

THE HONORABLE SHARON ARMSTRONG

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BERGMAN & FROCKT

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

IN RE ALL ACR 27 KING COUNTY  
ASBESTOS CASES OF BERGMAN &  
FROCKT

NO. 03-2-48455-5 SEA

CARRIER CORPORATION'S  
MOTION TO MODIFY ORDER  
ON PLAINTIFFS' MOTION TO  
COMPEL DISCOVERY

Oral Argument Requested

**RELIEF REQUESTED**

On November 24, 2004, the court granted Plaintiffs' motion to compel production from Carrier of records relating to 132 navy ships dating back to World War II. Reviewing its responsive pleadings to plaintiffs' motion, Carrier recognizes that it may not have adequately described the burden to locate and identify documents sought by plaintiffs relating to specific navy vessels. For the reasons set forth below, Carrier asks the Court to modify its order as follows: (1) require a rolling production of those records related to the 28 ships on which these

CARRIER, INC.'S MOTION TO MODIFY  
ORDER ON PLAINTIFFS' MOTION TO  
COMPEL DISCOVERY- 1

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WILSON SMITH COCHRAN DICKERSON  
PROFESSIONAL SERVICE CORPORATION  
1700 FINANCIAL CENTER, 1215 4TH AVENUE  
SEATTLE, WASHINGTON 98161-1007  
TELEPHONE: (206) 623-4100 FAX: (206) 623-9273

1 plaintiffs served and where plaintiffs have produced some evidence that Carrier  
2 products were onboard; (2) records of the 28 ships shall be produced by no later  
3 than Monday, December 20<sup>th</sup>; (3) defer that portion of its order relating to the  
4 remaining ships; provided that in the event that any plaintiff provides evidence of  
5 the presence of a Carrier product on any of the remaining ships, Carrier shall  
6 produce records relating to such ships within ten days thereafter; and (4) waive the  
7 discovery deadline solely for plaintiffs against Carrier to allow discovery plaintiffs  
8 deem necessary with respect to the claims against Carrier.  
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11 However the Court rules on this motion to modify, Carrier requests that it  
12 be granted additional time to comply with the Court's order.  
13

#### 14 *EVIDENCE RELIED UPON*

15 Declaration of Allen Hopkins

16 Declaration of Michael Jaeger

#### 17 *PROCEDURAL HISTORY*

18 In their February 2004 document request, plaintiffs sought records relating  
19 to Carrier manufactured products that were supplied, used, or installed on any of  
20 more than 900 navy ships. (Plaintiffs also sought records about, among other  
21 things, corporate decisions to warn users of Carrier products about warnings and  
22 safety information, measures employed by Carrier to protect its employees from  
23 asbestos related disease, and technical manuals regarding Carrier products that  
24 may have included components that contained asbestos.) After counsel conferred,  
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1 plaintiff agreed to provide a more limited list of ships that may relate to plaintiffs'  
2 claims. The information was provided on June 18, 2004 after two written requests  
3 by Carrier's counsel. In accordance with an agreement of counsel, on August 31,  
4 2004 plaintiffs furnished naval archive records that reflect the presence of Carrier  
5 products on 28 ships on which some of the plaintiffs served. (Exhibits supporting  
6 the foregoing summary are attached to the Declaration of Carrier's counsel filed  
7 with Carrier's Response to Plaintiffs' Motion to Compel.) Carrier agreed to  
8 produce records as to the 28 ships where plaintiffs produced some evidence of  
9 Carrier product on the vessels. Plaintiffs have indicated that there is evidence in  
10 some of the other vessels of Carrier products but no such evidence has been  
11 disclosed.

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15 Carrier has now produced more than 1,000 pages of documents responsive  
16 to plaintiffs' discovery and continues its efforts to identify and produce the ship  
17 specific documents plaintiffs seek.<sup>1</sup> See Declaration of Michael Jaeger.

## 18 *ARGUMENT*

19  
20 **A. The Task Of Identifying and Locating Documents Relating To A Single**  
21 **Navy Ship Is Complex And Extremely Time Consuming, Often Requiring**  
22 **Research Of Internet Sites And Other Publicly Available Sources.**

23  
24 Carrier has only recently been added as a defendant in substantial asbestos  
25 litigation in Washington and around the country. The plaintiffs herein first  
26 named and served Carrier as a defendant in February of this year as part of the

1 ACR XXVI trial group. Carrier has not been required to respond to a document  
2 request as broad as that posed by plaintiffs here, relating to 161 ships dating back  
3 more than sixty years, in asbestos litigation in any other jurisdiction<sup>2</sup>.  
4  
5 Consequently, Carrier has never compiled the documents requested here for any  
6 other case. The organizational and logistical difficulties associated with producing  
7 records on such a scale is only now fully appreciated.

8  
9 Attached is a declaration of Allen Hopkins, Carrier's Contract Manager-  
10 Marine Systems Group, whose duties include research regarding products  
11 manufactured and sold by Carrier and its affiliated brands. In addition to his  
12 normal duties, Mr. Hopkins is responsible for collecting historical documents  
13 relating to the asbestos litigation. His declaration illustrates that the collection of  
14 records of Carrier products on navy ships, even those relating to a single ship, is no  
15 simple task. More importantly, the bulk of the effort relates not to Carrier  
16 records that are maintained by job number in chronological order but from  
17 public sources neither owned nor controlled by Carrier and equally available  
18 to plaintiffs.  
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21 Carrier maintains an archive that includes records related to some, but not  
22 all, naval contracts dating back to World War II. The records consist of technical  
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24 <sup>1</sup> It is Carrier's understanding that it now has substantially complied with all discovery that is the  
25 subject of the court's Order except for the production of ship-specific documents described herein.

26 <sup>2</sup> There is some confusion in the record on the number of ships involved. The total number subject  
to the Court's order is 161. This includes the 28 vessels with some demonstration that Carrier  
product(s) were onboard.

1 manuals for equipment designed and manufactured in accordance with naval  
2 specifications. The archive includes more than 1,000 binders of records organized  
3 chronologically and, within each year, by contract number.  
4

5 Production of documents relating to a specific ship requires more than a  
6 simple reference to records organized according to the vessel's name. When only a  
7 vessel name is provided (as is the case here), Mr. Hopkins is first required to  
8 research the appropriate hull number associated with a particular ship. Over time,  
9 a particular name may be used by the Navy for more than one vessel and,  
10 therefore, each bears a separate hull number. Information required to identify a  
11 hull number for a specific vessel is available at various internet sites. When a hull  
12 number is identified, further research is required to determine when and where the  
13 vessel was built and when and where any refits of the vessel took place. Again,  
14 such information is available at various naval history websites on the internet as  
15 well as hard copy sources. These sources are equally available to plaintiffs as well  
16 as Carrier. See generally Declaration of Allen Hopkins. The foregoing steps, while  
17 extremely time consuming, are necessary before Carrier can even begin to access its  
18 own records. Those measures, however, represent the bulk of the work required of  
19 Carrier to identify and produce records of the type requested by plaintiffs.  
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23 Only when the preliminary research is completed is Mr. Hopkins then able  
24 to undertake the review of Carrier's archives, manually processing each binder and  
25 cross-checking the information therein against each hull number, to determine  
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1 what records, *if any*, Carrier may possess with respect to a given vessel. Available  
2 records with respect to a given vessel may consist of hundreds of pages in multiple  
3 volumes.  
4

5 As reported in his Declaration, Mr. Hopkins estimates that the research  
6 required to respond to plaintiffs' document request would require more than 1,000  
7 man hours, likely encompassing more than 30,000 pages of documents. Using the  
8 approximately hourly compensation of Mr. Hopkins (\$50 per hour) the cost of  
9 producing the requested records, not including reproduction charges, will approach  
10 \$50,000.  
11

12 **B. Carrier's Efforts To Produce Records Responsive To Plaintiffs' Request.**

13 The Court's November 24, 2004 Order requires production of the  
14 referenced documents by December 10th. This order was not received by Carrier's  
15 counsel until Monday, November 29. After receipt of the order, representatives  
16 from Carrier's national counsel have been dispatched to Carrier's archive in  
17 Syracuse, New York to assist in the search for responsive documents. It is  
18 expected that local counsel will begin to receive records in the next several days.  
19 These records will be produced as received. Carrier expects that responsive  
20 documents with respect to the 28 ships on which Carrier products are alleged to  
21 have been present will be produced by December 20th.  
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1 Carrier is not able to provide the Court with an accurate estimate of the  
2 time required to produce available records for all 161 ships. Such an estimate may  
3 be possible by the week of December 13<sup>th</sup>.  
4

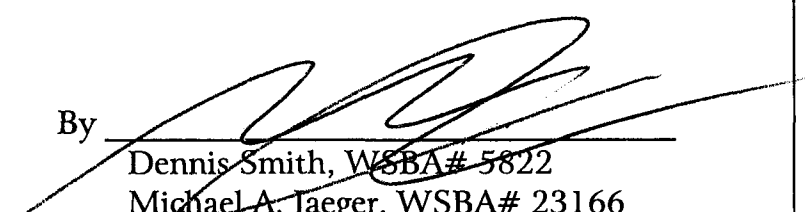
#### 5 IV. CONCLUSION

6 Carrier acknowledges that the record could have been more fully developed  
7 identifying the logistical hurdles in collecting the requested records and that this  
8 would have been helpful to the Court in fashioning an appropriate discovery order.  
9 As the foregoing summary and the attached Declarations of Allen Hopkins and  
10 Michael Jaeger reflect, amassing those records is a task requiring the mobilization  
11 of considerable effort at a significant expense. Ironically, it is now clear that the  
12 most time consuming and burdensome task is collecting information from public  
13 sources equally available to plaintiffs. Accordingly, Carrier respectfully requests  
14 that the Court modify its Order to allow a rolling production of records relating to  
15 the foregoing 28 ships, with the same to begin immediately and to be completed  
16 no later than December 20, 2004. Carrier also asks that the Court defer that  
17 portion of the order with respect to the remaining ships identified in plaintiffs'  
18 request until evidence of the presence or a Carrier product on such ship is  
19 produced. In the event that such evidence is forthcoming, Carrier is required to  
20 produce responsive documents within 10 days thereafter with the discovery  
21 deadline extended to allow plaintiffs to conduct any necessary discovery deferred  
22 by delays in production of Carrier records.  
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1 Alternatively, Carrier requests that the court transfer these cases to the  
2 ACR XXVIII trial group so that full discovery as ordered by the court can be  
3 completed in time for plaintiffs to conduct related follow-up discovery in advance  
4 of the September 25, 2005 trial date. With the exception of plaintiff Joseph  
5 Simonetta (*Simonetta v. Saberhagen Holdings, Inc., et al.*, Cause No. 04-2-02874-4  
6 SEA), all of the subject plaintiffs in these cases are deceased. As the court is aware,  
7 transfer of cases to subsequent ACR trial groups has been done in the past where  
8 the interests of the parties and substantial justice so require. In that regard, the  
9 cases at issue here were transferred from ACR XXVI to ACR XXVII at plaintiffs'  
10 request, which was not opposed by Carrier.  
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12

13 DATED this 7th day of December, 2004.

14 WILSON SMITH COCHRAN DICKERSON

15  
16  
17 By 

18 Dennis Smith, WSBA# 5822

19 Michael A. Jaeger, WSBA# 23166

20 of Attorneys for Defendant Carrier Corporation  
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