Service Bulletin 99 was distributed to Ford and Lincoln-Mercury Dealers. It recommended that a vacuum cleaner be used for cleaning brakes. In January 1976, a Technical Service Bulletin 104 was issued to the dealers indicating that Ford recommended the use of an industrial vacuum cleaner in brake cleaning operations. The 1977 edition of the Rotunda Catalog and Ford's Shop Manual for Dealerships recommended that brakes not be cleaned with an air hose and that a vacuum cleaner be used for this purpose. In November 1983, Ford issued Bulletin No. 83-22 on brake and clutch servicing. Technical Service Bulletins are presently distributed to approximately 29,000 Ford and Lincoln-Mercury dealer technicians. These documents are the results of corporate activity and are not the work of any single author. These bulletins have not been superseded. In the spirit of cooperation, Ford will produce a copy of the above described documents.

Additionally, as mentioned in Ford's Preliminary Statement, Ford will make available for inspection at a mutually agreeable time in Dearborn, Michigan, a collection of documents and other materials pertaining to asbestos, which may contain information responsive to this request.

REQUEST FOR PRODUCTION NO. 14

All correspondence, in-house memos, correspondence to or from third parties, and/or correspondence between DEFENDANT and defendant's customers concerning the hazards of asbestos from 1930 until the date of DEFENDANT's last sale or purchase of the products identified in response to Interrogatory No. 3.

RESPONSE:

Objections: Lack of Relevance. Burden. Overly Broad lack of Particularity. Premature.

SUPPLEMENTAL RESPONSE:

Without waiving any of the previously stated objections, Ford states that in the early 1970's Arnold Anderson and Roy Gealer of Ford's Scientific Research Staff conducted tests to determine the quantity of asbestos fibers liberated from brake linings during the braking process. They concluded that over 99.98% of the asbestos fibers in brake linings decomposed during the braking process into other materials. Their results were published in a 1973 SAE paper by A. Anderson and R. Gealer entitled "Asbestos Emissions From Brake Dynamometer Tests."

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Ford states that commencing in the early 1970's, Ford participated in and provided partial funding for studies done by Dr. Irving Selikoff and others at what is now the Mt. Sinai School of Medicine in New York, which work was reported on in a paper entitled

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Additionally, as mentioned in Ford's Preliminary Statement, Ford will make available for inspection at a mutually agreeable time in Dearborn, Michigan, a collection of

documents and other materials pertaining to asbestos, which may contain information responsive to this request.

REQUEST FOR PRODUCTION NO. 15

All correspondence, in-house memos, correspondence to and from third parties, and/or correspondence between DEFENDANT and defendant's customers regarding the content of DEFENDANT's asbestos-containing products from 1930 until the date of DEFENDANT's last sale or purchase of the products identified in response to Interrogatory No. 3.

RESPONSE:

Objections: Lack of Relevance. Burden. Overly Broad lack of Particularity. Premature.

SUPPLEMENTAL RESPONSE:

Without waiving any of the previously stated objections, Ford states that it sold vehicles and replacement parts which included asbestos-containing brake linings, pads and clutch facings through thousands of franchised Ford dealers and authorized distributors in the United States, under names such as Ford, Mercury, Ford Authorized Remanufacturers, and under various lines and series names such as Motorcraft. Ford also sold vehicles to the United States government. Ford additionally states that it did not manufacture asbestos-containing friction products. Such components were purchased from suppliers to Ford.

Asbestos-containing friction products, on the majority of Ford's regular production vehicles, were phased out by 1984. Such products on the remainder of the regular production vehicles were phased out by 1993 as suitable substitutes were found. However, Ford believes asbestos is still used on some heavy trucks and limousines rear brake assemblies as an appropriate substitute has not yet been found for these applications.

Ford understands the type of asbestos fibers in these products to be chrysotile. However, since Ford did not manufacture these products, it does not know percentages of asbestos that they contain, but, generally, it is thought to be, for example, between 40% and 60% asbestos, by weight, in brake linings.

REQUEST FOR PRODUCTION NO. 18

Any correspondence and/or records to or from purchasers, users of DEFENDANT's products or services, insurance carriers, distributors, suppliers, or subsidiary reflecting any warnings pertaining to asbestos, and/or asbestos-containing products.

RESPONSE:

Objections: Lack of Relevance. Burden. Overly Broad lack of Particularity. Premature.

SUPPLEMENTAL RESPONSE:

Without waiving any of the previously stated objections, Ford believes it first became aware that warnings related to asbestos health hazards or potential asbestos health hazards had been placed on asbestos-containing friction products in 1980. An employee from the Ford Parts and Service division observed a warning label on a carton from Bendix. Soon thereafter Ford began using the following warning on its cartons:

> CAUTION: CONTAINS ASBESTOS FIBERS. AVOID CREATING DUST. BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM. WHEN SERVICING THIS BRAKE LINING OR ANY COMPONENT RELATED TO IT OR LOCATED NEAR IT, PREVENT ASBESTOS DUST FROM BEING AIRBORNE BY VACUUMING THIS ASSEMBLY WITH AN INDUSTRIAL TYPE VACUUM CLEANER EQUIPPED WITH A HIGH EFFICIENCY FILTER SYSTEM AND BY WASHING THE ASSEMBLY WITH AN APPROPRIATE BRAKE PARTS WASHER IF NECESSARY. NEVER REMOVE DUST OR DIRT FROM THIS ASSEMBLY BY BLOWING WITH COMPRESSED AIR.

Ford will produce a copy of a sample aftermarket carton.