

SUPREME COURT OF THE STATE OF NEW YORK
ALL COUNTIES WITHIN THE CITY OF NEW YORK

PART 30

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IN RE: NEW YORK CITY
ASBESTOS LITIGATION

New York City
Asbestos Litigation
(NYCAL)

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This Document Relates To:

Index No. 40000/88

All Cases

**CMO AMENDMENT
RE: SPECIAL MASTER**

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Section III, entitled “**Special Discovery Master/ Referee**”, of the NYCAL Amended Case Management Order dated September 20, 1996, as amended May 26, 2011 and April 18, 2012 (“CMO”), is hereby deleted in its entirety, and the following inserted in its place and stead:

III. Special Master

A. The Court appoints (pursuant to consultation and consent of counsel) Shelley Rossoff Olsen, Esq. as Special Master in these cases. The parties have agreed to compensate Shelley Rossoff Olsen, Esq. for her services as Special Master at the flat rate of \$368,000 per year. These fees shall be borne, jointly, 40% by plaintiffs and, jointly, 60% by defendants. The assessment and collection of such compensation in such amounts shall be the responsibility of Rossi, Daskocil and Finkelstein, LLP (“RDF”), the financial management company agreed to by the parties.

The Special Master hereinafter named shall supervise compliance with discovery including, but not limited to, adequacy of the plaintiffs’ and defendants’ standard interrogatory responses, production of documents, the conduct of deposition and other discovery disputes that may arise, and, when requested, shall promptly make recommended rulings in writing for the Court’s consideration on all discovery disputes.

In the event of a discovery dispute, including but not limited to the failure to provide required discovery, the requesting party shall notify the Special Master without delay and request intervention. No motion to compel discovery from a party may be made without first seeking the assistance of the Special Master to obtain that discovery.

The Special Master shall convene and conduct mandatory settlement conferences as necessary and in accordance with the time line contained in the CMO, and shall have such other duties as specified by the CMO or the Court.

B. Any party objecting to a ruling by the Special Master must notify the Special Master and all other interested parties by email of its intention to raise an objection within three (3) business days of receiving such Special Master's ruling and must request that such Special Master issue a written recommendation. Thereafter, said objection must be raised in writing with the Court within seven (7) days of the receipt of such Special Master's written recommendation. If notification of a party's intention to challenge the Special Master's ruling is not given within three (3) business days, the Court may adopt the recommended ruling as its order on the disputed issue. Any and all motions made by the parties pursuant to this Amended Case Management Order must reference the paragraph(s) of this Order under which relief is sought, if applicable.

C. (i) The parties have agreed that Shelley Rossoff Olsen, Esq. will be engaged as the Special Master from January 1, 2017 through December 31, 2017, with reappointments anticipated thereafter. The parties have agreed to compensate Shelley Rossoff Olsen, Esq. for her services as the Special Master herein at the flat annual rate of \$368,000 for 2017. Such fee shall be borne 40% jointly by plaintiffs and 60% jointly by defendants. The assessment and collection of such compensation in such amounts shall be the responsibility of RDF.

(ii) On or before May 15, 2017, and in each calendar year thereafter, plaintiffs will submit the following information to the Special Master and RDF.

- a) allocations among plaintiffs for their 40% share, including names and addresses of all such plaintiffs' counsel;
- b) lists of all active defendants in NYCAL, including names and addresses of all of such defendants counsel;
- c) for purposes of this Section III of CMO, "active" defendants shall be deemed to mean all those defendants who are included in the *in extremis* docket, as discussed and defined in Sections XIII and XIV of this CMO, as well as all those defendants who are included in the activated and clustered FIFO docket; and
- d) the defendants' active list shall be updated and/or modified regularly to account for any new defendants.

(iii) Based on such information provided to RDF, it shall promptly notify plaintiffs' counsel and defendants' counsel by email of the parties' respective payments to be made as their proportionate shares of the Special Master's annual compensation in accordance with paragraph C(i) above. Plaintiffs' counsel shall be responsible for full payment of their clients' shares to RDF, on or before June 15 of each year and defendants' counsel shall be responsible for full payment of their clients' shares to RDF, on or before August 15 of each year, which amounts may be recouped by plaintiffs' and defendants' counsel in the form of client disbursements.

(iv) As the number of plaintiffs involved in respect of each docket is amenable to accurate calculation, plaintiffs shares of the Special Master's compensation for the period at issue shall be calculated precisely at the 40% share allocated to plaintiffs as set forth above, which amount is exclusive of the plaintiff's proportionate share of RDF's annual fee, which shall be established by separate order of the Court upon the parties' retention of RDF. The parties' proportionate shares of RDF's annual fees shall be allocated 40% to plaintiffs and 60% to defendants.

(v) As the number of defendants involved in respect of each docket is difficult to calculate, defendants' allocations shall be \$725.00 per defendant for the period at issue, which amount is inclusive of the defendants' proportionate share of RDF's annual fee. Each payment per defendant shall constitute a one-time fee for the period at issue, regardless of the number of cases in which the defendant is named. Any amounts paid to RDF in excess of the defendants' 60% share herein shall be placed in a special escrow account to be maintained by RDF on behalf of NYCAL and applied toward the defendants' obligations for the next succeeding period at issue, and the \$725.00 payment per defendant shall be adjusted as appropriate.

D. (i) It is anticipated that the appointment of the Special Master in 2018 will be on a calendar-year basis. For 2017, it will extend from January 1, 2017 until December 31, 2017. Ms. Olsen shall be paid by RDF on a quarterly basis, with the payments for her expected services from January 1, 2017 through December 31, 2017 to be made on or before March 20, 2017, June 20, 2017, September 20, 2017 and December 20, 2017.

(ii) a) As the Special Master's compensation through the end of this year has been set at \$368,000, plaintiffs' share of such compensation shall be calculated at 40% of such sum in the amount of \$147,200 for such period (exclusive of plaintiffs proportionate share of RDF's fee). As defendants' shares are difficult to calculate, defendants' 60% shares of such sum in the amount of \$220,800 for such period shall remain payable in the fixed amount of \$725.00 per defendant (inclusive of defendants' proportionate share of RDF's fee), with any overage in respect of defendants' amortized share to be deposited into the escrow account as set forth in paragraph C(v) above. Plaintiffs' 40% share and defendants 60% share of the Special Master's compensation in succeeding years shall be calculated on the full amount of \$368,000.00.

b) As set forth above, RDF's fee shall be borne 40% to plaintiffs and 60% to defendants. As established herein, the defendants' 60% share of such fee is included in each defendant's

payment obligation of \$725.00. Upon the parties' retention of RDF, the Court shall issue a separate order which, among other things, shall designate the amount and method of payment of plaintiffs 40% share of RDF's fee.

Except as set forth herein, and in all other respects, the CMO shall remain unchanged and in full force and effect.

DATED: December 19, 2016 SO ORDERED:


PETER H. MOULTON, J.S.C.


JORDAN C. FOX


CHARLES FERGUSON


ROBERT C. MALABY


JUDY YAVITZ