THE NATIONAL ASBESTOS WORKERS PENSION FUND

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PLAINTIFF'S EXHIBIT
MGC-136

MEMORANDUM

TO: All Contributing Employers

FROM: Simone L. Ornold, Administrative Agent

DATE: September 28, 1990

READ THIS LETTER ONLY IF YOU CONTRIBUTE TO THE NATIONAL ASBESTOS WORKERS PENSION FUND FOR EMPLOYEES WHO ARE NOT COVERED BY A COLLECTIVE BARGAINING AGREEMENT. THE RULES DISCUSSED IN THIS LETTER DO NOT APPLY TO THE NATIONAL ASBESTOS WORKERS MEDICAL FUND.

The Internal Revenue Service has recently issued regulations applicable to qualified pension plans such as the National Asbestos Workers Pension Plan which establish rules governing the coverage of non-bargaining unit employees by this Plan. These new rules, referred to as "coverage" and "non-discrimination" rules provide that if an employer contributes to a collectively bargained plan on behalf of employees who are not in a collective bargaining unit, the "non-bargaining unit employees" of the employer must separately meet these IRS requirements without taking bargaining unit employees into account.

The IRS regulations are very complex. The purpose of this letter is to inform you of these regulations and to advise you that this Plan, and every qualified pension plan, including single employer and non-collectively bargained plans, must comply with these regulations. The following sets forth basic information about these IRS requirements and the steps you must take to comply insofar as this Fund is concerned. Given the complexity of these requirements, however, we urge you to consult your attorney, accountant or other pension advisor for assistance.

## a. IRS Coverage Regulations

The IRS regulations require that the coverage of non-bargaining unit employees of an employer by the Plan must meet one of two tests. The first test (Ratio Percentage Test) is relatively simple. The non-bargaining unit group will pass this test if the percentage of non-highly compensated employees covered by this Plan is at least 70% of the percentage of highly compensated employees covered by this Plan.

complicated test. The safe harbor rule will be met only if you contribute on the same number of hours at the same contribution rate for each of your non-bargaining unit employees who participate in this Plan. The rules of the Plan require you to contribute on 40 houts per week for each of these employees. In order to satisfy the safe harbor rule and avoid burdensome calculations, you must contribute only this amount on each covered non-bargaining unit employee--you may not contribute any more or any less.

c. Compliance Procedures

In order to satisfy the IRS requirements each employer of non-bargaining unit employees must certify to the Plan each year that the requirements of the law have been met for that group. IF YOU DID NOT CONTRIBUTE TO THIS PLAN ON BEHALF OF ANY NON-BARGAINING UNIT EMPLOYEE FOR THE 1989 PLAN YEAR (JULY 1, 1989--JUNE 30, 1990), YOU ARE NOT REQUIRED TO COMPLETE THE ATTACHED CERTIFICATION FORM OR TO RESPOND TO THIS LETTER. The Plan will indicate on its records that you did not have non-bargaining unit employees in this Plan for the 1989 Plan Year. However, if you did contribute to this Plan on behalf of any non-bargaining unit employee during any part of the plan year beginning July 1, 1989, you must complete the enclosed certification form. You will receive a similar form each year and will not be required to respond if you did not contribute to this Plan on any non-bargaining unit employee in that year.

Enclosed is the first certification form which is to be completed and returned to the Fund Office by the date indicated on the form. The form will enable you to certify to the Plan that your coverage of your non-bargaining unit employees by this Plan meets the IRS rules. (The non-discrimination rules are satisfied because of the design of the Plan and no certification is needed for those rules.)

The Plan has adopted the following rules applicable to employers of non-bargaining unit employees to assure that the Plan complies with these new IRS requirements:

1. If an employer contributes to the Plan on behalf of any non-bargaining unit employee, the coverage of the employer's non-bargaining unit employees must meet IRS requirements. If these coverage requirements are not met for a plan year or the employer does not complete a certification or otherwise cooperate with the Fund's efforts to determine the employer's compliance with IRS requirements, the employer's non-bargaining unit employees will not earn a benefit under the Plan for that plan year.

**NATIONAL ASBESTOS WORKERS PENSION FUND**

**CERTIFICATION OF COMPLIANCE WITH THE MINIMUM COVERAGE REQUIREMENTS OF THE INTERNAL REVENUE CODE**

Plan Year: July 1, 19___-June 30, 19___

This form is to be completed by employers who contribute to the National Asbestos Workers Pension Fund on behalf of one or more employees who are not covered by a collective bargaining agreement (non-bargaining unit employees). IF YOU DO NOT CONTRIBUTE TO THIS FUND ON BEHALF OF NON-BARGAINING UNIT EMPLOYEES FOR THE YEAR INDICATED, YOU ARE NOT REQUIRED TO COMPLETE THIS FORM. If you do contribute on behalf of non-bargaining unit employees you must complete this form and return it to the Fund Office by __________ ______, 19___. If you do contribute on behalf of non-bargaining unit employees and you do not return the form, your non-bargaining unit employees may be terminated from participation in the Fund.

Please be sure to read the attached explanatory appendices before you complete this form.

For the plan year indicated above, does the coverage of your non-bargaining unit employees for whom you contribute to the National Asbestos Workers Pension Plan meet the minimum coverage requirements of Section 410(b) of the Internal Revenue Code? __________ Yes ____________ No (See Appendix I)

NOTE: Answer "YES" to this question if you do not provide pension benefits to any non-bargaining unit Highly Compensated Employee. (See Appendix II for definition of Highly Compensated Employee.)

CERTIFICATION

I hereby certify that the above information is true and complete to the best of my knowledge and belief. I am aware that there are serious penalties under federal law for providing false information to the Fund.

Name of Employer:_______________________________________

Signature:_______________________________________

Name:_______________________________________

Title:_______________________ Date:_______________________

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## APPENDIX I

### Minimum Coverage Rules Under IRC §410(b)

Under §410(b) of the Internal Revenue Code and proposed regulations issued under it, (Proposed IRS Regulations §§ 1.401(b)-1 through 1.401(b)-10) employers contributing to a collectively bargained pension plan for employees who are not covered by a collective bargaining agreement (non-bargaining unit employees) must cover a certain proportion of their non-bargaining unit Non-Highly Compensated Employees. The number of non-bargaining unit Non-Highly Compensated employees which must be covered depends on how many of their non-bargaining unit Highly Compensated Employees are covered.

The minimum coverage rules compare the pension coverage that an employer provides for his Highly Compensated Employees with the pension coverage provided for his employees who are not Highly Compensated. Under the proposed regulations employees covered by a collective bargaining agreement are ignored in testing pension coverage for non-bargaining unit employees, and only the non-bargaining unit employees' coverage needs to be tested. (See §1.410(b)-7(c)(6)(ii) and §1.410(b)-6(e)).

The minimum coverage requirements are met if non-bargaining unit employees of an employer satisfy one of two alternative tests. The first test--Ratio Percentage Test--is relatively simple. The group of non-bargaining unit employees will pass this test if the percentage of non-bargaining unit Non-Highly Compensated Employees covered by the Fund is at least 70% of the percentage of non-bargaining unit Highly Compensated Employees covered. (See §1.410(b)-2(b)(2)). Coverage provided by separate plans may be added together to meet this test if the plans' benefits and other participant features are comparable. (See §1.410(b)-7(d)).

If the Plan does not pass the Ratio Percentage Test, the Plan must pass the second test--the Average Benefits Test. This test has two parts--the Non-discriminatory Classification requirement and the Average Benefits Percentage requirement. Both of these requirements must be satisfied.

A classification is non-discriminatory if it is reasonable and is established under objective business criteria that identify the category of employees who benefit under the plan. The classification must also either be specifically approved by the IRS or it must satisfy a safe harbor test set forth in the regulations. Generally, the safe harbor is satisfied if the percentage of non-excludable non-highly compensated employees benefitting under the plan is at least 50% of the percentage of non-excludable highly compensated employees benefitting under the plan. A chart set out in the regulations establishes the safe harbor percentage at various concentrations of non-highly compensated employees. (See §1.410(b)-4)

APPENDIX II

Definition of Highly Compensated Employee under IRC §414(q)

The following are the tests for "highly compensated employees" under IRC §414(q). The amounts used for those tests are indexed each year. The following are the indexed amounts for the years indicated:

<u>TRA 86 Provisions</u>:

A person is a highly compensated employee if he or she-
(1) owns a 5% or greater interest in the employer;

(2) is an officer making more than $45,000; (For purposes of this test count the greater of 3 employees or 10% of the employer's employees, up to a maximum of 50 people. If none of the officers earn as much as $45,000, the highest paid officer is treated as a highly compensated employee.)

(3) receives compensation from the employer in excess of $75,000; or

(4) receives compensation from the employer in excess of $50,000 and was in the highest paid 20% of the employees for the year.

<u>1988:</u>

A person is a highly compensated employee in 1988 if he or she-

(1) owns a 5% or greater interest in the employer;

(2) is an officer making more than $47,013; (For purposes of this test count the greater of 3 employees or 10% of the employer's employees, up to a maximum of 50 people. If none of the officers earn as much as $47,013, the highest paid officer is treated as a highly compensated employee.)

(3) receives compensation from the employer in excess of $78,353; or

(4) receives compensation from the employer in excess of $52,225 and was in the highest paid 20% of the employees for the year.

<u>1989:</u>

A person is a highly compensated employee in 1989 if he or she-

(1) owns a 5% or greater interest in the employer;

seasonal employees working during no more than 6 months a year may be excluded. (See §1.414(q)-1T, Q&A 9). The compensation of family members employed by the same employer must be aggregated under some circumstances. (See §1.414(q)-1T, Q&A 11).

The definition of highly compensated employee under IRC §414(q) and the temporary regulations are highly technical and complex. The foregoing is only a brief summary of the regulations. The regulations themselves contain additional rules and options which you may use. For further guidance you may want to consult your attorney, accountant or pension advisor.