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NEW YORK STATE SUPREME COURT
COUNTY OF NEW YORK

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In Re: New York City Asbestos Litigation — Index No.

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LILA ROTH, Executrix of the Estate of JOSEPH ROTH, and LILA ROTH, Individually,
Plaintiffs,

-against-

GENERAL ELECTRIC COMPANY,
Defendant

AFFIRMATION AND MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT GENERAL ELECTRIC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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JERRY KRISTAL, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the truth of the following under penalties of perjury:

1. I am an attorney at law licensed to practice in the State of New York. I am associated with the law firm of Weitz & Luxenberg, P.C., counsel for plaintiffs in this action. I am fully familiar with the facts and circumstance of this action.

2. This affirmation is submitted in opposition to the motion for partial summary judgment submitted by defendant General Electric Company ("GE").

3. As discussed more fully below, GE's motion must be denied as GE's conduct, in failing to adequately warn of the hazards of asbestos, clearly establishes that it acted with reckless disregard for the safety of others.

I. GENERAL ELECTRIC MANUFACTURED AND SOLD MANY DIFFERENT ASBESTOS -CONTAINING MATERIALS AND MANUFACTURED AND SOLD A VARIETY OF EQUIPMENT WHICH REQUIRED THE USE OF ASBESTOS - CONTAINING MATERIALS IN AND ON THEM

4. The General Electric Company ("GE") is a large, diverse company, incorporated in New York in the early 1890's. (Marjorie Drucker, GE designee as the person most knowledgeable as to GE's historical knowledge of the hazards of asbestos and GE's historical use of asbestos, Deposition Transcript ["Drucker Tr."] at 297; all cited Drucker Tr. pages attached as Exhibit "A"). Since the 1920's, GE has had plants, for manufacturing and service, all over the United States. (Drucker Tr. at 298-299). Since at least that time, GE has manufactured and sold many different asbestos containing materials ("ACMs"). GE also manufactured and sold a variety of equipment which required the use of ACMs in and on them. Additionally, GE manufactured and sold equipment (specifically, x-ray equipment) that was promoted, as early as 1935, as being necessary for the diagnosis of pneumoconioses (dust diseases) including, specifically, asbestosis.

5. GE's use of asbestos, over the decades since the 1920's, in the manufacture of ACMs was extensive. The range of ACMs GE manufactured and sold included: wire and cable products, heater cord, insulating tape, gaskets, arc chutes, and asbestos phenolic resins and plastic compounds, including "Genal" and "Textolite". (Drucker Tr. at 299-333, 411-415, 439-443; see also, GE Answers to Interrogatories, first pages of all "Attachment 1"s" attached as Exhibit "B") Moreover, the quantity of raw asbestos used by GE was staggering. For example, one asbestos phenolic resin, Genal, was manufactured by GE from the 1920's to 1972. (Drucker Tr. at 439-452) While the amount of asbestos used in the manufacture of this product over the years had not been increasing, GE, in the manufacture of this single product in a single year (1970), used four million pounds of asbestos fiber.(Drucker Tr. at 444-445)

6. The equipment manufactured and sold by GE that required ACMs, both in and on them, included: land turbines and turbine-generator sets, marine turbines, including propulsion turbines and turbine-generator sets and pump turbines, railroad cars, jet engines, motors, generators and transformers. (Id.) The particular pieces of equipment involved in this case are marine turbines. These turbines contained ACMs in and on them and such use of ACMs was

known by GE since the 1930's. That GE knew its turbines required the use of large quantities of ACMs comes as no surprise.

7. GE invented the steam turbine for land-based use in the 1800's and has been in the turbine business for Navy ships since the early 1900's. (David Hobson, GE designated marine turbine representative, Adams Deposition Transcript, 12/17/01, at 27-28, all cited Adams Tr. pages attached as Exhibit "C") Turbines are large pieces of equipment that utilize superheated steam to provide energy to rotate a shaft within the turbine. The shaft of the turbine is connected to other pieces of equipment. The use to which a particular turbine is put depends on the equipment to which it is connected. Ships required a number of turbines to be installed on them as turbines aboard ships were used for three distinct purposes: ship propulsion, the generation of electricity and to drive pumps.(Hobson, Adams at 22-23)

8. When used for propulsion, the turbine is connected to the propeller of the ship. Each propulsion "turbine" really consisted of two turbines (a high pressure turbine and a low pressure turbine). (Hobson, Adams at 43) Moreover, different classes of ships had varying numbers of propellers and, therefore, varying numbers of turbines that were used for propulsion. For example, destroyers had one propeller and therefore, two turbines for propulsion, while aircraft carriers had four propellers and, therefore, eight turbines solely for propulsion purposes. (Hobson, Totman Deposition Transcript, 3/25/02,at 57-58, all cited Totman Tr. pages attached as Exhibit "D")

9. When used to generate electricity, turbines were connected to generators and sold as "turbine-generator sets". Ships often had multiple turbine-generator sets. For example, carriers had between four and sixteen turbine-generators on board. (Id.)

10. GE has historically been a major supplier of turbines for Navy ships. During the explosion of shipbuilding in the 1930's and 1940's, GE had a huge percentage of the Navy main propulsion turbine business. (See, GE graph of percentages of Navy ships built between 1933 and 1943 that contained GE turbines demonstrating that 32% of carriers, over 48% of destroyers,

over 56% of battleships, over 79% of escort destroyers and over 82% of cruisers had GE turbines, attached as Exhibit "E")

II. GENERAL ELECTRIC SPECIFIED THE USE OF ASBESTOS INSULATION ON ITS NAVY TURBINES

11. It was, and is, no surprise that turbines and turbine-generator sets, driven by superheated steam, required the use of thermal insulation and that, historically, this insulation contained asbestos. (Hobson, Chang Deposition Transcript, 11/2/01, at 72, 76, 79, all cited Chang Tr. pages attached as Exhibit "F"; as to generators, Hobson, Totman at 56.) The use of asbestos insulation on GE turbines has been described by GE as "common knowledge, "common practice" and "custom". (Hobson, Ingraham Deposition Transcript, 9/5 /02 , at 19-20, 31, 62, all cited Ingraham Tr. pages attached as Exhibit "G")

12. Perhaps most significantly, such use of asbestos-containing insulation, including large quantities of asbestos cloth, asbestos cement and asbestos felt was specified by GE in its design of Navy turbines. The specification of the use of asbestos was contained in such GE drawings as the "Master Plan: Lagging" for steam turbines. (See Exhibit "H", GE Master Plan: Lagging, 1944). This particular drawing alone specifies 90 square feet of asbestos felt, 170 square feet of asbestos cloth, 30 square feet of asbestos "plastic" insulation, 3 lbs. of asbestos twine and 150 lbs. of asbestos cement. (Id.) GE not only specified the use of these asbestos materials, but also specified such details as the specific thicknesses to be used, the type of finishes to be used, and the drying time for the asbestos cement (Id.).

13. The use of asbestos insulation and the use of large amounts were both, therefore, not only entirely foreseeable by GE, but known by GE. (Hobson, Norman Deposition Transcript, 12/1/4/95, at 55-60, all cited Norman Tr. pages attached as Exhibit "I"; see also, series of historical GE turbine plant photographs showing insulation on parts of the turbines in the factory,

attached as Exhibit "J"). After all, GE has described its turbines as "big", "large" and "huge" (Hobson, Ingraham at 22) and GE knew that most ships had multiple turbines.

14. Finally, during installation of the turbines on board ship, GE field representatives, part of the GE Installation and Services Engineering Department, would be present. (Hobson, Adams at 37-38, see also GE historical photograph of GE employees on board ship during turbine "trials" with portion of insulated turbine visible, attached as Exhibit "K") At times, these GE representatives would inspect the insulation itself and, if not done to his/her satisfaction, "advise and counsel" that it be done properly or re-done. (Hobson, Rudolph Deposition Transcript, 4/27/99 at 124, all cited Rudolph Tr. pages attached as Exhibit "L")

15. Armed with clear knowledge that asbestos insulation was specified by it and was required on its turbines and turbine-generator sets, GE obviously foresaw that individuals who installed and/or were present during the installation of the insulation, in confined quarters on board ships, would be exposed to asbestos.

III. GENERAL ELECTRIC TURBINES ALSO CONTAINED ASBESTOS COMPONENTS AND GENERAL ELECTRIC SEPARATELY SOLD THESE ASBESTOS COMPONENTS THROUGH ITS "AFTERMARKET" BUSINESS AS SPARE AND REPLACEMENT PARTS

16. Independent of the fact that GE turbines and turbine-generator sets required the use of asbestos insulation on them, GE also designed and manufactured this equipment with asbestos components in them and was in the business of supplying these asbestos components, both as spare parts and as replacement parts.

17. GE turbines contained asbestos gaskets and asbestos packing in various locations of the equipment up through the 1980's. (See Hobson Adams at 26-27, 54-62, 78; Hobson Totman at 20). As "loose" parts supplied along with its turbines, GE also supplied the asbestos gaskets that were placed in between the pipe flanges connecting the steam pipes to the turbines. (Id. Hobson Adams at 57). In its turbine replacement parts business, GE maintained a warehouse at

its turbine manufacturing plant in Lynn, Massachusetts or ordered the parts directly from the initial manufacturer for the turbine customer (Id. Hobson Adams at 60-61; Hobson Totman at 20)

IV. GENERAL ELECTRIC HAD EARLY, EXTENSIVE AND DETAILED KNOWLEDGE OF THE HAZARDS OF EXPOSURE TO ASBESTOS, INCLUDING, BY THE LATE 1940'S, KNOWLEDGE THAT ASBESTOS COULD CAUSE BOTH LUNG AND PLEURAL CANCERS, AND INCLUDING KNOWLEDGE OF THE HAZARDS TO "END PRODUCT" USERS AND BYSTANDERS"

18. GE's extensive use of asbestos and extensive manufacture and sale of ACMs, including equipment in and on which ACMs were required, is only surpassed by the early and staggering amount of knowledge it possessed regarding the hazards of asbestos exposure, the universe of those at risk for asbestos diseases and the steps necessary to reduce the risks.

19. GE's knowledge of the hazards of asbestos, dating back to the 1930's, was obtained by GE from a variety of sources. Those source of information included:

a) GE's large staff of physicians and other medical personnel, industrial hygienists and safety engineers;

b) outside consultants, including those specifically hired in the 1930's to address the hazards of asbestos in GE factories;

c) publicly available information, such as textbooks of which GE was aware, including the 1938 text "Silicosis and Asbestosis" and the 1949 text "Industrial Toxicology", co-authored by GE's 1930's asbestos consultant and which included a section on asbestos and lung cancer;

d) information sent to GE by associations involved with industrial health and safety to which GE belonged, including the National Safety Council (NSC), the Industrial Hygiene Foundation (IHF) and the American Association of Industrial Physicians and Surgeons (AAIPS).(see Drucker Tr. at 498-499)

20. At the recent deposition of GE's designee on the subject of GE's historical knowledge of the hazards of asbestos, GE has admitted that by the 1930's it knew the following:

a) asbestos exposure could cause the disease asbestosis (Drucker Tr. at 664);

b) asbestosis could be disabling and could cause death(Drucker Tr. at 571-575);

c) symptoms of asbestosis included dyspnea (shortness of breath), anorexia, cyanosis (blue coloration due to lack of oxygen), weight loss and emaciation (Drucker Tr. 784-792);

d) asbestosis, once acquired, was permanent, untreatable and incurable (Drucker Tr. 817-819;

e) asbestosis was a "chronic" disease, not an acute disease, requiring a number of years to develop (latency) (Drucker Tr. 464-465, 654-655;

f) individuals were exposed to asbestos dust, not only from work in factories, but from the use of asbestos-containing products, such as asbestos- containing insulation used on boilers, engines, pipes and other equipment (Drucker Tr. 792-793);

g) that such asbestos exposures from asbestos- containing insulation occurred in those handling and applying such products in buildings and ships during construction and repair (Drucker Tr. 792-795);

h) individuals at risk for pneumoconioses, including silicosis and asbestosis, included those working near others who were creating dust (Drucker Tr. 540-542, re: silica, Tr. 551-552 re: silica, Tr. 556-558 re: lead, Tr. 575-582, particularly 582, re: asbestos);

i) the defense mechanisms of the lungs were unable to cope with the fine fibrous insoluble particles of asbestos (Drucker Tr.638-644);

j) the dust that was most dangerous was so small as to be invisible to the naked eye, unless gathered in a dense cloud (Drucker Tr. 712, 811-813);

k) the "toxic limit" for asbestos of 5 million particles per cubic foot of air was a very small concentration, so small that the condition may look good to a critical eye, but still present a dangerous exposure, and was invisible to the naked eye (Drucker Tr. 712-715 and 816-817).

19. Critically, by the late 1940's, GE knew asbestos could cause cancer and, specifically, cancers of the lung and pleura. (Drucker Tr. 827 and 937; see also discussion generally, Drucker Tr. 819-832)

21. Not only did GE have the knowledge of the hazards as noted above, but GE also knew how to reduce the hazard. GE knew in the 1930's that some of the methods to suppress asbestos dust and thereby reduce the hazards from asbestos included:

a) wetting the material (Drucker Tr. 935, 609-611;

b) local exhaust ventilation (Drucker Tr. 935, 624);

c) separating more dusty processes from less dusty or non-dusty processes (obviously, thereby reducing the risk to "bystanders") (Drucker Tr. 935, 575-582, particularly 582);

d) using positive pressure air helmet respirators which supplied outside air and were different than simple face masks (Drucker Tr. 620-624).

22. Perhaps most importantly in a "failure to warn" case, GE knew, in the 1930's, that in order for a workers to protect themselves from asbestos dust, they needed to know that they were being exposed to something that was hazardous. (Drucker Tr. 935-936).

V. GENERAL ELECTRIC HAD NUMEROUS MEANS OF WARNING THOSE EXPOSED TO ASBESTOS DUST FROM ASBESTOS-CONTAINING MATERIALS IN AND ON GENERAL ELECTRIC EQUIPMENT

23. Armed with extensive knowledge regarding the hazards of asbestos and the means to reduce the risk, GE also had a number of different means with which to effectively communicate an adequate warning. GE knew that it could communicate warnings to those using and working around its equipment by placing a warning on the surface of its equipment itself. For example, GE specifically utilized the surface of the equipment, by placing a "CAUTION" on the nameplate of its turbines, a location GE knew would not be covered and would permanently remain with the equipment.(see Exhibit "M ")

24. The nameplate caution utilized by GE cautioned workers to read another means of communicating a warning-the instruction manual that accompanied the equipment. These manuals were another source of communication as they were maintained on board ships and referred to by those working on and with the turbines. Further, GE knew that it could place warnings in the instruction manuals themselves. For example, GE, in its equipment manuals, at