

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

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TO

Eli Gottesdiener

PHONE NO.

FACSIMILE NO. 17187881650

FROM

Reagan M. Brown

PHONE NO. (713) 651-5469

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October 14, 2008

**FACSIMILE (718) 788-1650
AND CERTIFIED MAIL/RRR**


Mr. Eli Gottesdiener
Gottesdiener Law Firm, PLLC
498 7th Street
Brooklyn, New York 11215

Re: Civil Action No. 1:07CV692; *Charles E. Moody v. The Turner Corporation, et. al.*; In the United States District Court for the Southern District of Ohio, Western Division

Dear Eli:

In accordance with my letter of October 13, 2008, please find enclosed Defendants' Responses and Objections to Plaintiffs' First Set of Requests for Production.

Very truly yours,


Reagan M. Brown

rmb/jh
Enclosure

cc: Mr. Michael D. Eagen
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Mr. Barry W. Cowan (Firm)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHARLES E. MOODY and TIMOTHY L.	§	
TALLENTINE, on behalf of themselves and	§	
on behalf of all others similarly situated,	§	Case No. 1:07 CV 692
	§	
Plaintiffs,	§	
v.	§	Chief Judge Beckwith
	§	
THE TURNER CORPORATION AND	§	
EMPLOYEES' CASH BALANCE	§	
RETIREMENT PLAN OF THE TURNER	§	
CORPORATION,	§	
	§	
Defendants.	§	

**DEFENDANTS' RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendants, The Turner Corporation ("Turner") and Employees' Cash Balance Retirement Plan of The Turner Corporation (the "Plan") (collectively "Defendants") serve the following Responses and Objections to Plaintiffs' First Requests for Production.

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

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CERTIFICATE OF SERVICE

A true and correct copy of this pleading was served on October 14, 2008, on all counsel of record.



Reagan M. Brown

**RESPONSES AND OBJECTIONS TO
PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION**

REQUEST FOR PRODUCTION NO. 1:

1. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "whipsaw," "projection," "96-8," "Notice 96-8" or "IRS Notice 96-8," "actuarial equivalent," "equivalent actuarial value," "present value," "future value," "estimate," "estimation," "method," "methodology," "normal retirement age," "normal retirement date," "fixed rate," "variable rate," "above-market," "above market," "guaranteed minimum," "4.5%," "4.5% minimum," or "4.5% guarantee."

2. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "accrual," "benefit," "benefit accrual," "accrual of benefit," "accrual methods," "accrued benefit," "rate of benefit accrual," "benefit accrual requirements," "cash balance benefit," "cash benefit formula," "formula," "calculate," "calculated," "calculation," "hybrid," or "crediting earnings."

3. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "backload," "backloaded," "backloading," "411(b)," "frontload," "frontloaded," "frontloading," "back-load," "back-loaded," "back-loading," "front-load," "front-loaded," or "front-loading."

4. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "lump sum," "lumpsum," "single sum," "distribution," "payment," "cashout," "cash-out," "benefit commencement," "benefit commencement date," or "optional form of benefit."

5. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "determination letter," "moratorium plan," "liable," "liability," "amount owed," "amount due," "damages," "shortfall," "windfall," "excess," "amount in excess," "complain," "complaint," "lawful," "unlawful," "legal," "illegal," "forfeit," "forfeiture," "lawsuit," "litigation," "class action," "plaintiff," "plaintiffs," "plaintiff's," "plaintiffs'," "Lyons," "Esden," "Berger," "Georgia-Pacific," "Bank of Boston," "Xerox" (provided the word "plan" or "cash balance" or "Berger" appears within 10 words of the word "Xerox"), or "AK Steel."

6. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "account," "account balance," "notional account," "hypothetical account," "cash balance account," "notional," or "hypothetical."

7. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "credits," "pay credits," "future credits," "interest credit," "interest crediting," "earnings credit," "rate of return," "supplemental rate," "supplemental allocation," "definitely determinable," "Appendix A1," "Appendix A2,"

"Market Value Account," "ICBA," "Stabilized Notional Account," "hypothetical portfolio," "algorithm," "Aggregate Supplemental Rate," "CPI," "Consumer Price Index," "S&P 500 Index," "Lehman Bros. Intermediate Government/Corporate Bond Index," "Standard and Poor's 500 Index," "successor bond index," "asset mix," "investment earnings-based credit," "minimum of 4.5% of principal," "regardless of the performance of fund investments," "goal is to provide," "over the long term," or "approximate the plan's expected long-term investment results."

8. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "417," "417(e)," "417e," "GATT," "PBGC," "discount rate," "30 year Treasury," "30-year Treasury," "safe harbor," "standard index," "associated margin," "interest rate," "IRS interest rate," "mortality table," "IRS mortality table," or "rate."

9. All emails (and all attachments without exception to same) that concern the Plan in any way or cash balance pension plans and contain the word "discrimination," "nondiscrimination," "non-discrimination," "HCE," "NHCE," "test," "prohibit," "regulate," "regulations," "dictate," "mandate," "proscribe," "prescribe," "relative value," "normal form," "Pension Protection Act of 2006," "PPA," "proposed legislation," "August 17, 2006," "August 18, 2006," "2007-6," or "Notice 2007-6."

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, unreasonably cumulative and duplicative, seeks electronic documents that are not reasonably accessible due to undue burden and/or cost, and seeks documents that are neither relevant nor likely to lead to the discovery of admissible evidence. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such privileged documents will be withheld from production.

Subject to and without waiving the previous objection(s), Defendants are in the process of identifying the sources, categories, and types of potentially relevant email communications and will, to the extent it is not unduly burdensome or costly, produce relevant, non-privileged email communications related to the adoption of the Cash Balance Plan, any amendments to the Cash Balance Plan related to the Earnings Credit, the "whipsaw" calculation used by the Cash Balance Plan, the Earnings Credit calculation used by the Cash Balance Plan; and/or the Supplemental Earnings Income calculation used by the Cash Balance Plan.

REQUEST FOR PRODUCTION NO. 2:

1. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word "whipsaw," "projection," "96-8," "Notice 96-8" or "IRS Notice 96-8," "actuarial equivalent," "equivalent actuarial value," "present value," "future value," "estimate," "estimation," "method," "methodology," "normal retirement age," "normal retirement date,"

“fixed rate,” “variable rate,” “above-market,” “above market,” “guaranteed minimum,” “4.5%,” “4.5% minimum,” or “4.5% guarantee.”

2. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word “accrual,” “benefit,” “benefit accrual,” “accrual of benefits,” “accrual methods,” “accrued benefit,” “rate of benefit accrual,” “benefit accrual requirements,” “cash balance benefit,” “cash balance formula,” “formula,” “calculate,” “calculated,” “calculation,” “hybrid,” or “crediting earnings.”

3. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word “backload,” “backloaded,” “backloading,” “41 k(b),” “frontload,” “frontloaded,” “frontloading,” “back-load,” “back-loaded,” “back-loading,” “front-load,” “front-loaded,” or “front-loading.”

4. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word “lump sum,” “lumpsum,” “single sum,” “distribution,” “payment,” “cashout,” “cash-out,” “benefit commencement,” “benefit commencement date,” or “optional form of benefit.”

5. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word “determination letter,” “moratorium plan,” “liable,” “liability,” “amount owed,” “amount due,” “damages,” “shortfall,” “windfall,” “excess,” “amount in excess,” “complain,” “complaint,” “lawful,” “unlawful,” “legal,” “illegal,” “forfeit,” “forfeiture,” “lawsuit,” “litigation,” “class action,” “plaintiff,” “plaintiffs,” “plaintiffs,” “plaintiffs,” “Lyons,” “Esdén,” “Berger,” “Georgia-Pacific,” “Bank of Boston,” “Xerox” (provided the word “plan” or “cash balance” or “Berger” appears within 10 words of the word “Xerox”),” or “AK Steel.”

6. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word “account,” “account balance,” “notional account,” “hypothetical account,” “cash balance account,” “notional,” or “hypothetical.”

7. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word “credits,” “pay credits,” “future credits,” “interest credit,” “interest crediting,” “earnings credit,” “rate of return,” “supplemental rate,” “supplemental allocation,” “definitely determinable,” “Appendix A1,” “Appendix A2,” “Market Value Account,” “ICBA,” “Stabilized Notional Account,” “hypothetical portfolio,” “algorithm,” “Aggregate Supplemental Rate,” “CPI,” “Consumer Price Index,” “S&P 500 Index,” “Lehman Bros. Intermediate Government/Corporate Bond Index,” “Standard and Poor’s 500 Index,” “successor bond index,” “asset mix,” “investment earnings-based credit,” “minimum of 4.5% of principal,” “regardless of the performance of fund investments,” “goal is to provide,” “over the long term,” or “approximate the plan’s expected long-term investment results.”

8. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word "417," "417(e)," "417e," "GATT," "PBGC," "discount rate," "30 year Treasury," "30-year Treasury," "safe harbor," "standard index," "associated margin," "interest rate," "IRS interest rate," "mortality table," "IRS mortality table," or "rate."

9. All documents other than emails that can be electronically or digitally searched as containing one or more terms that concern the Plan in any way or cash balance pension plans and contain the word "discrimination," "nondiscrimination," "non-discrimination," "HCE," "NHCE," "test," "prohibit," "regulate," "regulations," "dictate," "mandate," "proscribe," "prescribe," "relative value," "normal form," "Pension Protection Act of 2006," "PPA," "proposed legislation," "August 17, 2006," "August 18, 2006," "2007-6," or "Notice 2007-6."

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, unreasonably cumulative and duplicative, seeks electronic documents that are not reasonably accessible due to undue burden and/or cost, and seeks documents that are neither relevant nor likely to lead to the discovery of admissible evidence. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such privileged documents will be withheld from production.

Subject to and without waiving the previous objection(s), Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, produce relevant, non-privileged electronic documents related to the adoption of the Cash Balance Plan, any amendments to the Cash Balance Plan related to the Earnings Credit, the "whipsaw" calculation used by the Cash Balance Plan, the Earnings Credit calculation used by the Cash Balance Plan; and/or the Supplemental Earnings Income calculation used by the Cash Balance Plan.

REQUEST FOR PRODUCTION NO. 3:

This request seeks all documents concerning Plan document. Included in this request is a request for:

1. All versions of the Plan document (including all amendments, all appendices and/or tables or attachments thereto).
2. All drafts of each distinct version of the Plan.
3. All drafts of any proposed modifications to the Plan.
4. All drafts of all proposed or eventually adopted Plan amendments.
5. All communications concerning all drafts of the Plan document or all drafts of all Plan amendments (including communications concerning design proposals for any Turner-

sponsored defined benefit plan to use a cash balance, pension equity or other hybrid formula during the relevant time).

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, and (because Plaintiffs define “documents” to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendant further objects to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such privileged documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced in January 2008. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents related the Plan (including relevant drafts, modifications, adoptions, amendments, appendices related to the Earnings Credit), the “whipsaw” calculation used by the Cash Balance Plan, the Earnings Credit calculation used by the Cash Balance Plan; and/or the Supplemental Earnings Income calculation used by the Cash Balance Plan.

REQUEST FOR PRODUCTION NO. 4:

This request seeks all documents concerning the Earnings Credit. Included in this request is a request for:

1. All documents concerning the determination of the Plan’s Earnings Credit for each year since 1994.
2. All documents concerning the design, development, and history of the Earnings Credit, from conception to the present time.
3. All documents concerning the differences in the ways in which the Earnings Credit is described in the Plan document versus the SPD, or differences in the ways the Earnings Credit is described in one version of the SPD versus another.
4. All documents not otherwise captured by other requests that constitute or concern communications with participants regarding the Earnings Credit.
5. All documents concerning the Plan’s compliance or non-compliance with ERISA or the Internal Revenue Code (or proposed regulations thereunder) in light of the Pension Protection Act of 2006 prohibition of above-market interest crediting rates.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, and (because Plaintiffs define “documents” to include electronic or computerized data

compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced in January 2008. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding (a) the determination of the Plan's Earnings Credit, (b) the design, development, and history of the Earnings Credit, (c) the Plan document describing the Earnings Credit, (d) the Plan's Summary Plan Descriptions describing the Earnings Credit, and (e) documents concerning the Plan's compliance with ERISA and the Internal Revenue Code regarding above-market interest crediting rates.

REQUEST FOR PRODUCTION NO. 5:

This request seeks all documents concerning the Plan's Summary Plan Descriptions ("SPD's") and Summary of Material Modifications ("SMM's"). Included in this request is a request for:

1. All SPD's that were ever distributed to one or more participants during the relevant time.
2. All SMM's that were ever distributed to one or more participants during the relevant time.
3. All draft SPD's.
4. All draft SMM's.
5. All communications concerning all versions, final or draft, of any SPD or any SMM, or communications concerning such possible SPD's or SMM's or amendments to existing SPD's or SMM's.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the

extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding the SPD's and SMM's.

REQUEST FOR PRODUCTION NO. 6:

All communications constituting or concerning legal or other advice either requested or rendered regarding any actual or proposed version of the SPD or any actual or proposed communication with one or more participant concerning his or her benefits under the Plan.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, seeks documents that are neither relevant nor likely to lead to the discovery of admissible documents, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

REQUEST FOR PRODUCTION NO. 7:

This request seeks all documents concerning any inter or intranet website which was or is accessible to Plan participants regarding the Plan. Included in this request is a request for:

1. All documents constituting or concerning all versions of any inter or intranet website which was or is accessible to Plan participants regarding the Plan.
2. All communications concerning the content and presentation of information or features on such Plan website.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, seeks documents that are neither relevant nor likely to lead to the discovery of admissible documents, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding any portion of a website accessible to Plan participants the dealt with the adoption of the Cash Balance Plan, amendments to the Cash Balance Plan related to the Earnings Credit, the

“whipsaw” calculation used by the Cash Balance Plan, the Earnings Credit calculation used by the Cash Balance Plan, and/or the Supplemental Earnings Income calculation used by the Cash Balance Plan.

REQUEST FOR PRODUCTION NO. 8:

All documents constituting or concerning communications to participants (“participant communications”) regarding the Plan’s benefits, including but not limited to drafts of all such participant communications, and documents generated in connection with the development and dissemination of such participant communications. Excluded from this request are communications relating solely to individual claims for benefits that do not pertain to claims that the Plan calculated benefits in possible violation of law.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, and (because Plaintiffs define “documents” to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents related to communications to Plan participants that dealt with the adoption of the Cash Balance Plan, amendments to the Cash Balance Plan related to the Earnings Credit, the “whipsaw” calculation used by the Cash Balance Plan, the Earnings Credit calculation used by the Cash Balance Plan; and/or the Supplemental Earnings Income calculation used by the Cash Balance Plan.

REQUEST FOR PRODUCTION NO. 9:

All valuations of the Plan performed for the period January 1, 1994 to the present.

RESPONSE:

Please see documents previously produced. Additionally, Defendants will supplement their previous production to provide, to the extent that they exist, any additional valuations of the Plan not previously produced.

REQUEST FOR PRODUCTION NO. 10:

This request seeks all documents concerning the Plan and the Internal Revenue Service (“IRS”) and/or its compliance with provisions of the Internal Revenue Code (the “Code”) and/or its request for a determination letter that it is tax-qualified. Included in this request is a request for:

1. All documents constituting communications with (to or from) the IRS regarding the Plan.
2. All documents concerning communications or proposed communication with (to or from) the IRS regarding the Plan.
3. All IRS Forms 5300 (with all attachments) submitted with respect to a request for a determination letter with respect to the Plan.
4. All draft Form 5300's or constituent parts thereof, whether or not finalized and submitted with respect to a request for a determination letter with respect to the Plan. All communications concerning any investigation or audit of the Plan (by the IRS or Department of Labor or Inspector General of any governmental agency or any governmental agency).

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding the Plan's compliance with provisions of the Internal Revenue Code (the "Code") and/or its tax-qualified status.

REQUEST FOR PRODUCTION NO. 11:

All demonstrations which show compliance, non-compliance or possible compliance or non-compliance with the accrual standards of ERISA and the Internal Revenue Code's backloading standards of ERISA § 204(b)(1)(A), 29 U.S.C. § 1054(b)(1)(A), 26 U.S.C. § 411(b)(1)(A). Also, all communications concerning such demonstrations.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding the Plan's compliance with the accrual standards of ERISA and the Internal Revenue Code's back-loading standards.

REQUEST FOR PRODUCTION NO. 12:

All documents concerning the interest crediting rate used or proposed to be used in demonstrating compliance with the Internal Revenue Code's § 401(a)(4) nondiscrimination requirements. Included in this request is a request for:

1. All demonstrations which show compliance, non-compliance or possible compliance or non-compliance with the Internal Revenue Code's § 401(a)(4) nondiscrimination requirements ("nondiscrimination tests").
2. All communications regarding any nondiscrimination tests.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding the interest crediting rate used or proposed to be used by the Plan in demonstrating compliance with the Internal Revenue Code's § 401(a)(4) nondiscrimination requirements.

REQUEST FOR PRODUCTION NO. 13:

All documents concerning either Defendant's liability for computing benefits under the Plan in violation or possible violation of the Internal Revenue Code and/or ERISA as those requirements are stated in IRS Notice 96-8, including for the period prior to the issuance of Notice 96-8 ("compliance with the whipsaw rule" for purposes of these requests). All documents concerning legislative or possible legislative relief, prospective, retroactive or otherwise, from required compliance with the whipsaw rule.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, seeks documents that are neither relevant nor likely to lead to the discovery of admissible evidence, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it inappropriately assumes Defendants violation (or possible violation) of the requirements set forth in IRS Notice 96-8. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, produce non-privileged, electronic (and hard copy) documents regarding Defendant's compliance with the requirements stated in IRS Notice 96-8.

REQUEST FOR PRODUCTION NO. 14:

All documents concerning the determination or methodology for determining the projection rate to be used for calculating benefits under the Plan in the event the Plan were ordered, directed or otherwise decided to calculate benefits in a way that required or involved the projection of the participant's account balance to his or her normal retirement date.

RESPONSE:

Defendants object to this Request because it is inappropriate in that it proposes a hypothetical question and inappropriately assumes that the Plan has been ordered, directed, or otherwise decided to calculate benefits in a certain way. Additionally, Defendants object that this Request seeks electronic documents that are not reasonably accessible due to undue burden and/or cost (because Plaintiffs define "documents" to include electronic or computerized data compilations). Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding the determination or methodology for determining the projection rate to be used for calculating benefits under the Plan.

REQUEST FOR PRODUCTION NO. 15:

All documents concerning the Plan's actuarial assumptions for funding purposes as to the value of future interest credits under the Plan, including but not limited to documents concerning

how those assumptions were selected and documents constituting or concerning communications regarding those assumptions.

RESPONSE:

Defendants object to this Request because it seeks electronic documents that are not reasonably accessible due to undue burden and/or cost (because Plaintiffs define "documents" to include electronic or computerized data compilations). Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents regarding the Plan's actuarial assumptions for funding purposes as to the value of future interest credits under the Plan.

REQUEST FOR PRODUCTION NO. 16:

All documents (and all drafts of same) which the administrator ever distributed to participants in order to comply with ERISA § 204(h), 29 U.S.C. § 1054(h), regarding any amendment effective January 1, 1994 or subsequent to that date. In addition, all communications regarding such 204(h) notices and draft 204(h) notices.

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, seeks documents that are neither relevant nor likely to lead to the discovery of admissible documents, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), please see documents previously produced. Additionally, Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, supplement their previous production to provide non-privileged, electronic (and hard copy) documents distributed to participants regarding any amendment effective January 1, 1994 or subsequent to that date related to the Cash Balance Plan related to the Earnings Credit, the "whipsaw" calculation used by the Cash Balance Plan, the Earnings Credit calculation used by the Cash Balance Plan, and/or the Supplemental Earnings Income calculation used by the Cash Balance Plan.

REQUEST FOR PRODUCTION NO. 17:

All documents concerning the benefits anticipated and/or actually realized from converting the Plan to a cash balance design.

RESPONSE:

Defendants object to this Request because it seeks electronic documents that are not reasonably accessible due to undue burden and/or cost (because Plaintiffs define "documents" to include electronic or computerized data compilations). Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, provide non-privileged, electronic (and hard copy) documents regarding the benefits anticipated and/or received from converting the plan to a cash balance design.

REQUEST FOR PRODUCTION NO. 18:

All documents concerning Plaintiffs' participation in the Plan and all documents concerning their employment by the Plan sponsor, including but not limited to Plaintiffs' personnel file, and documents regarding their earnings and credited service.

RESPONSE:

Defendants object to this Request because it seeks electronic documents that are not reasonably accessible due to undue burden and/or cost (because Plaintiffs define "documents" to include electronic or computerized data compilations). Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, provide non-privileged, electronic (and hard copy) documents regarding Plaintiffs' employment with The Turner Corporation as it relates to their participation in the Plan in addition to those documents previously produced.

REQUEST FOR PRODUCTION NO. 19:

All documents concerning any claim for benefits made by any participant during the relevant time which had as its premise in whole or in part that the Plan illegally calculates benefits, backloads benefits, fails to pay lump sums that are actuarial equivalents to the Plan's accrued benefit or otherwise contends that Plan or its administration was or is in violation of

federal law. Defendants may redact personal identifiers from these records until such time as a confidentiality order is entered and/or Plaintiffs are certified named representative of the proposed Class.

RESPONSE:

Defendants object to this Request because it seeks electronic documents that are not reasonably accessible due to undue burden and/or cost (because Plaintiffs define "documents" to include electronic or computerized data compilations). Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), Defendants are not aware of any claim made by any Plan participant (except for Plaintiffs' complaint) that the Plan illegally calculates benefits, backloads benefits, fails to pay lump sums that are actuarial equivalents to the Plan's accrued benefit or otherwise contends that Plan or its administration was or is in violation of federal law.

REQUEST FOR PRODUCTION NO. 20:

All documents reflecting all lump sum distributions from the Plan made to participants since December 31, 1993 to the present. Without waiving this request, Plaintiffs will agree to accept the following as a complete response until such time as Plaintiffs in their sole discretion determine further response is necessary or appropriate: a spreadsheet in Excel format which provides all of the following data for each participant receiving a distribution from the Plan since 12/31/93:

- Identification number (or other identifier in lieu of name)
- Date of birth
- Date of hire
- Hours by year (post-12/31/93)
- Compensation by year (post-12/31/93)
- Termination date
- Benefit Commencement Date (only for Benefit Commencement Dates since 12/31/93)
- The amount paid
- Date paid

RESPONSE:

Defendants object to this Request because it is overly broad, unduly burdensome, seeks documents that are neither relevant nor likely to lead to the discovery of admissible documents, and (because Plaintiffs define "documents" to include electronic or computerized data compilations) seeks electronic documents that are not reasonably accessible due to undue burden and/or cost. Defendants further object to this Request because it seeks for Defendants to create a document. Defendants further object to this Request because it implicates documents protected by the attorney-client and/or work-product privilege and any such documents will be withheld from production.

Subject to and without waiving the previous objection(s), Defendants are in the process of identifying the sources, categories, and types of potentially relevant electronic documents and will, to the extent it is not unduly burdensome or costly, provide non-privileged, electronic (and hard copy) documents regarding distributions paid to Plaintiffs.