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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIC KLOPMAN-BAERSELMAN, as
Personal Representative for the Estate of
RUDIE KLOPMAN-BAERSELMAN,
deceased,

Plaintiff,

v.

AIR & LIQUID SYSTEMS
CORPORATION, et al.,

Defendants.

CASE NO. 3:18-cv-05536-RJB

FINAL RED-LINED NOTICE OF
VIDEOTAPED DEPOSITION OF
TOYOTA MOTOR SALES, U.S.A.,
INC.

MATTERS OF EXAMINATION

MATTER OF EXAMINATION NO. 1:

Toyota’s knowledge of hazards of asbestos before 1994.

MATTER OF EXAMINATION NO. 2:

A description of what **brakes, clutches, gaskets, and heat insulators** looked like on Toyota passenger vehicles in the United States between 1965 and 1994, and a general description of Toyota’s recommended work practices to replace them during this same time period.

1 **MATTER OF EXAMINATION NO. 3:**

2 Toyota's relationship with Chilton Book Company and Haynes Publishing Group with
3 respect to the specific Chilton and Haynes Toyota automotive manuals in Rudie Klopman-
4 Baerselman's garage **that are dated** between 1965 and 2007.

5 **MATTER OF EXAMINATION NO. 4:**

6 **Information regarding the meaning of Toyota's 2006 codes of conduct #1 and #3.**

7 **MATTER OF EXAMINATION NO. 5:**

8 Toyota's position, subjective beliefs, and opinions about the proper and reasonable
9 conduct of a manufacturer and seller of asbestos-containing automotive products in the United
10 States between 1965 and 1994, **without reference to privileged materials or work product.**

11 **MATTER OF EXAMINATION NO. 6:**

12 Information regarding compensation for Toyota's designated 30(b)(6) witness(es) for
13 their work and testimony in **this lawsuit.**

14 **MATTER OF EXAMINATION NO. 7:**

15 Information about the history of Toyota on its **website.**

16 **MATTER OF EXAMINATION NO. 8:**

17 The identity of the suppliers of Toyota's asbestos-containing **brakes, clutches, gaskets,**
18 **and heat insulation** between 1965 and 1994, including the time period (start date and end date) of
19 such supply.

20 **MATTER OF EXAMINATION NO. 9:**

21 Information regarding all material safety data sheets (MSDS) that mention **asbestos**
22 Toyota received, distributed, or is currently in possession, custody, or control of that are dated
23 between 1965 and 1994.

1 **MATTER OF EXAMINATION NO. 10:**

2 The brand name, manufacturer, and supplier of the **asbestos-containing brakes, clutches,**
3 **gaskets, and heat insulators** installed as original equipment in Rudie Klopman-Baerselman's
4 Toyota vehicles manufactured between 1960 and 1994.

5 **MATTER OF EXAMINATION NO. 11:**

6 Information about whether or not Toyota distributed **asbestos-containing vehicles and**
7 **replacement parts** to Oregon and Washington between 1965 and 1994.

8 **MATTER OF EXAMINATION NO. 12:**

9 Information regarding Toyota's position, statements, and recommendations regarding the
10 importance of replacing OEM Toyota **asbestos-containing parts** with Toyota Genuine Parts
11 between 1965 and 1994.

12 **MATTER OF EXAMINATION NO. 13:**

13 Information regarding Motor Vehicle Manufacturers Association (MVMA) documents
14 that identify the brand name, manufacturer, or supplier of the **asbestos-containing brakes,**
15 **clutches, gaskets, and heat insulators** installed as original equipment in Rudie Klopman-
16 Baerselman's Toyota vehicles manufactured between **1965** and 1994.

17 **MATTER OF EXAMINATION NO. 14:**

18 Toyota's position, belief, and opinion regarding whether **Rayloc brand brakes and**
19 **clutches, Bendix brand brakes,** Borg Warner brand clutches, **EIS brand brakes,** Victor brand
20 gaskets, and Fel-Pro brand gaskets can be used as replacement parts with Toyota vehicles
21 between 1965 and **2002**.

22 **MATTER OF EXAMINATION NO. 15:**

23 **The time period (start date and end date) when Bendix was a manufacturer of**
24

1 brakes for Toyota vehicles between 1965 and 1994 and any and all cautions, warnings, or
2 notifications regarding asbestos ever received by Toyota from Bendix.

3 **MATTER OF EXAMINATION NO. 16:**

4 Toyota's knowledge, understanding, information, position, and opinion regarding the
5 frequency with which the brake shoes, brake pads, clutch components, gaskets, and heat
6 insulators in its vehicles wear out, need to be replaced, and need to be inspected, including the
7 time period and manner in which Toyota communicated such information between 1965 and
8 1994.

9 **MATTER OF EXAMINATION NO. 17:**

10 Toyota's recommendations regarding how to properly inspect and/or remove and replace
11 the brakes, clutches, gaskets, and heat insulators in its vehicles, including the work practices,
12 procedures, and tools involved in such work, and the time periods when Toyota recommended
13 such work practices between 1965 and 1994.

14 **MATTER OF EXAMINATION NO. 18:**

15 Toyota's knowledge regarding whether removing, replacing, and/or inspecting the
16 brakes, clutches, gaskets, and heat insulators in its vehicles creates any dust, as well as the time
17 period when Toyota knew this between 1965 and 1994.

18 **MATTER OF EXAMINATION NO. 19:**

19 The time period (start date and end date) and manner in which Toyota recommended that
20 its customers use compressed air when working with brakes, clutches, gaskets, and/or heat
21 insulators on its vehicles between 1965 and 2007, and the time period when Toyota discontinued
22 such recommendations.

23 **MATTER OF EXAMINATION NO. 20:**

1 The time period and manner in which Toyota recommended that its customers grind, file,
2 scrape, or sand the **brakes, clutches, and gaskets** in its automobiles between 1965 and **2017**, and
3 the time period when Toyota discontinued such recommendations.

4 **MATTER OF EXAMINATION NO. 21:**

5 Toyota's knowledge of the temperatures reached by the catalytic converter and/or
6 exhaust manifold areas in its vehicles between 1965 and 1992, and how those temperatures affect
7 the gasket material on such components.

8 **MATTER OF EXAMINATION NO. 22:**

9 Information regarding Toyota's marketing, sale, distribution, or involvement in any
10 way with dust suppression systems or equipment for **brakes, clutches, or gaskets**, including
11 through any of its divisions, subsidiaries, distributors, or dealers between 1965 and **2017**.

12 **MATTER OF EXAMINATION NO. 23:**

13 The time period when Toyota first learned that its vehicles included **components** that
14 contained asbestos.

15 **MATTER OF EXAMINATION NO. 24:**

16 The time period when Toyota learned the laws and regulations pertaining to **asbestos** in
17 California, and the content of each such law and regulation, as well as any automobile
18 certification Toyota had to obtain from California from **1958** to 1994.

19 **MATTER OF EXAMINATION NO. 25:**

20 Toyota's knowledge and awareness of EPA recommendations regarding asbestos
21 between 1965 and 1994, including the EPA "Don't Blow It Video" and EPA "Guidance for
22 Preventing Asbestos Disease Among Auto Mechanics" (aka the EPA Gold Book), and any
23 actions Toyota took in response to such publications.

1 **MATTER OF EXAMINATION NO. 26:**

2 The time period when and manner in which Toyota first learned that breathing **asbestos**
3 **dust** could be hazardous to human beings.

4 **MATTER OF EXAMINATION NO. 27:**

5 Information regarding the existence of Toyota facilities where mechanics performed
6 automotive repair and maintenance work in the United States between **1958** and 1994.

7 **MATTER OF EXAMINATION NO. 28:**

8 Toyota's knowledge of federal safety standards regarding asbestos **in automotive parts,**
9 including the time period and extent of such knowledge and awareness between **1958** and 1994.

10 **MATTER OF EXAMINATION NO. 29:**

11 Toyota's membership in any and all automotive and engineering associations in Japan
12 and the United States, and the time period of such membership before 1994.

13 **MATTER OF EXAMINATION NO. 30:**

14 Information regarding Toyota's investigation into the hazards of asbestos between 1965
15 and 1994.

16 **MATTER OF EXAMINATION NO. 31:**

17 Information regarding Toyota's advertising and slogan, "We Really Care," used in the
18 **1980s.**

19 **MATTER OF EXAMINATION NO. 32:**

20 Information regarding the earliest asbestos lawsuits filed against Toyota, including the
21 **allegations, disease type, occupation, and Toyota's response thereto.**

22 **MATTER OF EXAMINATION NO. 33:**

1 Toyota's knowledge regarding whether its own employees were developing asbestos-
2 related lung disease, the time period of such knowledge, the identity of such individuals, the job
3 title of such individuals, and Toyota's response thereto.

4 **MATTER OF EXAMINATION NO. 34:**

5 Information regarding any and all testing, studies, research and development Toyota
6 has performed or caused to be performed regarding asbestos, and the amount of money spent on
7 the same between 1965 and 1994.

8 **MATTER OF EXAMINATION NO. 35:**

9 Any and all individuals and experts Toyota has hired to perform research and
10 development regarding safety on the asbestos-containing components of Toyota vehicles
11 between 1965 and 1994.

12 **MATTER OF EXAMINATION NO. 36:**

13 Toyota's control over the words on its packaging, including Toyota's ability to provide
14 warnings about asbestos with its products.

15 **MATTER OF EXAMINATION NO. 37:**

16 Toyota's knowledge of "do-it-yourselfers" as referenced in Toyota's manuals between
17 1965 and 1994.

18 **MATTER OF EXAMINATION NO. 38:**

19 All information regarding any warnings, cautions, or notifications Toyota gave anyone
20 regarding asbestos between 1965 and 2017.

21 **MATTER OF EXAMINATION NO. 39:**

22 Information regarding any recall or removal of asbestos-containing parts or vehicles
23 performed by Toyota between 1965 and 2007.

1 **MATTER OF EXAMINATION NO. 40:**

2 The meaning of NOTES, CAUTIONS, and WARNINGS sections in Toyota's manuals.

3 **MATTER OF EXAMINATION NO. 41:**

4 Information regarding Toyota's historical and current document retention policies from
5 1965 to 1994.

6 **MATTER OF EXAMINATION NO. 42:**

7 Information regarding any **writings** in which Toyota has contended, stated, or indicated in
8 any way that **asbestos** is hazardous or dangerous.

9 **MATTER OF EXAMINATION NO. 43:**

10 The basis of Toyota's contention, position, and opinion, if made, that it has been
11 scientifically proven that asbestos in automobiles is safe, **without reference to privileged**
12 **materials or work product.**

13 **MATTER OF EXAMINATION NO. 44:**

14 Toyota's knowledge and contentions regarding any public health or epidemiological
15 institutions that have concluded there is no safe level of exposure to **asbestos** when it comes to
16 mesothelioma risk, **without reference to privileged materials or work product.**

17 **MATTER OF EXAMINATION NO. 45:**

18 Information regarding Toyota's awareness of a single government, medical, regulatory,
19 educational, scientific, or public health organization in the world (e.g., OSHA, EPA, American
20 Cancer Society, World Health Organization, National Institutes of Health, IARC, etc.) that
21 agrees with Toyota's contention, if made, that repeatedly grinding and sanding asbestos-
22 containing clutches and gaskets does not increase a person's risk of developing mesothelioma,
23 **without reference to privileged materials or work product.**

1 **MATTER OF EXAMINATION NO. 46:**

2 Information regarding any facts, documents and witnesses that support Toyota's
3 contention that Rudie Klopman-Baerselman was exposed to asbestos in the Dutch merchant
4 marines, including the names of all companies and entities that Toyota contends are responsible
5 for exposing Mr. Klopman-Baerselman to asbestos in the merchant marines, **to the extent known,**
6 **and without reference to privileged materials or work product.**

7 **MATTER OF EXAMINATION NO. 47:**

8 Information regarding any companies or entities other than Toyota that Toyota contends
9 are responsible for exposing Rudie Klopman-Baerselman to asbestos, **to the extent known, and**
10 **without reference to privileged materials or work product.**

11 **MATTER OF EXAMINATION NO. 48:**

12 Information about the manner in which Toyota searched for information and documents
13 and prepared for the topics identified in this deposition notice.

14 **MATTER OF EXAMINATION NO. 49:**

15 **Information regarding Toyota Motor Sales's investigation into the hazards of asbestos in**
16 **automobiles that began in approximately 2000.**

17 **MATTER OF EXAMINATION NO. 50:**

18 All documents reviewed and individuals interviewed in preparation to testify as the
19 30(b)(6) witness for Toyota Motor Corporation in asbestos litigation.

20 **MATTER OF EXAMINATION NO. 51:**

21 Toyota's positions, beliefs, and opinions regarding the accuracy of the testimony of the
22 witnesses who have testified about Toyota in this case.

23 **MATTER OF EXAMINATION NO. 52:**

1 The facts, documents, and witnesses with information supporting Toyota's affirmative
2 defenses, without reference to privileged materials or work product:

3 a) No. 1 that Plaintiff's claimed injuries and damages are the result of their or
4 Plaintiffs' decedent's comparative or contributory fault;

5 b) No. 2 that Plaintiffs' claimed injuries and damages were due to actions of third
6 parties beyond the control of TMC;

7 c) No. 11 that if Plaintiffs have incurred any injury or damage, which TMC denies,
8 TMC alleges that the risk of such injury or damage to Plaintiffs was not
9 foreseeable;

10 d) No. 13 that the state of the medical and scientific knowledge, as well as the
11 published literature and other materials reflecting the state of the medical and
12 scientific knowledge, at all times pertinent to TMC's asbestos-containing products
13 was such that TMC neither knew, nor could have known, that its asbestos-containing
14 products presented a foreseeable risk of harm to Plaintiffs or Plaintiffs'
15 decedent in the normal and expected use of the products;

16 e) No. 17 that pursuant to RCW 4.22.070, the percentage of fault that allegedly caused
17 Plaintiffs' injuries, if any, should be apportioned among the following parties or
18 entities: A. Plaintiffs for failure to use or properly use safety equipment, improper
19 use of asbestos-containing products, use of cigarettes or other tobacco products,
20 and any other factors that future discovery may disclose regarding the degree of
21 fault attributable to the Plaintiffs; B. The other named defendants in this lawsuit; C.
22 Asbestos manufacturers and/or suppliers and/or contractors not named in this
23 lawsuit whose products were present or likely to be present at any of Plaintiff's
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1 work sites; D. Asbestos manufacturers and/or suppliers and/or contractors that have
2 filed bankruptcy petitions, to specifically include, but not limited to, Johns
3 Manville Corporation, Celotex, Carey Canada, Eagle-Picher, H.K. Porter, Unarco
4 Industries, Amatex Corporation, Standard Asbestos Company, Forty-Eight
5 Insulations, Inc., and Keene Corporation and all related corporate entities of the
6 same; E. Asbestos manufacturers and/or suppliers and/or contractors not named in
7 this lawsuit who enter into settlement agreements or releases with the Plaintiffs; F.
8 The employers of Plaintiffs who failed to provide a safe work environment and/or
9 adequate warnings or instructions regarding the proper application and use of
10 asbestos-containing products, including, when appropriate, the United States
11 government for any military installation, naval shipyard or energy facility, and any
12 other government entity where Plaintiffs were employed; G. Other named
13 defendants or other entities that contributed to Plaintiffs' alleged injuries having
14 specific factual or procedural defenses against them that bar Plaintiffs' cause of
15 action against the defendants or entities; H. TMC reserves the right to amend the
16 allegations of this section to, as future discovery may warrant, include additional
17 parties or entities that may have contributed to Plaintiffs' alleged injuries;
18 f) No. 25 that as a result of Plaintiffs' decedent's education, training and experience,
19 they were knowledgeable of the proper use of the product and any inherent risk of
20 any improper use of the product. Nevertheless, Plaintiffs failed to utilize the
21 product in a manner reasonable expected of a person with their training and
22 experience.
23 g) No. 38 that at all times material herein there was no known substitute for asbestos
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1 in the products distributed by TMC. The unavoidable composition of the products
2 is a bar to recovery in strict liability against TMC;
3 h) No. 40 that Plaintiffs' alleged injuries were solely and proximately caused or
4 contributed to by their contributory negligence and/or their acts or omissions
5 including, but not limited to, the following: A. Plaintiffs failed to exercise ordinary
6 care for their own safety when they knew, or should have known, of the hazards
7 incident to their work; B. Plaintiffs failed to use appropriate protective clothing and
8 equipment when they knew, or should have known, that the materials with which
9 they were working might be harmful; C. Plaintiffs failed to use products distributed
10 by TMS [sic] in the proper and intended manner and subjected such product to
11 abnormal uses not reasonably foreseeable by TMS [sic] ; D. Plaintiffs failed to
12 advise, request or demand that her employers provide appropriate protective
13 clothing and equipment and/or a suitable and safe workplace; E. Plaintiffs failed to
14 heed advice and warnings concerning proper and safe working conditions and use
15 of the materials with which they were working; F. Plaintiffs failed to use the safety
16 equipment provided by their employers and/or failed to follow their employers'
17 safety procedures; G. Plaintiffs habitually used tobacco; H. Plaintiffs voluntarily
18 and knowingly assumed the risks that caused their damages, if any, therefore

19 **MATTER OF EXAMINATION NO. 53:**

20 General information regarding Toyota's relationship with Toyota Tsusho Corporation of
21 Japan, Toyota Tsusho South Pacific (TTSPH), Toyota Tsusho Inc. and Asco Motors, including
22 whether Asco Motors is a fully approved Toyota automotive distributor.

23 **SCHEDULE OF DOCUMENTS**

1 **DOCUMENT REQUEST CATEGORY NO. 1:**

2 All of Toyota's annual reports from 1965 to 1994 that include the word asbestos.

3 **DOCUMENT REQUEST CATEGORY NO. 2:**

4 Toyota's advertising and marketing materials in which it used the slogan "We Really
5 Care" and are dated in the 1980s.

6 **DOCUMENT REQUEST CATEGORY NO. 3:**

7 All communications between Toyota and Chilton Book Company and Haynes
8 Publishing Group that reference asbestos or compressed air between 1965 and 2007.

9 **DOCUMENT REQUEST CATEGORY NO. 4:**

10 All writings regarding Toyota's analysis of the cost and price difference between
11 asbestos-containing and asbestos-free automotive component parts between 1965 and 1994.

12 **DOCUMENT REQUEST CATEGORY NO. 5:**

13 Writings regarding the asbestos content of Toyota's brakes, clutches, gaskets, and heat
14 insulators between 1965 and 1994.

15 **DOCUMENT REQUEST CATEGORY NO. 6:**

16 All writings regarding the identity of Toyota's suppliers of asbestos-containing brakes,
17 clutches, gaskets, heat insulators in Toyota vehicles between 1965 and 1994.

18 **DOCUMENT REQUEST CATEGORY NO. 7:**

19 All material safety data sheets (MSDS) Toyota received, distributed, or is currently in
20 possession, custody, or control of that reference asbestos between 1965 and 1994.

21 **DOCUMENT REQUEST CATEGORY NO. 8:**

22 All writings regarding the brand name, supplier, and distributor of each OEM asbestos-
23 containing component (e.g., brakes, clutches, gaskets, heat insulators) of the specific make,
24

1 model, and year of each Toyota vehicle identified at deposition by Eric Klopman-Baerselman,
2 Thomas Klopman-Baerselman, Steven Klopman-Baerselman, Lorene Shoell, Michael Heyer,
3 and Ray Smith in this case.

4 **DOCUMENT REQUEST CATEGORY NO. 9:**

5 All Motor Vehicle Manufacturers Association (MVMA) documents pertaining to brakes,
6 clutches, gaskets, heat insulators in Rudie Klopman-Baerselman's Toyota vehicles for model
7 years between 1965 and 1994.

8 **DOCUMENT REQUEST CATEGORY NO. 10:**

9 All writings in Toyota's possession, custody, or control that mention Bendix brakes
10 associated with Toyota vehicles between 1965 and 1994.

11 **DOCUMENT REQUEST CATEGORY NO. 11:**

12 All writings in which Toyota recommended that its customers grind, file, scrape, or sand
13 the brakes, clutches, and gaskets associated with Rudie Klopman-Baerselman's Toyota vehicles
14 for model years between 1965 and 1994.

15 **DOCUMENT REQUEST CATEGORY NO. 12:**

16 All writings in Toyota's possession, custody, or control relating to Toyota's marketing,
17 sale, distribution, or involvement in any way with dust suppression systems for brakes, clutches,
18 or gaskets, including through any of its divisions, subsidiaries, distributors, or dealers between
19 1965 and 1994.

20 **DOCUMENT REQUEST CATEGORY NO. 13:**

21 All writings, if any, documenting when Toyota first learned that breathing asbestos dust
22 could be hazardous to human beings.

23 **DOCUMENT REQUEST CATEGORY NO. 14:**

1 All of the literature Toyota reviewed during its investigation into the hazards of asbestos
2 that began in 2000, including any and all literature that supports Toyota's contention, position, or
3 opinion that the asbestos in automotive products is safe, **without reference to privileged materials**
4 **or work product.**

5 **DOCUMENT REQUEST CATEGORY NO. 15:**

6 All literature and publications of any kind in Toyota's possession, custody, or control that
7 Toyota considered in concluding that the asbestos in automotive friction products is safe, **without**
8 **reference to privileged materials or work product.**

9 **DOCUMENT REQUEST CATEGORY NO. 16:**

10 All writings regarding any and all testing, studies, research and development Toyota has
11 performed or caused to be performed regarding asbestos between 1965 and 1994, **without**
12 **reference to privileged materials or work product.**

13 **DOCUMENT REQUEST CATEGORY NO. 17:**

14 All writings regarding any and all individuals and experts Toyota hired, if any, to perform
15 research and development on the asbestos-containing components of Toyota vehicles between
16 1965 and 1994.

17 **DOCUMENT REQUEST CATEGORY NO. 18:**

18 All writings regarding any warnings, cautions, or notifications Toyota gave anyone
19 regarding asbestos, including the original and legible copies of said warnings, between 1965 and
20 1994.

21 **DOCUMENT REQUEST CATEGORY NO. 19:**

1 All writings in which Toyota has contended, stated, implied, or indicated in any way that
2 asbestos is hazardous, dangerous or harmful, including to the environment, to human beings, to
3 mechanics, to families, to wives, or to children.

4 **DOCUMENT REQUEST CATEGORY NO. 20:**

5 Any and all writings regarding Toyota's sale, marketing, or distribution of equipment to
6 minimize, clean, wet down or vacuum asbestos dust, brake dust, clutch dust, gasket dust, or any
7 other kind of dust.

8 **DOCUMENT REQUEST CATEGORY NO. 21:**

9 All writings in which Toyota references the EPA Gold Book/Guidance for Preventing
10 Asbestos Disease Among Auto Mechanics.

11 **DOCUMENT REQUEST CATEGORY NO. 22:**

12 All writings that support any contention by Toyota that Rudie Klopman-Baerselman was
13 exposed to asbestos in the Dutch merchant marines or at Tektronix, without reference to
14 privileged materials or work product.

15 **DOCUMENT REQUEST CATEGORY NO. 23:**

16 All writings supporting Toyota's contention that any companies or entities other than
17 Toyota are responsible for exposing Rudie Klopman-Baerselman to asbestos, without reference
18 to privileged materials or work product.

19 **DOCUMENT REQUEST CATEGORY NO. 24:**

20 The writings supporting each of Toyota's below affirmative defenses, without reference
21 to privileged materials or work product:.

- 22 a) No. 1 that Plaintiff's claimed injuries and damages are the result of their or
23 Plaintiffs' decedent's comparative or contributory fault;

1 b) No. 2 that Plaintiffs' claimed injuries and damages were due to actions of third
2 parties beyond the control of TMS;

3 c) No. 4 that Plaintiffs' claimed injuries and damages are the direct and proximate
4 result of knowing assumption of risk;

5 d) No. 5 that Plaintiffs have failed to join a necessary and/or indispensable party.

6 e) No. 7 that Plaintiffs' damages, if any, were caused by alteration and/or unintended
7 use and/or misuse of the product;

8 f) No. 8 that if Plaintiffs have incurred any injury or damage, which TMS denies,
9 TMS alleges that the risk of such injury or damage to Plaintiffs was not
10 foreseeable;

11 g) No. 10 that the state of the medical and scientific knowledge, as well as the
12 published literature and other materials reflecting the state of the medical and
13 scientific knowledge, at all times pertinent to TMS's asbestos-containing products
14 was such that TMS neither knew, nor could have known, that its asbestos-containing
15 products presented a foreseeable risk of harm to Plaintiffs or Plaintiffs'
16 decedent in the normal and expected use of the products;

17 h) No. 12 that pursuant to RCW 4.22.070, the percentage of fault that allegedly caused
18 Plaintiffs' injuries, if any, should be apportioned among the following parties or
19 entities: A. Plaintiffs for failure to use or properly use safety equipment, improper
20 use of asbestos-containing products, use of cigarettes or other tobacco products,
21 and any other factors that future discovery may disclose regarding the degree of
22 fault attributable to the Plaintiffs; B. The other named defendants in this lawsuit; C.
23 Asbestos manufacturers and/or suppliers and/or contractors not named in this
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1 lawsuit whose products were present or likely to be present at any of Plaintiff's
2 work sites; D. Asbestos manufacturers and/or suppliers and/or contractors that have
3 filed bankruptcy petitions, to specifically include, but not limited to, Johns
4 Manville Corporation, Celotex, Carey Canada, Eagle-Picher, H.K. Porter, Unarco
5 Industries, Amatex Corporation, Standard Asbestos Company, Forty-Eight
6 Insulations, Inc., and Keene Corporation and all related corporate entities of the
7 same; E. Asbestos manufactures and/or suppliers and/or contractors not named in
8 this lawsuit who enter into settlement agreements or releases with the Plaintiffs; F.
9 The employers of Plaintiffs who failed to provide a safe work environment and/or
10 adequate warnings or instructions regarding the proper application and use of
11 asbestos-containing products, including, when appropriate, the United States
12 government for any military installation, naval shipyard or energy facility, and any
13 other government entity where Plaintiffs were employed; G. Other named
14 defendants or other entities that contributed to Plaintiffs' alleged injuries having
15 specific factual or procedural defenses against them that bar Plaintiffs' cause of
16 action against the defendants or entities; H. TMS reserves the right to amend the
17 allegations of this section to, as future discovery may warrant, include additional
18 parties or entities that may have contributed to Plaintiffs' alleged injuries;
19 i) No. 20 that as a result of Plaintiffs' decedent's education, training and experience,
20 they were knowledgeable of the proper use of the product and any inherent risk of
21 any improper use of the product. Nevertheless, Plaintiffs failed to utilize the
22 product in a manner reasonable expected of a person with their training and
23 experience;

1 j) No. 25 that at all times material herein there was no known substitute for asbestos
2 in the products distributed by TMS. The unavoidable composition of the products is
3 a bar to recovery in strict liability against TMS;

4 k) No. 27 that Plaintiffs' alleged injuries were solely and proximately caused or
5 contributed to by their contributory negligence and/or their acts or omissions
6 including, but not limited to, the following: A. Plaintiffs failed to exercise ordinary
7 care for their own safety when they knew, or should have known, of the hazards
8 incident to their work; B. Plaintiffs failed to use appropriate protective clothing and
9 equipment when they knew, or should have known, that the materials with which
10 they were working might be harmful; C. Plaintiffs failed to use products distributed
11 by TMS in the proper and intended manner and subjected such product to abnormal
12 uses not reasonably foreseeable by TMS; D. Plaintiffs failed to advise, request or
13 demand that her employers provide appropriate protective clothing and equipment
14 and/or a suitable and safe workplace; E. Plaintiffs failed to heed advice and
15 warnings concerning proper and safe working conditions and use of the materials
16 with which they were working; F. Plaintiffs failed to use the safety equipment
17 provided by their employers and/or failed to follow their employers' safety
18 procedures; G. Plaintiffs habitually used tobacco; H. Plaintiffs voluntarily and
19 knowingly assumed the risks that caused their damages, if any, therefore barring
20 this action and/or reducing their recovery; and I. TMS reserves the right to add
21 additional acts or omissions by Plaintiffs as discovery may warrant;

22 l) No. 29 that Plaintiffs and Plaintiffs' decedent were not injured by products for
23 which TMS is responsible. The asbestos, if any, contained in said products was not
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1 harmful in the amounts, if any, expected to be released, was locked in, encapsulated
2 and firmly bound so that it did not release fibers sufficient to pose any health
3 hazard;

4 m) No. 33 that at all times since its enactment, TMS fully complied with the
5 requirements of the Occupational Safety and Health Act (OSHA) and the rules and
6 regulations promulgated thereunder; and

7 n) No. 34 that complete and adequate instructions and warnings accompanied the
8 product and were given to purchasers and, therefore, TMS owned no additional
9 duty to Plaintiffs or Plaintiffs decedent.

10 **DOCUMENT REQUEST CATEGORY NO. 25:**

11 If Toyota has withheld any document based on a claim of privilege, please produce a
12 privilege log identifying all such documents.

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14 DATED this ___ day of October 2019.

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