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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	:	**Chapter 11**
HOPEMAN BROTHERS, INC.,	:	**Case No. 24-32428 (KLP)**
Debtor.	:	

OMNIBUS REPLY IN SUPPORT OF MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS EXTENDING THE AUTOMATIC STAY TO STAY ASBESTOS-RELATED ACTIONS AGAINST NON-DEBTOR DEFENDANTS

Hopeman Brothers, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor"), hereby files this omnibus reply (the "Reply") in support of entry of a final order (the "Final Order") approving the *Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants* (the "Motion to Stay") [1] and represents as follows:

[1] Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion to Stay. On July 3, 2024, this Court entered the interim order approving the Motion to Stay on an interim basis [Doc. No. 35] (the "Interim Order").

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PRELIMINARY STATEMENT

1. The Motion to Stay seeks only temporary relief, not to alter any party's substantive rights to pursue the Debtor's Insurers or any of the other Protected Parties after a "pause" in the litigation during this bankruptcy case.[2] The Debtor is not seeking in this case a nonconsensual release of any of the Protected Parties. Claimants who believe they have direct actions against the Insurers – including Liberty Mutual Insurance Company ("LMIC") – can pursue them after the Debtor is afforded a "breathing spell" and a reasonable opportunity to prosecute a chapter 11 plan that will benefit all creditors by establishing an efficient and fair process to utilize the Debtor's remaining cash and its insurance policies to resolve and make payments on the valid claims among the thousands of unresolved asbestos-related claims asserted against the Debtor. The Motion to Stay merely seeks to avoid the wasting of estate resources and the depletion of available insurance coverage that will be caused by a small subset of creditors trying to pursue their claims during the bankruptcy to the detriment of others.

2. The relief sought in the Motion to Stay squarely aligns with the goals of the automatic stay outlined by the Fourth Circuit in *A.H. Robins Co. Inc. v. Piccinin*: "to protect the debtor from an uncontrollable scramble for assets in a number of uncoordinated proceedings, to preclude one creditor from pursuing a remedy to the disadvantage of other creditors, and to provide the debtor and its executives with a reasonable respite from protracted litigation, during which they may have an opportunity to formulate a plan of reorganization for the debtor." 788 F.2d 994, 998 (4th Cir. 1986).

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[2] As explained in paragraph 9 of the Motion to Stay, the Protected Parties include (a) the Insurers who provide or provided shared-insurance coverage to the Debtor and Wayne and are named in "direct-action" asbestos-related lawsuits on behalf of Wayne, and (b) the Former D&Os of the Debtor and Wayne who also are named in asbestos-related lawsuits with the Debtor and are covered under the Debtor's insurance policies. The full list of the known Protected Parties is set forth on Exhibit A annexed hereto.

3. Approval of the Motion to Stay on a final basis will enable the Debtor to accomplish these goals and preserve estate assets by: (a) avoiding the depletion of excess liability insurance coverage to address only a subset of claims against the Debtor, (b) avoiding the incurrence of attorneys' fees by the Debtor to address discovery requests in both claims litigation and expected coverage disputes with the Insurers, (c) avoiding the triggering of potential indemnity claims against the estate by Protected Parties having to incur defense costs in lieu of the Debtor, which indemnity claims might dilute recoveries for the Debtor's other creditors, and (d) avoiding the unnecessary incurrence of other administrative expenses, which the Debtor unfortunately would have to incur to protect its interests in what is a complex and intertwined liability insurance portfolio, arising out of the commencement or continuation of litigation against the Debtor's current and former Insurers during the bankruptcy.

4. Without the requested relief, piecemeal efforts to litigate the same asbestos-related claims brought against the Debtor would be prosecuted against the Protected Parties, notwithstanding the bankruptcy filing and the automatic stay. To be clear, however, the only claimants who oppose the Motion to Stay are Louisiana claimants who want to prosecute direct-action claims against the Debtor's Insurers and Former D&Os during the bankruptcy case. As explained in the Moton to Stay, there are thirty-five (35) Direct Action Lawsuits that currently are pending in Louisiana and each names the Debtor and LMIC as either defendants or third-party defendants.[3] *See* Motion to Stay, ¶ 15; *see also* Exhibit B 1-3 attached, which are representative of the complaints and third party complaints in these Direct Action Lawsuits. Counsel for some of these claimants have made perfectly clear in both post-petition communications and in their

[3] Counsel for each of the claimants in these direct-action lawsuits were served with the Motion to Stay and the Interim Order. *See* Certificates of Service, Docket Nos. 24 and 52. Two of these Direct Action Lawsuits also name as defendants Former D&Os.

oppositions to the Motion to Stay that they seek to continue with, and in some cases amend pending litigation to pursue LMIC, or other insurers of the Debtor, to address their claims outside of and during the bankruptcy case. These claimants with direct action rights against the Debtor's Insurers want to continue the "race to the courthouse," with no competition from the thousands of other asbestos claimants who do not hold or have not asserted direct action claims, to access the Debtor's insurance coverage before the Debtor can transfer that coverage to a liquidation trust under the Debtor's proposed chapter 11 plan for the benefit of all holders of valid asbestos-related claims against the Debtor.

5. To the extent such post-petition litigation would dilute the Debtor's insurance coverage that might be available to pay other claimants, it is in violation of the automatic stay of section 362(a)(3). "A products liability policy of the debtor is . . . valuable property of the debtor, particularly if the debtor is confronted with substantial liability claims within the coverage of the policy in which case the policy may well be . . . the most important asset of the … estate." *Piccinin*, 788 F.2d at 994 (also involving Louisiana direct action lawsuits). That is the case here.

6. Furthermore, to the extent such litigation were to continue during the pendency of this case, the Debtor would be subjected to indemnification claims from certain of the Protected Parties, and also would be forced to spend the estate's dwindling cash responding to discovery in and taking action to protect its interests. Case law supports that this is precisely the "unusual circumstances" in which this Court can order that the asbestos-related actions are to be stayed against each of the non-debtor Protected Parties under 362(a)(1). *Id.* at 999.

7. The Committee and certain Louisiana claimants assert in their objections that direct action lawsuits against LMIC should be permitted to proceed because the LMIC policies are not property of the estate, since, as the Debtor contends, the coverages under those policies were either

exhausted (meaning the aggregate limits of coverage were met with respect to "completed operations" or "products" coverage) or released by the Debtor (meaning, with respect to continuing-"operations" or "non-products" coverage without aggregate limits, the coverage was settled and "bought-back" by LMIC) pursuant to a settlement agreement with LMIC entered into more than 20 years ago (the "LMIC Settlement").[4] They also argue that, even if that is true, their claims attached to the LMIC policies and were not subject to the settlement of the operations coverage, despite the fact that their own allegations in the Direct Action Lawsuits are that their alleged claims were not known to exist for nearly 17-20 years after the LMIC Settlement. This Court, however, does not need to pass judgment on whether the Louisiana claimants' claims are completed operations or products claims subject to aggregate limits or operations claims not subject to aggregate limits, or whether any of their claims survived the LMIC Settlement, because the Debtor is not seeking to eliminate these claims in the Motion to Stay or even in its proposed chapter 11 plan. After the conclusion of this chapter 11 case, asbestos claimants will be free to pursue these claims against LMIC, to the extent any such claims exist. Asserting those claims now, however, will involve extensive discovery and legal disputes that will be costly to the estate to address.

8. In addition, the issue of whether the LMIC Settlement is binding on the Louisiana claimants—which this Court has not been asked to and does not need to decide—likely will spur coverage disputes between the Debtor and its excess Insurers, or among the Debtor's excess

[4] The LMIC Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company, dated March 21, 2003, by its terms purports to be a confidential document. The Debtor has sought permission from LMIC to freely share that agreement and the related Indemnification and Hold Harmless Agreement of the same date with parties-in-interest in this case and to use those agreements strictly for proceedings in this bankruptcy. LMIC has not agreed to date. The Debtor is prepared to produce the LMIC settlement documents with any party-in-interest upon entry into an appropriate Confidentiality Agreement, or with the Court's approval.

Insurers themselves, or with LMIC, on the extent of their respective obligations if the 20-year old LMIC Settlement is challenged and/or upset. Such "messy" disputes are precisely why it is critical that LMIC remain a Protected Party during the pendency of this chapter 11 case. Yet, deferring the claimants' litigation with LMIC until after the bankruptcy will not impair the claimants' rights, if they have any such claims.

9. Accordingly, for the reasons set forth in the Motion to Stay and further explained below, the Debtor believes that all such actions against the Protected Parties either are automatically stayed under sections 362(a)(1) and 362(a)(3), or this Court should stay such actions under its power to do so, including through use of section 105(a) in conjunction with section 362(a), to avoid the interference and unnecessary expense and distraction associated with the Louisiana claimants' attempt to end run the automatic stay.

SUMMARY OF THE ARGUMENTS IN OPPOSITION TO THE MOTION STAY

10. Four objections were filed to the Motion to Stay (collectively, the "Objections"):

(i) the *Opposition and Objection to Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants* [Docket No. 86] ("Roussel Objection") filed on behalf of three families of Louisiana asbestos claimants who have filed direct action claims against the Debtor (the "Roussel Claimants"), and in which a co-defendant of the Debtor, Huntington Ingalls Industries, Inc. ("*HII*"), the owner of the former Avondale shipyard in Louisiana, has filed third-party complaints against LMIC as insurer for Wayne;

(ii) *Huntington Ingalls Industries, Inc.'s Preliminary Objection and Reservation of Rights Regarding Motion of Debtor for Entry of Interim and Final Orders*

Extending Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants [Docket No. 135] (the "HII Objection");

(iii) *Opposition and Objection to Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants* [Docket No. 138] (the "Hoffman Objection") filed on behalf of two Louisiana law firms, the Boling Law Firm and the Law Office of Philip C. Hoffman, which Objection does not identify their clients but from a review of the Direct Action Lawsuits, the Hoffman firm represents nine plaintiffs and the Boling Law Firm represents one plaintiff in those Louisiana Direct Action Lawsuits (collectively, the "Hoffman Claimants") that name both the Debtor and LMIC, as insurer for Wayne, as defendants; and

(iv) *Limited Objection of the Official Committee of Unsecured Creditors to the Debtor's Motion for Extension of the Automatic Stay to Enjoin Asbestos-Related Actions Against Non-Debtor Defendants* [Docket No. 141] (the "Committee Objection"), filed on behalf of the Official Committee of Unsecured Creditors (the "Committee").

11. The arguments raised in the Objections principally fall into five categories:

(i) Louisiana asbestos claimants have rights to pursue direct actions against the Debtor's Insurers despite the commencement of this chapter 11 case, and such actions would not deplete the Debtor's policies;

(ii) LMIC should not be a Protected Party because post-petition pursuit of any Louisiana claimant's claims asserted against LMIC will not harm the estate;

(iii) The Debtor has failed to demonstrate that any of the Protected Parties are entitled to indemnification;

(iv) Following the Supreme Court's recent decision in *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071 (2024), it is inappropriate for the Court to extend the automatic stay to non-debtors; and

(v) The relief sought in the Motion to Stay should have been commenced through an adversary proceeding.

12. In sum, the Motion to Stay is uncontested except with respect to the proposed direct action claims the Roussel Claimants and the Hoffman Claimants want to pursue against LMIC (and the Committee curiously wants them to have permission to pursue despite the potential detriment to all other claimants) and the claims the Hoffman Claimants suggest they may pursue against Former D&Os. *See* Roussel Objection, p. 1; Committee Objection, p. 2; Hoffman Objection, p 10. The HII Objection only seeks more information to assess the Motion to Stay, but importantly, nothing about the relief sought in the Final Order would prevent HII, or any other party, from seeking relief from the Final Order later if circumstances warrant relief.

13. Each of the Objections should be overruled. Short responses to the numbered issues above are as follows:

(i) The continuation or commencement of Direct Action Lawsuits against the Debtor's excess insurers would lead to expensive coverage fights over, among other issues, allocation, exhaustion and policy coverage of the claims, all of which would ensnare the Debtor in discovery and cause it to incur substantial administrative expenses. In addition, if the claims are covered by policies with aggregate limits, the Debtor faces a diminution of coverage in policies owned by the Debtor that insure against liabilities and/or defense costs of other claimants besides the objecting Louisiana claimants. In addition, the automatic stay bars direct action claims against the Debtor's Insurers under section

362(a)(3) because proceeds of the policies are property of the Debtor's estate to the extent they might diminish recoveries for other claimants and frustrate the orderly administration of the claims by this Court.

(ii) If LMIC is not a Protected Party, the Debtor will incur substantial administrative expenses to (a) respond to discovery on the underlying claims and the insurance coverage disputes about the effectiveness of the LMIC Settlement, (b) follow litigation in Louisiana to protect the Debtor's interests to avoid collateral estoppel and rulings inconsistent with the Debtor's interests, and (c) address indemnity claims asserted by LMIC under purported contractual indemnity rights, which the Debtor will have to defeat to avoid diluting the recoveries of claimants, and address indemnity claims of Former D&Os if they are defendants in that litigation. To the extent the Louisiana claimants' proposed post-petition litigation is not automatically stayed by section 362(a)(1), this Court has the power to stay the litigation under section 105(a) because the harms to the Debtor outweigh any harm to the objectors by a temporary pause in the pursuit of the litigation, and it is in the best interest of all of the Debtor's creditors and the public that the Debtor have the opportunity to prosecute its chapter 11 plan without draining the estate's assets during that effort.

(iii) The Debtor's corporate By-Laws (attached hereto as Exhibit C) expressly provide for indemnity to the Former D&Os, and LMIC has threatened to pursue indemnification claims against the Debtor under a written indemnity agreement entered into in connection with the 2003 LMIC Settlement with the Debtor. In addition, the Hoffman Claimants appear to want to continue pursuing claims against the Former D&Os, who have express indemnity rights from the Debtor. Accordingly, the threatened actions

against these Protected Parties should be deemed stayed by section 362(a)(1) because of such potential indemnification obligations, and no asbestos claimants will be harmed by this Court confirming the automatic stay applies to the Protected Parties to simply maintain the status quo during the pendency of this case.

(iv) Nothing in *Purdue Pharma* prevents a bankruptcy court from extending the automatic stay to non-debtors, particularly during the prosecution of a chapter 11 plan.

(v) There is no procedural bar to the relief sought in the Motion to Stay; it does not require an adversary proceeding. This Court has the authority to grant the relief the Debtor seeks, including with respect to direct actions claims against LMIC, by enforcement of the automatic stay as written, and through the modification or extension of the stay under section 362(a) itself, or in combination with section 105(a). To the extent the preliminary injunction standard applies, the Debtor satisfies the standard, as set forth below. If the Court would prefer, the Debtor is amenable to the Court treating the Motion to Stay as an adversary proceeding.

14. For these reasons and those set forth below, the Motion to Stay should be granted on a final basis.

REPLY

A. The Automatic Stay Bars Direct Action Lawsuits Against the Debtor's Insurers During the Pendency of a Bankruptcy Case Because Proceeds of the Policies Are Property of the Debtor's Estate

15. First, and contrary to the arguments raised in the Objections that serve only the interests of the objecting Louisiana claimants, any direct action claims against the Debtor's Insurers for claims against the Debtor are stayed by section 362(a)(3) because the proceeds of a debtor's liability insurance policies are property of the Debtor's bankruptcy estate in circumstances like those presented in this bankruptcy case. Established case law further supports that it is in the

best interest of all the Debtor's creditors for the Court in this case to approve the Motion to Stay on a final basis so this Court can oversee the process proposed by the Debtor in this chapter 11 case to transfer its available cash and insurance policies to a liquidation trust to allow the cash and insurance proceeds be distributed fairly to all holders of valid asbestos-claims, rather than permit a subset of Louisiana asbestos claimants to win a "race to the courthouse" and potentially deplete the Debtor's dwindling cash and its insurance proceeds through their Direct Action Lawsuits.

16. Specifically, case law in the Fourth Circuit, and other circuits, confirms that liability insurance policy proceeds are property of the estate in the circumstances presented and, as a result, direct action lawsuits against a debtor's insurers are stayed automatically. *See Piccinin*, 788 F.2d at 1001 (upholding district court judgment in mass tort case that "all actions [including Louisiana direct actions] for damages that might be satisfied from proceeds of the [policy issued by debtor's insurer] were subject to the stay pursuant to [section 362(a)(3)] because of the risk of depletion of debtor's estate"); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 91-93 (2d Cir. 1988) (holding the bankruptcy court had authority to approve the settlement of claims from the debtor's liability insurance policies because the policy proceeds were property of the estate, and recognizing that the bankruptcy court stayed direct action claims against the debtor's insurers); *In re Minoco Group of Cos., Ltd.*, 799 F.2d 517, 518 (9th Cir. 1986) ("For purposes of the automatic stay, we see no significant distinction between a liability policy that insures the debtor against claims by consumers and one that insures the debtor against claims by officers and directors. In either case, the insurance policies protect against diminution of the value of the estate . . . . [L]iability policies meet the fundamental test of whether they are 'property of the estate' because the debtor's estate is worth more with them than without them."); *Nat'l Union Fire Ins. Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.)*, 837 F.2d 325, 329 (8th Cir. 1988) ("[I]f the policies

are held to cover [] damage claims lodged against the estate . . . [and] [t]hough the policy proceeds do not flow directly into the coffers of the estate, they do serve to reduce some claims and permit more extensive distribution of available assets in the liquidation of the estate."); *Tringali v. Hathaway Machinery Co., Inc.*, 796 F.2d 553, 560 (1st Cir. 1986) (holding that proceeds of a general liability policy are property of the estate even outside the mass tort context). As the Fifth Circuit expressly held in *In re Davis*, the "weight of authority" supports that insurance proceeds sought in a direct action from the debtor's insurers are property of the estate. 730 F.2d 176, 178. 184-85 (5th Cir. 1984).

17. Courts overwhelmingly agree that it is critically important to stay actions to recover liability policy proceeds when, as in the present case, "there [are] multiple claimants to the proceeds of the policy, and [because] the proceeds are insufficient to satisfy all claimants . . . the bankruptcy court should be able to oversee the allocation of the insufficient policy proceeds among the claimants." 3 Collier on Bankruptcy ¶ 362.07[3][a] (16th ed. 2019) (citations omitted). A holding to the contrary would "prevent [the] bankruptcy court from marshalling the insurance proceeds, and, along with the other assets arranging for their distribution so as to maximize their ability both to satisfy legitimate creditor claims and to preserve the debtor's estate." *Tringali v. Hathaway Mach. Co.*, 796 F.2d at 560. This is precisely why the Debtor filed the Motion to Stay – to prevent claimants from litigating "in other forums the exact same asbestos claims and attempt[ing] to recover from the insurance proceeds that the Debtor proposes to channel to the liquidation trust through the chapter 11 plan." *See* Motion to Stay, ¶ 19.

18. In support of their argument that the Direct Action Lawsuits against the Debtor's Insurers should be permitted, the Louisiana claimants rely on the limited cases from the Fifth Circuit that have reached the opposite conclusion of the majority of courts and held that liability

policy proceeds are not property of the estate. *See* Roussel Objection, p. 22; Hoffman Objection, ¶ 17 (citing to *Houston v. Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993); *Landry v. Exxon Pipeline Co.,* 260 B.R. 769, 799 (Bankr. M.D. La. 2001); *La. World Exposition, Inc. v. Fed. Ins. Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1401 (5th Cir. 1987)). None of these cases is binding on this Court, and each is easily distinguishable.

19. In *Edgeworth*, the bankruptcy court held that a chapter 7 debtor's medical malpractice insurance policy was not considered property of the estate because the debtor had no right to receive the funds. "In fact, Edgeworth never explicitly tendered the insurance policy or any insurance proceeds into the bankruptcy estate." 993 F.2d at 55. In addition, the bankruptcy court also relied on the fact that "no secondary impact ha[d] been alleged upon [the debtor's] estate, which might have occurred if, for instance, the policy limit was insufficient to cover the appellants' claims or competing claims to proceeds." *Id.* at 56. That important factual distinction exists in the present case; it is not presently known whether insurance proceeds will cover all claims against the Debtor. The Debtor is hopeful they will if the two proposed settlements are approved and the case proceeds promptly toward confirmation of its proposed plan.

20. The court in *Landry* simply stated in *dicta* that liability insurance proceeds were not property of the estate, but admitted that there was "plenty of insurance coverage" to satisfy claims in that chapter 7 case.

21. While the Fifth Circuit held in *La. World Exposition* that proceeds of insurance policies were not property of a debtor's bankruptcy estate because the proceeds would be paid to claimants and not the debtor, a subsequent Fifth Circuit decision suggests that liability policy proceeds might always be property of the debtor's estate. *See In re Vitek, Inc.*, 51 F.3d 530, 535 (5th Cir. 1995). Specifically, the Fifth Circuit held in *Vitek* that "when a debtor corporation owns

an insurance policy that covers its own liability vis-à-vis third parties, we – like almost all other courts that have considered the issue – declare or at least imply that both the policy and the proceeds of that policy are property of the debtor's bankruptcy estate." *Id.*

22. The objecting parties also fail to mention that the Fifth Circuit more recently has made clear that a different rule should be applied in the case of debtors facing mass tort claims, as in the present case. Namely, in *In re OGA Charters, L.L.C.*, the Fifth Circuit held that "where a siege of tort claimants threaten the debtor's estate over and above the policy limits, we classify the proceeds as property of the estate." 901 F.3d 599, 604 (5th Cir. 2018). The Fifth Circuit had previously explained the reasons for this different rule – reasons that apply equally in the present case and are consistent with the cases from other Circuits (including the Fourth Circuit) – that the different rule was required in mass tort cases because "the court would not otherwise be able to prevent a free-for-all against the insurer outside the bankruptcy proceeding." *Sosebee v. Steadfast Ins. Co.*, 701 F.3d 1012, 1023 (5th Cir. 2012)

23. Here, the Debtor is facing mass tort liability, and its primary assets are its liability insurance policies. While the Debtor cannot say definitively today whether the thousands of unresolved asbestos-related claims presently asserted and likely to be asserted against the Debtor will exceed the limits of its applicable liability coverage, failure to approve the Motion to Stay on a final basis and/or the confirm the Direct Action Lawsuits are stayed would jeopardize the equitable distribution of estate property. Accordingly, this Court should follow established Fourth Circuit case law and the holdings of the majority of other courts that have considered the issue and overrule the Objections and hold that the automatic stay of section 362(a)(3) bars direct action lawsuits against the Debtor's Insurers during the pendency of this bankruptcy case because the proceeds of the Debtor's liability policies are property of the Debtor's estate.

24. The Louisiana claimants and the Committee argue that any proceeds of the LMIC policies settled and released by the Debtors would not constitute property of the estate. To the contrary, if there are residual rights in those policies owned by the Debtor despite the earlier exhaustion and buy-back of coverage, those policies and their proceeds similarly would be property of the Debtor's bankruptcy estate under the law set forth above. The additional harm to the estate from the post-petition pursuit of LMIC by the objecting Louisiana claimants is addressed below.

B. The Automatic Stay Applies to Actions Against LMIC and the Former D&Os Pursuant to Section 362(a)(1) Due to the Identify of Interests with the Debtor

(i) Indemnification Rights and Claims Result in an Identity of Interests

25. In response to the objection raised by the Hoffman Claimants that the Debtor has failed to provide factual support that the Protected Parties are or will be entitled to indemnification, the Debtor is obligated under its By-Laws to indemnify the Former D&Os for any defense costs and liability they may have for asbestos-related claims arising out of their service to the Debtor. In addition, LMIC has informed the Debtor that it intends to assert alleged contractual indemnification claims against the Debtor if the Motion to Stay is not approved on a final basis and the Direct Action Lawsuits proceed against LMIC.

26. As a result of these indemnification obligations to its Former D&Os and potentially to LMIC, established Fourth Circuit case law is plain that the Debtor "is the real party defendant" in the actions and the asbestos-related actions against the Protected Parties that implicate indemnity obligations are stayed under section 362(a)(1). *Piccinin*, 788 F.2d at 999-1001. As the bankruptcy court in *Aldrich Pump* recently held, the Fourth Circuit in *Picinin* described the type of situation that would cause such an identity of interest: "[a]n illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any

judgment that might result against them in the case." *In re Aldrich Pump*, 2021 WL 3729335, *30 (Bankr. W.D.N.C. Aug. 20, 2021) (quoting *Piccinin*, 788 F.2d at 999). "To refuse application of the statutory stay in that case would defeat the very purpose and intent of the statute." *Piccinin*, 788 F.2d at 999. In confirming that the stay applied to non-debtors under section 362(a)(1) based on potential indemnification obligations, the court in *Aldrich Pump* also held that "we need not decide today whether the indemnification provisions . . . would give rise to absolute indemnification rights in these cases . . . . It is sufficient to stay that . . . the [agreements] would give rise to claims against the Aldrich/Murray estates." 2021 WL 3729335, *31 n. 244. As held by the court, it was sufficient that "the claims against the Protected Parties ***could*** potentially trigger indemnification rights." *Id.* at 31 (emphasis added).

27. When a debtor indemnifies another defendant for liability, section 362(a)(1) applies precisely because the action is deemed to be one against the debtor. *See Dunnam v. Sportsstuff, Inc.*, 2008 WL 200287, *3 (E.D. Va. Jan. 23, 2008) (stay applied to action against non-debtor where, because debtor indemnified non-debtor, proceeding against non-debtor "would unavoidably become a de facto proceeding against [the debtor] and would frustrate the purposes" of section 362(a)(1)); *Edwards v. McElliots Trucking, LLC*, 2017 WL 5559921, at *2-3 (S.D. W.Va. Nov. 17, 2017); *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 860-61 (6th Cir. 1992) (applying the identity of interest test to affirm a bankruptcy court's decision to enjoin continuation of an action against a debtor's officers when a right to indemnity and impact of debtor's insurance arrangements were implicated).

(ii) Identity of Interest Exists for Claims Based on Debtor's Conduct or Products

28. Case law also dictates that there is an identity of interest between a debtor and non-debtor when the debtor's conduct or product is "at the core of the issues raised" in actions against

the non-debtor. *W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.)*, 386 B.R. 17, 30-31 (Bankr. D. Del. 2008); *In re Am. Film Techs., Inc.*, 175 B.R. 847, 849-50 (Bankr. D. Del. 1994) (finding identity of interest in part because counts against non-debtors and debtors necessarily involved the same subject matter and would involve facts identical to each other).

29. The asbestos-related actions against LMIC are or should be stayed because there is an "identity of interest" between the Debtor and LMIC given that the Debtor's conduct and products would be at the center of any asbestos-related claims pursued against LMIC. Annexed hereto as Exhibit B 1-3 are samples of the complaints filed by the Roussel and Hoffman Claimants that initiated the Direct Action Lawsuits (collectively, the "Complaints"). A plain reading of the Complaints demonstrates that the claims raised in the Direct Action Lawsuits against the Debtor, LMIC and the other Protected Parties are asbestos-related bodily injury claims and involve the same products, the same time periods, and the same liability and damage allegations. Indeed, if these Louisiana claimants can proceed with litigation against LMIC post-petition, they would simply be substituting LMIC for the Debtor in the same claims.

30. If the relief requested in the Motion to Stay is not granted on a final basis, the prosecution of the asbestos actions against the Former D&Os, and potentially LMIC, and the resulting defense costs, settlements and any verdicts, may irreparably fix what are otherwise contingent claims against the Debtor. The Debtor would be stuck with those defense costs, settlement amounts and verdicts – and the indemnification obligations that flow from them. Due to the identity of interests between the non-debtors and the Debtor, those claims against non-debtors would in effect be claims against the Debtor. This is the precise situation that was the subject of *Piccinin* when the Fourth Circuit concluded that refusal of the application of the stay to protect the non-debtors would defeat its very purpose and intent.

31. Given the fact that the Direct Action Lawsuits the objecting Louisiana claimants seek to assert against LMIC and the Former D&Os undeniably involve the Debtor's conduct and products and the fact that the Debtor has potential indemnification obligations to the Former D&Os and LMIC, the asbestos-related actions against both are stayed under section 362(a)(1) and the Court should overrule the Objections.

C. For Actions against Non-Debtors Not Automatically Stayed by Sections 362(a)(1) or (3), this Court has the Power to Stay Such Actions

(i) The Debtor Also Can Satisfy the Standard for Entry of a Preliminary Injunction

32. While the Debtor submits that it is unnecessary for the Debtor to establish each of the factors necessary to impose a preliminary injunction because the Debtor properly seeks the relief under sections 362(a)(1) and 362(a)(3), the preliminary injunction factors also support enjoining the asbestos-related actions against the Protected Parties through use of section 105(a) in conjunction with section 362(a).

33. Courts considering the propriety of a preliminary injunction under section 105(a) typically apply the traditional four-pronged test for injunctions:

(i) The debtor's reasonable likelihood of a successful reorganization;

(ii) The imminent risk of irreparable harm to the debtor's estate in the absence of an injunction;

(iii) The balance of harms between the debtor and its creditors; and

(iv) Whether the public interest weighs in favor of an injunction.

In re Bestwall LLC, 606 B.R. 243 (Bankr. W.D. N.C. 2019) (citing *Robins*, 788 F.2d at 1008). The Debtor can satisfy each of the factors.

(1) The relief is necessary to protect the estate and achieve the goals of the case

34. The Fourth Circuit has determined that the critical, if not decisive, issue over whether injunctive relief should be granted is whether and to what extent the non-debtor litigation interferes with the debtor's reorganization efforts ***or*** affects the bankruptcy estate. *Se In re Brier Creek Corp. Crt. Assocs. Ltd.,* 486 B.R. 681, 694 (Bankr. E.D.N.C. 2013) (citing *Picinin*, 788 F.2d at 1003-09). Furthermore, the Fourth Circuit also made clear that a bankruptcy court's power to enter injunctions is not limited to reorganization cases – expressly holding that bankruptcy courts have "ample power under [section 105] to enjoin actions excepted from the automatic stay which might interfere in the rehabilitative process ***whether in a liquidation or in a reorganization case***"). *Id.* at 1003 (emphasis added).

35. Courts also agree that establishing that a bankruptcy case is likely to be successful is not intended to be a particularly high standard. *See In re Bestwall LLC*, 606 B.R. 243 (Bankr. W.D. N.C. 2019) (citing *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 860 (6th Cir. 1992) ("In view of the bankruptcy court's protection of [the debtor's] reorganization efforts, it is implicit in its decision that it believed [the debtor] had some realistic possibility of successfully reorganizing under Chapter 11.")). Indeed, the court "must make at least a rebuttable presumption that the [debtors] have made a good faith filing and are making a good faith effort to reorganize." *Id.* (quoting *In re Gathering Rest., Inc.,* 79 B.R. 992, 1001 (Bankr. N.D. Ind. 1986).

36. The Debtor filed this bankruptcy case in good faith to pursue an equitable resolution of thousands of unresolved asbestos-claims. Provided this case is allowed to proceed without delay, the Debtor has sufficient resources to fund the costs of its chapter 11 case and fund a trust with sufficient resources to fairly and finally resolve its asbestos liabilities. The Debtor already has filed key motions to settle certain insurance coverage to create a fund of nearly $50 million to administer a liquidating trust and pay allowed claimants. The Debtor likewise has filed its chapter

11 plan and an accompanying disclosure statement. The Debtor has taken every step necessary to be prepared for a successful chapter 11 case before its cash is exhausted. Enjoining asbestos-related actions against the Protected Parties during the case is fully consistent with, and necessary for the Debtor to pursue, the ultimate objective of this case.

(2) The Debtor will be irreparably harmed absent the requested relief

37. Without the relief requested in the Motion to Stay, the Debtor and its estate will be irreparably harmed. Absent final approval of the relief requested in the Motion to Stay, there is a legitimate risk that actions against the Protected Parties will deplete the Debtor's insurance coverage that the Debtor is seeking to transfer to a liquidation trust pursuant to its proposed chapter 11 plan. As such, the Debtor's estate would be reduced to the detriment of all creditors. Furthermore, given that claims against the Protected Parties are tantamount to claims against the Debtor, the estate would be irreparably harmed because the Debtor will be forced to spend time and estate resources participating in such actions. This non-bankruptcy litigation also will undermine the parties' and the Court's ability to confirm a plan that treats all asbestos claimants fairly and equitably.

38. The Louisiana claimants and the Committee contend that the estate will not be harmed by the pursuit of asbestos-actions during this bankruptcy case for coverage that may still exist in favor of only Louisiana claimants. Such a contention completely ignores the reality of the situation for the following reasons.

- *Asbestos-Related Actions Against LMIC Would Implicate Excess Insurance*

39. As explained in the First Day Declaration, the Debtor exhausted or released (*i.e.*, settled and sold back to LMIC) all its primary and excess coverage available through LMIC pursuant to the LMIC Settlement in exchange for payments by LMIC. Those payments were made

by LMIC, held in trust to pay asbestos claims and defense costs, and have since been exhausted. Because LMIC's coverage was exhausted and released, excess insurers of the Debtors above the LMIC policies have been paying millions of dollars of indemnity claims and defense costs relating to the asbestos-related claims asserted against the Debtor and LMIC as insurer for Wayne. Those excess insurers, however, might contest coverage if LMIC coverage were determined to be available despite the earlier settlement.

40. Furthermore, the objecting claimants' theory of having claims against LMIC rests on a proposition that appears contrary to the alleged facts. Not one of the objecting claimants has asserted that it has a claim that manifested itself, or was made known to the Debtor or LMIC, before the time the LMIC coverages were released and settled in 2003 and the policies were bought back by LMIC. By the time these claims became known, which was 17-20 years later according to the Complaints, the Debtor did not have any remaining liability insurance coverage from LMIC. *See Comardelle v. Pennsylvania Gen. Ins. Co.*, 2014 WL 6485642, at *4 (E.D. La. Nov. 18, 2014) (buy-back of insurance occurring before asbestos claims were known was free and clear of such claims, despite allegation of exposure prior to sale). Thus, these claims implicate excess insurance above LMIC's primary (and in certain years, umbrella) coverage, and the proceeds of such policies, as explained above, are property of the estate and the direct actions against the Protected Parties are stayed under section 362(a)(3) or should be stayed by the Court, if necessary, under section 105(a) to carry out the purposes of section 362(a).

- *Direct Action Lawsuits Against LMIC Will Cause the Debtors to Incur Substantial Administrative Expenses*
  - *The Debtor Will Have to Address Discovery on Claim and Coverage Issues*

41. The objecting Louisiana claimants make plain that the Debtor's conduct will be central to actions against LMIC because the claims against LMIC will be predicated on whether the LMIC Settlement between the Debtor and LMIC are binding on the Louisiana claimants, whether the claimants hold valid claims against the Debtor and/or Wayne, and whether their claims against the Debtor are "products claims" or "operations claims." *See* Roussel Objection, p. 6 (contending that "while Hopeman may have agreed to release any rights it had to the Liberty Mutual CGL policies, these sort of agreements between an insurer and an insured have no effect on an injured tort victim's rights under the policy"); *id*., p. 14 ("Because the claims by the Creditors herein are operations claims and not products claims or completed operations claims, there is no risk for any of the claims to deplete the [LMIC policies] even if Hopeman did still have rights under the policies. As set forth above, the exposures occurred during Hopeman's contracting activities while Hopeman was handling the asbestos products. Thus, they are operations claims."); Committee Objection, p. 2 (arguing that "even though the Debtor believes that it has released its interest in the Liberty coverage, asbestos claimants across the country, who possess enforceable rights under the applicable policies, have not released *their* interests, which cannot be extinguished or altered by a subsequent bilateral agreement between the Debtor and Liberty").

42. As a result, each of these issues would require the Debtor to spend time and the estate's money responding to discovery and protecting the estate's interests. The asbestos claimants cannot challenge the validity of the LMIC Agreements without the involvement of the Debtor related to the Debtor's conduct and products. To establish the validity of the asbestos claims against the Debtor, it will be necessary to serve discovery on the Debtor and for the Debtor to protect its coverage rights in that litigation or in other disputes.

43. Moreover, to prove or disprove whether the claims against the Debtor are products claims or operations claims, the nature of the claims alone supports that it will be necessary to serve discovery on the Debtor related to its conduct and product. The Debtor would be the real party in interest in any such action. Caselaw is clear – extension of the automatic stay to a non-debtor is appropriate where the debtor is the real party in interest and, absent extension of the stay, the debtor necessarily would be forced to participate in the action. *See McCartney v. Integra Nat'l Bank North*, 106 F.3d 506, 509-11 (3d. Cir. 1997); *In re Cont'l Airlines*, 177 B.R. 475, 481 n.6 (D. Del. 1993 (explaining that the action against the non-debtor should be stayed if it "would so consume the time, energy and resources of the debtor" that it would substantially hinder the bankruptcy case).

- *Any Assertion that the Claims Against LMIC as Insurer for the Debtor or Wayne Are Operational Claims Are Hotly Contested Issues*

44. The objecting Louisiana claimants contend that, even if the Debtor had rights under the LMIC policies, the claims they wish to pursue against LMIC will not drain available coverage because their claims are "operational" claims (rather than "products liability" claims or "completed operations" claims) that are not subject to the aggregate limits of coverage that apply to products liability claims. The Debtor has treated the asbestos-related claims as product liability or completed operations claims for many years. Even assuming for purposes of argument, without agreeing, that some of these claims might involve operational claims (at least prior to 1977, when the Debtor no longer included any asbestos materials in its joiner packages) and not products or completed operations claims, their argument misses four important facts (each of which would subject the Debtor to extensive discovery and costs if LMIC is not a Protected Party).

45. First, as mentioned previously, LMIC bought back its liability insurance policies in 2003, pursuant to the LMIC Settlement, long before any of the objecting Louisiana claimants asserted a claim against the Debtor or Wayne for injuries allegedly covered by those policies. Based on the exhibits annexed to the Louisiana Claimants Objection, the Purported Louisiana Claimants did not file their complaints or even allege manifestation or diagnosis of any disease from asbestos exposure until long after 2003.[5] The Debtor, therefore, simply does not have any liability coverage from LMIC that would cover any claims of the Louisiana claimants' claims. Under applicable Louisiana case law, the LMIC policies were bought back in 2003 free and clear of any unasserted claims against either the Debtor or Wayne. *See Comardelle v. Pennsylvania Gen. Ins. Co.*, 2014 WL 6485642, at *4 (E.D. La. Nov. 18, 2014).

46. Second, even if the objecting Louisiana claimants have claims against LMIC that survived the release and buy-back of the LMIC policies, which will be hotly contested, and the Louisiana claimants pursue only non-product claims against LMIC or other Insurers of the Debtor, excess product insurance policies of the Debtor will remain exposed to portions of those claims. Such exposure arises pursuant to the terms of some excess product insurers' prepetition coverage-in-place settlement agreements to pay defense and indemnity for asbestos claims on a product rather than non-product basis, provisions in the Debtor's multi-lateral and individual settlements with LMIC and various excess insurers permitting contribution claims in certain circumstances, and background state law governing contribution claims among insurers on a shared risk.

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[5] See Exhibits 47 [Doc. 86-47] at ¶ 6 (Petition for Damages in *Regusa*, filed in 2021, alleging manifestation of mesothelioma did not occur until 2021), 49 [Doc. 86-49] at ¶ 22 (Petition for Damages in *Rivet*, filed in 2022, alleging diagnosis of mesothelioma in May 2022), and 51 [Doc. 86-51] at ¶ 8 (Petition for Damages in *Costanza*, filed in 2024, alleging first diagnosis of mesothelioma in April 2023).

47. Third, as to claims against LMIC as an insurer for Wayne, there is no evidence Wayne was ever on site at the Louisiana shipyard installing any of the joiner packages provided by and sometimes installed by the Debtor. The claims against LMIC as insurer for Wayne could never be non-products liability claims. The products and completed operations liability coverage is indisputably subject to aggregate limits, and having any plaintiff or third-party plaintiff continue litigation against LMIC for Wayne during the bankruptcy will reduce (*i.e.*, waste) the available excess and capped liability coverage and thus harm other creditors who would share in the proceeds of those policies.

48. Fourth, if the Former D&Os are defendants in any post-petition Direct Actions Lawsuits allowed to continue, those Former D&Os also have rights under shared excess insurance with the Debtor and Wayne to recover their defense costs and any liability they might have, which will further reduce coverage available to other creditors. Moreover, those Former D&Os have indemnification claims under the Debtor's corporate governance documents, which will further deplete resources available to pay other asbestos-related claimants.

(3) *The Balance of Harms Weighs in Favor of a Preliminary Injunction*

49. The balance of harms also weighs heavily in favor of the relief sought in the Motion to Stay. As explained above, continued prosecution of asbestos-related actions against the Protected Parties would cause irreparable harm to the Debtor and its estate by, among other means, undermining the very goal of this chapter 11 case, and requiring the Debtor to actively participate in litigation pending throughout the country while simultaneously seeking to address the same claims before this Court. On the other hand, as set forth above, asbestos claimants will not be harmed by entry of the stay relief requested. The stay order merely will preserve the status quo during the pendency of this chapter 11 case. Asbestos claimants will be free to pursue their alleged

claims against the Protected Parties after the conclusion of this chapter 11 case, or to seek relief from the stay order in the event circumstances develop that would support such relief.

50. Plaintiffs in the Direct Action Lawsuits and other asbestos claimants also can continue to pursue their claims against other parties, other than the Debtor and Protected Parties. As is evident in the complaints that commenced the Direct Action Lawsuits, asbestos claimants typically sue multiple parties in the tort system. The asbestos claimants can and will continue to prosecute and collect on their claims against other parties and sources notwithstanding the entry of the relief sought in the Motion to Stay. *See Bestwall*, 606 B.R. at 257 (in addressing the balance of harms, observing that "nothing about maintaining the injunction in this case prohibits the plaintiffs from continuing to proceed against the remaining defendants in state court"). Furthermore, as noted, the trust the Debtor seeks to establish in its chapter 11 plan would allow for more efficient recoveries for asbestos-claimants than generally are available in the tort system.

51. Any prejudice to the asbestos claimants would be quite minimal, especially in comparison to the hardship the Debtor would face if the Motion to Stay is not granted on a final basis.

52. The approval of the Motion to Stay on a final basis merely will preserve the status quo, which is one of the primary purposes of the automatic stay – preventing disorganized dismemberment of the debtor's assets by creditors filing actions outside of the bankruptcy court to obtain independent relief to the detriment of other creditors and the debtor. 3 Collier on Bankruptcy ¶ 362.03 (16th ed. 2019) (providing that the "stay provides creditors with protection by preventing the dismemberment of a debtor's assets by individual creditors levying on the property. This promotes the bankruptcy goal of equality of distribution.").

53. As noted by the Bankruptcy Court for the Western District of North Carolina in staying prosecution of claims against non-debtor entities during a chapter 11 case involving significant asbestos-related claims, the asbestos claimants are "not being asked to forego their prosecution against [the non-debtor], only to delay it." *American Film Technologies*, 175 B.R. 847, 849 (Bankr. D. Del. 1994).

54. Furthermore, in some of the Direct Action Lawsuits, particular those of the Roussel Claimants, the plaintiff did not name LMIC as a defendant in any capacity. Instead, LMIC, as the insurer for Wayne, later was sued as a third-party defendant by another defendant in the action, HII. (An example of an HII third-party claim against LMIC, as insurer for Wayne, is included within Exhibit B-2 hereto). Importantly, LMIC was the liability insurer for both the Debtor and Wayne under the same excess liability insurance policies at issue. *See* Exhibit D, which includes a sample of such a policy.

55. Counsel to the Roussel Claimants have made clear in post-petition communications with Debtor's counsel and in their Objection that they want to pursue direct action claims against LMIC as the insurer *for the Debtor*, not Wayne, during the bankruptcy. They propose to amend their lawsuits in Louisiana to add LMIC in its capacity as liability insurer of the Debtor to pursue their claims against the Debtor through a direct action against LMIC. The Debtor has refused that request because the filing and prosecution of claims against LMIC will dilute recoveries for other claimants. They either will drain existing coverage, if there remains any coverage against LMIC, and/or will cause the Debtor to incur attorneys' fees and costs to address coverage disputes and discovery requests during this bankruptcy case, and, as explained above, likely will cause the estate to face indemnity claims for defense costs LMIC will incur to address both the new claims and the continued prosecution of the direct claims asserted against LMIC as insurer for Wayne. Moreover,

Louisiana creditors' arguments that their claims are non-products claims against LMIC undermine all asbestos claimants' future access to the excess products insurance that the Debtor was recovering from prior to entering bankruptcy and is attempting to maximize for the benefit of all creditors.

56. Accordingly, such direct action claims are tantamount to claims against the Debtor. In other words, if LMIC is not included as a Protected Party, the asbestos claimants would be able to pursue in the tort system the very same claims that the Debtor is seeking to resolve in the chapter 11 case, undermining a central purpose of this case.

57. The fact, however, that the Roussel Claimants must amend their complaints to add LMIC as the insurer for the Debtor as a defendant to the action demonstrates those complaints are not ready to proceed against LMIC as a defendant. The Roussel Claimants, and others, can simply sever any existing claims against LMIC or wait for the conclusion of this bankruptcy case to proceed with those claims.

58. To the extent this Court believes there may be any harm from delay on account of approving the Motion to Stay on a final basis (which harm the Debtor denies exists) that harm must be weighed against the important benefits that will result from preserving the Debtor's remaining assets – including its insurance policies and available cash – so the Debtor can convey such assets to a trust for the benefit of all claimants holding allowed asbestos-related claims under a chapter 11 plan. As the court held in enjoining actions against non-debtors in *In re Bestwall LLC*, to, among other things, enable the debtor to accomplish the goal of forming a trust (under section 524(g) in that case), a trust "will provide all claimants . . . with an efficient means through which to equitably resolve their claims." 606 B.R. 243, 257 (Bankr. W.D. N.C. 2019).

(4) Public Interest Supports a Stay Order

59. There is a strong public interest in the Debtor accomplishing the goal of this chapter 11 case – permitting the Debtor to transfer its remaining insurance coverage and cash to a liquidating trust and establishing a uniform and equitable manner to resolve thousands of asbestos claims. In the Debtor's chapter 11 case, this result is not possible if piecemeal litigation of the asbestos-claims against Protected Parties in the tort system is allowed to circumvent this bankruptcy process, further deplete the Debtor's insurance policies, and force the Debtor to spend time and money participating in such litigation during the pendency of this bankruptcy case. For that reason, a successful bankruptcy case – and a stay order that makes such reorganization possible – serves the public interest by allowing resolution of thousands of claims in a uniform and equitable manner.

D. *Purdue Pharma* Does Not Prevent the Bankruptcy Court from Extending the Automatic Stay to Non-Debtors

60. Contrary to the objection raised by the Hoffman Claimants, the recent decision by the Supreme Court in *Purdue Pharma* does not prevent this Court or any other court from extending the automatic stay to non-debtors during the case. *See* Hoffman Objection, ¶¶ 4-17. In support of this objection, the Hoffman Claimants rely on the mistaken assertion that the Debtor is seeking the approval of the Motion to Stay because the Debtor "is hoping to obtain a non-consensual third party release in favor of insurers, and reducing potential recovery of the Estate and its creditors." *See id.* at ¶ 9. That simply is not true.

61. The Bankruptcy Court for the District of Delaware, in *In re Parlement Techs., Inc.*. recently rejected a similar argument that *Purdue Pharma* precludes entry of a preliminary injunction. *See* 2024 WL 3417084 (Bankr. D. Del. July 15, 2024). The court held in *Parlement* that it "reads the *Purdue Pharma* decision to do what is said, and to be 'confin[ed] . . . to the

question presented [whether a bankruptcy court may grant a non-consensual third-party release]." *Id.* at *4. Nothing in *Purdue Pharma* provides a reason to reconsider the established case law that found it appropriate to extend the stay to non-debtors where the assertion of claims against the non-debtors would interfere with the debtor's reorganization efforts. *Id.* (citing to *Piccinin*, *American Film* and *W.R. Grace*). The court recognized that this established case law "found preliminary injunctions against third-party claims to be appropriate where the assertion of those claims would interfere with the debtor's reorganization efforts." *Id.* "[W]hile such interference is no longer a lawful basis for *permanently* enjoining the assertion of such a claim, it remains a sufficient basis for the entry of a preliminary injunction." *Id.*

62. The court in *Parlement*, therefore, held that a "preliminary injunction may still be granted if the Court concludes that (a) providing the debtor's management a breathing spell from the distraction of other litigation is necessary to permit the debtor to focus on the reorganization of its business *or* (b) because it believes the parties may ultimately be able to negotiate a plan that includes a consensual resolution of the claims against the non-debtors." *Id.* at *1; *see also Coast to Coast Leasing, LLC*, 2024 WL 3544805 (Bankr. N.D. Ill. July 17, 2024) (holding that *Purdue Pharma* is not a bar to granting preliminary injunctions enjoining suits against non-debtors).

63. Accordingly, case law supports that the authority for this Court to extend the stay to a non-debtor survives *Purdue Pharma.* As explained above, the relief is critical and necessary to avoid further depletion of the Debtor's insurance policies, save the estate from administrative claims during the pendency of the case addressing discovery, and to achieve the primary goal of this primary this case – ensuring a fair and equitable distribution of the Debtor's remaining assets among all claimants with allowed asbestos-related claims against the Debtor.

64. Additionally, in the present case, there is not a scintilla of evidence that the Debtor is seeking non-consensual releases for the Insurers. The chapter 11 plan proposed by the Debtor does not include non-consensual releases. *See* Docket No. 56.

E. There Is No Procedural Bar to the Relief Sought in the Motion to Stay and the Debtor Also Can Satisfy the Preliminary Injunction Factors

65. Lastly, the Roussel Claimants object to the Motion to Stay claiming that the relief sought in the Motion to Stay should have been brought pursuant to an adversary proceeding. *See* Roussel Objection, at p. 33-39. This objection fails because, in accordance with established case law in the Fourth Circuit, the Debtor seeks relief in the Motion to Stay under section 362(a)(1) and section 362(a)(3), and there is no procedural bar to seeking such relief through a motion.

66. To the extent the Court concludes that the Debtor preferably should have sought a preliminary injunction through an adversary proceeding under section 105, the Court can still approve the Motion to Stay without requiring the Debtor to commence an adversary proceeding, in the interest of judicial economy and because there is no prejudice to the parties, since the Debtor can satisfy the preliminary junction standard (as detailed above).

67. The Fourth Circuit has recognized four separate grounds, either statutory or equitable, on which a bankruptcy court may enjoin litigation against non-debtors: (i) the automatic stay under section 362(a)(1), (ii) the automatic stay under section 362(a)(3), (iii) the bankruptcy court's powers under section 105, and (iv) the bankruptcy court's general equity powers under its comprehensive jurisdiction conferred by 28 U.S.C. § 1334. *Piccinin,* 788 F.2d at 999-1004. Furthermore, the Fourth Circuit in *Piccinin* recognizes that the automatic stay of section 362(a) applies in its own force to prohibit certain actions against non-debtors and it is not necessary to seek an injunction through an adversary proceeding to confirm that the automatic stay protects certain non-debtors, such as the Protected Parties, in "unusual circumstances" that are present here.

Id. at 999; *see also In re LTL Management, LLC*, 638 B.R. 291, 300 (Bankr. D.N.J. 2022) (citing to Third Circuit precedent that agreed with *Picinnin* that section 362(a) provides an independent basis for extension of a stay to preclude lawsuits against non-debtor third parties); 10 Collier on Bankruptcy ¶ 7001.08 (16th Ed. 2019) ("An adversary proceeding is not necessary when the relief is automatically available. Thus, a distinction should be made between those situations covered by an automatic injunction or stay, such as those covered by section 362(a) of the Code, and those in which a proceeding must be commenced to obtain an injunction.").

68. As Judge Humrickhouse expressly held in *In re Brier Creek Corp. Ctr. Assocs. Ltd.*. in connection with overruling a similar objection that a debtor's motion seeking a stay of proceedings against non-debtors was procedurally improper: "***seeking a determination that the stay under 11 U.S.C. § 362(a) applies [to non-debtors] is properly made by motion and does not require the initiation of an adversary proceeding***." 2013 WL 144082, at *2 (Bankr. E.D. N.C. Jan. 14, 2013) (emphasis added); *see also In re Extraction Oil & Gas, Inc.*, 2020 WL 7074142, at *4 (Bankr. D. Del. Dec. 3, 2020) (denying argument that extension of automatic stay to non-debtor was procedurally improper because it required an adversary proceeding – "the Debtors are not seeking an injunction. Rather, they are seeking to enforce an existing, statutorily-created injunction. As such, the Debtors may proceed by motion.") (citing *In re THG Holdings LLC*, 604 B.R. 154, 162 (Bankr. D. Del. 2019) (it was unnecessary "to establish each of the factors necessary to impose a preliminary injunction because the Bankruptcy Code itself establishes the basis for the enforcement of the automatic stay."); *In re Alberts*, 381 B.R. 171, 176 (Bankr. W.D. Pa. 2008) (holding that the debtor did not need to ask for an injunction because the automatic stay is a statutory injunction that arose automatically "without the necessity of a formal court order"). Indeed, "the Court could raise the issue [of application of the automatic stay to the Protected

Parties] *sua sponte.*" *See Extraction Oil & Gas*, at *4 (citing *In re Lessing Const., Inc.*, 67 B.R. 436, 444 (Bank. E.D. Pa. 1986) (The Court "must raise the automatic stay issue *sua sponte* when [it] observe[s] its applicability.").

69. The Debtor seeks confirmation through the Motion to Stay that the automatic stay applies to asbestos-actions against the Protected Parties pursuant to sections 362(a)(1) and 362(a)(3). While the Debtor also requests in the Motion to Stay that, only to the extent required, section 105(a) authorizes approval of the Motion to Stay to carry out the purposes of sections 362(a)(1) and 362(a)(3), the Debtor relies on sections 362(a)(1) and 362(a)(3), in the first instance, to support the relief requested by the Motion to Stay and case law supports that such relief can be sought through a motion rather than an adversary proceeding

70. In addition, courts overwhelmingly have excused the lack of a formal adversary proceeding and permitted the debtor to proceed by motion where parties in interest had sufficient notice and opportunity to participate in the hearings. *In re Altman*, 254 B.R. 509, 512 (D. Conn. 2000); *see Parlement*, 2024 WL 3417084, at *4 (holding that "Civil Rule 61 (which is made applicable to contested matters like this one by Bankruptcy Rule 9005) explains that the 'court must disregard all errors that do not affect any party's substantial rights'" and, while the Court denied the motion for a preliminary injunction on the merits, "it is certainly not obvious that, in the absence of a claim of inadequate notice," the Court would deny an otherwise meritorious motion for a preliminary injunction on the ground that it was sought by motion rather than by adversary proceeding); *Brier Creek*, 2013 WL 144082, at *2 (recognizing that "courts in many instances have found that judicial economy permits the courts to look beyond Rule 7001 to the merits of the dispute provided no prejudice will result"); *In re Braniff Int'l Airlines, Inc.*, 164 B.R. 820, 831 (Bankr. E.D.N.Y. 1994) ("Where a party has proceeded by motion and the record has

been adequately developed, however, courts have reached the merits of the dispute despite the procedural irregularity."); *In re Orfa Corp. of Philadelphia*, 170 B.R. 257, 275 (E.D. Pa. 1994) ("Nevertheless, in some cases where a matter was improperly initiated by motion as a contested matter, 'courts have concluded that where the rights of the affected parties have been adequately presented so that no prejudice has arisen, form will not be elevated over substance and the matter will be allowed to proceed on the merits as originally filed.").

71. Put plainly, "[g]iven the often nonexistent differences between contested and adversarial proceedings, courts have commonly dismissed challenges to one proceeding or the other because harmful error is often difficult – if not impossible – to establish." *Dudley v. Buffalo Rock Company*, 2021 WL 1164380, at *4 (N.D. Ala. Mar. 26, 2021) (citations omitted). Indeed, the more streamlined motion process benefits all parties, as it is quicker and more efficient, including eliminating the need for subsequent motion practice related to a complaint, while also ensuring that affected parties had adequate notice and opportunity to participate in these proceedings.

72. Accordingly, to the extent the Court believes the relief sought in the Motion to Stay should have been sought by an adversary proceeding, case law supports that the Court can still allow the Motion to Stay to proceed in the interest of judicial economy and given the lack of any prejudice. The Debtor has made every reasonable effort to ensure that all affected parties were served with Notice of the Motion to Stay and the Interim Order, including, without limitation, counsel to each of the parties to the Direct Action Lawsuits. *See* Certificates of Service, Docket Nos. 24 and 52. The Debtor subsequently agreed to continue the Motion to Stay and give the Committee, the other Objecting Parties and other parties in interest, additional time to review the

Motion to Stay, conduct discovery, and file or supplement any objections to the relief sought in the Motion to Stay.

73. The record supports that parties have received adequate notice of the relief sought in the Motion to Stay, have had ample time to analyze the relief sought in the Motion to Stay and defend their rights, and cannot in good faith allege that the lack of an adversary proceeding resulted in any prejudice. It would be wasteful to require the Debtor to file an adversary proceeding alleging the same core facts that are set forth in the Motion to Stay.

74. Finally, since the relief sought in the Motion to Stay is only temporary, there is no judgement or permanent relief the Debtor would be seeking in an adversary proceeding. Importantly as well, there are unknown claimants that the relief sought through the Motion to Stay is meant to stay, so not all parties affected by the proposed stay could be named as defendants. Nevertheless, the Debtor is willing to convert the Motion to Stay into an adversary proceeding, or have the Court deem it so converted, to the extent the Court determines that would be the more appropriate way to proceed.

III. Conclusion and Reservation of Rights

75. In sum, the Debtor respectfully submits that the Court should overrule the Objections and approve the Motion to Stay on a final basis.

76. The Debtor expressly reserve its right to amend, modify, or supplement this Reply and to raise any additional arguments and present additional evidence at any hearing concerning the Motion to Stay and the Objections.

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Dated: September 9, 2024
Richmond, Virginia

<u>/s/ Henry P. (Toby) Long, III</u>
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Proposed Counsel for the Debtor and Debtor in Possession

<u>Exhibit A</u>

Protected Parties

1. **Insurers Who Provide (or in the case of Liberty Mutual Insurance Company provided) Shared Insurance Coverage to the Debtor, Wayne and Former D&Os :**

a. Liberty Mutual Insurance Company

b. Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North American)

c. Westchester Fire Insurance Company

d. Continental Casualty Company

e. Fidelity & Casualty Company

f. Lexington Insurance Company

g. Granite State Insurance Company

h. Insurance Company of the State of Pennsylvania

i. National Union Fire Insurance Company of Pittsburgh, PA

j. General Reinsurance Corporation

2. **Former D&Os of the Debtor and Wayne Who Are Also Covered Under the Debtor's Insurance Policies. The following Former D&Os are named in pending Direct Action Lawsuits with the Debtor and Wayne and, with the exception of Bertram C. Hopeman, are each deceased:**

a. Albert Arendt Hopeman, Jr. (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

b. Bertram C. Hopeman (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

c. Charles Johnson (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

d. Kenneth Wood (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

3. Current D&Os of the Debtor Who Have the Same Indemnification Rights as Former D&Os:

a. Christopher Lascell

b. Daniel Lascell

c. Carrie Lascell Brown

Exhibit B-1

Sample Hoffman Claimants Complaint

ATTORNEY'S NAME: Hoffman, Philip C 32277
AND ADDRESS: 643 MAgazine St. 300 A, New Orleans, LA 70130

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

NO: 2022-09322 **DIVISION: A** **SECTION: 16**

KRAEMER, DARWIN ET AL

Versus

TAYLOR SEIDENBACH ET AL

CITATION

TO: LIBERTY MUTUAL INSURANCE COMPANY, AS THE INSURER OF WAYNE MANUFACTURING COMPANY

THROUGH: THE LOUISIANA SECRETARY OF STATE
8585 ARCHIVES AVENUE, BATON ROUGE, LA 70809

SERVED ON
R. KYLE ARDOIN
MAR 02 2023
SECRETARY OF STATE
COMMERCIAL DIVISION

YOU HAVE BEEN SUED:

You must either comply with the demand contained in the

FIRST SUPPLEMENTAL AND AMENDING PETITION FOR DAMAGES WITH INCORPORATED MOTION FOR LEAVE OF COURT AND PETITION FOR DAMAGES

a certified copy of which accompanies this citation, or file an answer or other legal pleading within the delay provided by Civil Code of Procedure Article 1001. The mentioned article is noted on the back of this page for your reference. You may make your filing in the office of the Clerk of this Court, Room 402, Civil Courts Building, 421 Loyola Avenue, New Orleans, LA 70112.

ADDITIONAL INFORMATION

Legal assistance is advisable. If you want a lawyer and can't find one, you may contact the New Orleans Lawyer Referral Service at https://neworleansbar.community.lawyer/. This Referral Service operates in conjunction with the New Orleans Bar Association. If you qualify, you may be entitled to free legal assistance through Southeast Louisiana Legal Services (SLLS) at 877-521-6242 or 504-529-1000.

**********COURT PERSONNEL ARE NOT PERMITTED TO GIVE LEGAL ADVICE**********

IN WITNESS HEREOF, I have hereunto set my hand and affix the seal of the Civil District Court for the Parish of Orleans, State of LA February 9, 2023

Clerk's Office, Room 402
Civil Courts Building
421 Loyola Avenue
New Orleans, LA 70112

CHELSEY RICHARD NAPOLEON, Clerk of
The Civil District Court
for the Parish of Orleans
State of LA
by Ellen K. Philbrick
Ellen Philbrick, Deputy Clerk

SHERIFF'S RETURN
(for use of process servers only)

PERSONAL SERVICE

On this ________ day of ________________________ served a copy of the within

FIRST SUPPLEMENTAL AND AMENDING PETITION FOR DAMAGES WITH INCORPORATED MOTION FOR LEAVE OF COURT AND PETITION FOR DAMAGES

ON **LIBERTY MUTUAL INSURANCE COMPANY, AS THE INSURER OF WAYNE MANUFACTURING COMPANY**

THROUGH: **THE LOUISIANA SECRETARY OF STATE**

Returned the same day

________________ No. ________

Deputy Sheriff of ________________

Mileage: $ ________________

________ / ENTERED / ________

PAPER RETURN

________ / ________ / ________

SERIAL NO. DEPUTY PARISH

DOMICILIARY SERVICE

On this ________ day of ________________________ served a copy of the within

FIRST SUPPLEMENTAL AND AMENDING PETITION FOR DAMAGES WITH INCORPORATED MOTION FOR LEAVE OF COURT AND PETITION FOR DAMAGES

ON **LIBERTY MUTUAL INSURANCE COMPANY, AS THE INSURER OF WAYNE MANUFACTURING COMPANY**

THROUGH: **THE LOUISIANA SECRETARY OF STATE**

by leaving same at the dwelling house, or usual place of abode, in the hands of ________________ a person of suitable age and discretion residing therein as a member of the domiciliary establishment, whose name and other facts connected with this service I learned by interrogating HIM/HER the said **LIBERTY MUTUAL INSURANCE COMPANY, AS THE INSURER OF WAYNE MANUFACTURING COMPANY** being absent from the domicile at time of said service.

Returned the same day

________________ No. ________

Deputy Sheriff of ________________

Civil Code of Procedures
Article 1001

Art. 1001. Delay for answering

A. A defendant shall file his answer within twenty-one days after service of citation upon him, except as otherwise provided by law. If the plaintiff files and serves a discovery request with his petition, the defendant shall file his answer to the petition within thirty days after service of citation and service of discovery request.

B. When an exception is filed prior to answer and is overruled or referred to the merits, or is sustained and an amendment of the petition ordered, the answer shall be filed within fifteen days after the exception is overruled or referred to the merits, or fifteen days after service of the amended petition.

C. The court may grant additional time for answering.

Acts 2021, No. 174, §1, eff. Jan. 1, 2022.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

FILED 2023 JAN 24 AM 11:28 CIVIL DISTRICT COURT

STATE OF LOUISIANA

NO.2022-9322 **SECTION** **DIVISION " A "**

DARWIN KRAEMER, ROSEANNE PIERRON, CHERYL BECNEL AND WENDY VONLIENEN

VERSUS

TAYLOR SEIDENBACH

FILED: ______________________ ______________________
DEPUTY CLERK

FIRST SUPPLEMENTAL AND AMENDING PETITION FOR DAMAGES WITH INCORPORATED MOTION FOR LEAVE OF COURT

NOW INTO COURT, through undersigned counsel, come Petitioners who file this their first supplement and amendment to the original Petition for Damages herein the following respects:

1.

By supplementing and amending **THE ENTIRE ORIGINAL PETITION TO BE REPLACED BY THE FOLLOWING:**

COMES NOW Petitioners Darwin Kraemer, Roseanne Pierron, Cheryl Becnel, and Wendy Vonlienen, by and through undersigned counsel, and respectfully represents as follows:

1. Petitioner Darwin Kraemer is an adult resident citizen of the state of Louisiana.
2. Petitioner Roseanne Pierron is an adult resident citizen of the state of Louisiana.
3. Petitioner Cheryl Becnel is an adult resident citizen of the state of Louisiana.
4. Petitioner Wendy Vonlienen is an adult resident citizen of the state of Iowa.
5. Made Defendants herein are the following, either foreign corporations licensed to do and doing business in the State of Louisiana or domestic corporations licensed to do and doing business in the State of Louisiana, or are individuals that are liable unto the Petitioner (also referred to as Plaintiff herein), for the claims asserted herein:

ASBESTOS MINERS/ MANUFACTURERS/ SELLERS/SUPPLIERS/ DISTRIBUTORS/CONTRACTORS

A. **EAGLE, INC;**

B. **TAYLOR-SEIDENBACH, INC.;**

C. **INTERNATIONAL PAPER COMPANY** (individually and as successor by merger with CHAMPION INTERNATIONAL CORPORATION, successor by merger with UNITED STATES PLYWOOD CORPORATION)

D. **HOPEMAN BROTHERS, INC.;**

E. **PARAMOUNT GOBAL** (f/k/a VIACOM, INC. *successor by merger with* CBS CORPORATION F/K/A WESTINGHOUSE ELECTRIC CORPORATION);

F. **LIBERTY MUTUAL INSURANCE COMPANY** as the insurer of WAYNE MANUFACTURING COMPANY;

G. **FOSTER WHEELER, LLC**

H. **GENERAL ELECTRIC COMPANY;**

I. **ZURICH AMERICAN INSURANCE COMPANY,** as successor-by-merger to Maryland Casualty Company, as the insurer of MARQUETTE INSULATION, INC.

EMPLOYER/PREMISE OWNER/EXECUTIVE OFFICERS

J. **HUNTINGTON INGALLS INCORPORATED** f/k/a NORTHROP GRUMMAN SHIP SYSTEMS, INC. f/k/a AVONDALE INDUSTRIES, INC.

K. **CERTAIN UNDERWRITERS AT LLOYD'S, LONDON**, a non-Louisiana foreign insurer registered to do or doing business in the State of Louisiana, as the liability insurers of the Following Executive Officers of Avondale Industries, Inc.: James Bull, Henry "Zac" Carter, C. Edwin Hartzman, Hettie Margaret Dawes-Eaves (via service of process by the Direct Action Statute L. R. S. 22:655), which may be served through the Louisiana Secretary of State Tom Schedler at Twelve United Plaza,8585 Archives Avenue, Baton Rouge, LA 70809;

L. **THE TRAVELERS INSURANCE COMPANY**, as the Liability Insurers of the Following Executive Officers of Avondale Industries, Inc.: James Bull, Henry "Zac" Carter, C. Edwin Hartzman, Hettie Margaret Dawes-Eaves (via Service of press via the Direct-Action Statute L. R. S. 22:655);

M. **TEMPCON,INC.;**

N. **PETRIN,LLC**

O. **BOLLINGER SHIPYARDS, LLC**

P. **ALLIED SHIPYARD, INC.;**

Q. **McDERMOTT, INC.,** f/k/a J. RAY MCDERMOTT & CO., INC.;

R. **CHEVRON ORONITE COMPANY, LLC**

6. Orleans Parish is a proper venue for this matter pursuant to Louisiana Code of Civil Procedure Article 42(2) because Defendant Taylor-Seidenbach is a domestic corporation licensed to do business in this State and has designated as its primary business office and/or primary place of business in Louisiana as Orleans Parish.

7. Orleans Parish is a proper venue for this matter pursuant to Louisiana Code of Civil

Procedure Article 42(2) because Defendant Eagle, Inc. is a domestic corporation licensed to do business in this State and has designated as its primary business office and/or primary place of business in Louisiana as Orleans Parish (1100 Poydras Street, New Orleans, Louisiana 70163).

8. This action is within the jurisdiction of the court and Orleans Parish is a proper venue pursuant to Louisiana Code of Civil Procedure article 73 because each of the defendants listed above contributed to Petitioners' exposures to asbestos and subsequent contraction of asbestos related diseases . therefore each is solidarily liable to Petitioners with each of its co-defendants, and defendants Eagle, Inc., f/k/a Eagle Asbestos & Packing Co., Inc., Taylor-Seidenbach, Inc. are domiciled in Orleans Parish.

9. This action is within the jurisdiction of the court and Orleans Parish is a proper venue pursuant to Louisiana Code of Civil Procedure Article 74 because wrongful conduct occurred, and resultant damages were sustained within Orleans Parish.

10. Petitioners father, Howard Kraemer, was an insulator at Avondale Shipyard during the 1950s, 1960s and 1970s. Additionally, after working at Avondale, Mr. Kraemer worked as an insulator for Tempcon and Petrin working at many different industrial facilities including Chevron in Belle Chasse, Bolinger Shipyard, Allied Shipyard and McDermott in Morgan City. As an insulator at all locations, Mr. Kraemer testified to doing the same work which was installing and removing asbestos containing insulation and was in close proximity to others using asbestos containing materials. The asbestos containing products used by Mr. Kraemer and used near Mr. Kraemer caused Mr. Kraemer's work clothes to be contaminated with asbestos fibers. Mr. Kraemer wore his work clothes home and contaminated the family vehicles and home. As a result, all of Mr. Kraemer's children came into contact with his asbestos contaminated work clothes and were each individually exposed to asbestos which they all inhaled.

11. Before and during Petitioners exposure period, each of the defendants designed, tested, evaluated, manufactured, packaged, furnished, stored, handled, transported, installed, supplied and/or sold asbestos-containing products.

12. When inhaled or otherwise ingested, asbestos causes irreparable and progressive lung damage that can manifest itself as asbestos-related pleural disease, asbestosis, mesothelioma, pulmonary and bronchogenic carcinoma, gastrointestinal cancer, cardiac problems, other lung diseases, pneumoconiosis, and various other injuries.

13. Each of the defendants knew or should have known through industry and medical

studies, the existence of which were unknown to Petitioner or Petitioner's father, of the health hazards inherent in the asbestos-containing products they were selling and/or using.

CONTRA NON VALENTUM

14. As a direct and proximate result of having inhaled, ingested, or otherwise been exposed to asbestos as described directly above, Petitioners each contracted asbestos related diseases. Petitioners did not know that their conditions were caused by asbestos until Roseanne Pierron was diagnosed with lung cancer in August of 2022. Mrs. Pierron's treating physician told her that her lung cancer was not caused by smoking and must have been caused by asbestos. Because all the petitioners had similar exposure histories, they began to realize their own conditions were caused by asbestos. Once Roseanne was diagnosed with lung cancer, Wendy Vonlienen first realized her lung cancer was caused by asbestos. Darwin Kraemer has a growing mass on his lungs and has pleural asbestosis. Cheryl Becnel also has a growing mass on her lung and has plueral asbestosis.

15. Because of the latency period between exposure to asbestos and the onset of malignant mesothelioma, and because of the active concealment by some defendants of the causes and effects of exposure to asbestos, Petitioners has only recently discovered her injuries and not more than one year preceding this filing of this Petition for Damages.

16. Petitioner disclaims any cause of action or recovery for any injuries caused by any exposure to asbestos dust that occurred in a federal enclave. Petitioners also disclaim any cause of action or recovery for any injuries resulting from any exposure to asbestos dust caused by any acts or omissions of a party committed at the direction of an officer of the United States Government.

17. Petitioners disclaim any cause of action or recovery for any injuries caused by any exposure to asbestos dust that occurred in a federal enclave, including but not limited to the Outer Continental Shelf. Specifically, Petitioner does not allege, nor will they claim that any asbestos exposure of Petitioner occurred on or arose from activities related to the Outer Continental Shelf.

NEGLIGENCE ALLEGATIONS AGAINST ASBESTOS MINERS/ MANUFACTURERS/ SELLERS/SUPPLIERS/ DISTRIBUTORS/CONTRACTORS

18. The Defendants were all miners, manufacturers, sellers, users, contractors, distributors and/or suppliers of asbestos products or equipment utilizing asbestos products

internally and externally, and were engaged in the business of using, manufacturing or facilitating the manufacture of asbestos products or equipment utilizing asbestos products internally and externally, or representing themselves as manufacturers of asbestos products, or were professional vendors of asbestos or asbestos-containing products.

19. The asbestos products and/or asbestos-containing equipment mined, manufactured, sold, distributed, supplied and/or used by these defendants negligently, recklessly, willfully and/or because of gross and wanton negligence or fault, failed to properly discharge their duties to the Petitioners in the following manner:

a. lack of warning or of sufficient warning of the hazards these products would present in the course of their normal foreseeable use or intended use;

b. lack of safety instructions or of sufficient safety instructions for eliminating or reducing the health risks associated with the intended use of these products;

c. failure of defendants to inspect these products to assure sufficiency and adequacy of warnings and safety cautions;

d failure to test or adequately test these products for defects or hazards they could present to the intended or foreseeable users;

e. failure to truthfully report or adequately report the results of product testing and medical studies associated with foreseeable hazards of these products by intended or foreseeable users;

f. failure to recall these products mined, manufactured, sold, distributed and/or supplied;

g. failure to properly package these products so that they could be safely transported, handled, stored, or disposed of;

h. failure to inform Petitioners of the need for adequate engineering or industrial hygiene measures to control the level of exposure to asbestos, including but not limited to local exhaust, general ventilation, respiratory protection, segregation of work involving asbestos, use of wet methods to reduce the release of asbestos into the ambient air, medical monitoring, air monitoring, and procedures to prevent the transportation of asbestos fibers home on clothing; and

i. failure to inform or warn Petitioners of the hazards of asbestos exposure;

20. The use of defendants' products and asbestos-containing equipment, negligently, recklessly, willfully and/or because of gross and wanton negligence or fault, as noted above, are a proximate cause of Petitioner's injuries complained of herein.

21. Petitioner also alleges that each and every one of the foregoing defendants were also negligent in engaging in the substandard conduct enumerated above and that this negligence was also a proximate cause of Petitioner's injuries.

NEGLIGENCE AND STRICT LIABLITY OF THE EMPLOYER, EXECUTIVE OFFICER, AND PREMISE OWNERS

22. Pursuant to La. Civil Code Article 2317, Plaintiffs alleges a claim for strict liability and negligence against certain employer and premise owner Defendants. Plaintiffs alleges strict premise liability against these Defendants for failing to provide Plaintiff with a safe place in which to work free from hazards of asbestos, which failure was a proximate cause of the Plaintiff's injuries.

23. The employers and its executive officers and premise defendants negligently, recklessly, willfully and/or because of gross and wanton negligence or fault, failed to properly discharge their duties to the Petitioner in the following:

a. failed to provide a safe work environment;

b. failed to provide safety equipment;

c. failed to provide correct, adequate, or proper safety equipment;

d. recklessly and negligently failed to disclose, warn, or reveal critical medical and safety information regarding asbestos hazards in general and with regard to those specific hazards at the work site;

e. recklessly concealed and negligently omitted to reveal critical medical and safety information regarding the safety and health risks associated with the asbestos and asbestos-containing products at the worksites;

f. failed to timely remove asbestos hazards from the workplace;

g. failed to properly supervise or monitor the work areas for compliance with safety regulations;

h. failed to provide a safe and suitable means of eliminating the amount of asbestos dust in the air; and

i. failed to provide the necessary facilities, practices and procedures that would lessen or eliminate the transfer of asbestos from the workplace to the home on the clothing and/or person of the Petitioner or her family members.

j. The above-described negligence, fault, and willful misconduct of these defendants were a proximate cause of the Petitioner's injuries.

k. All have liability to Petitioner in strict liability for things in their garde, possession, custody, or control, pursuant to article 2317 of the Louisiana Code of Civil Procedure that have caused harm to Petitioner.

24. At all times throughout Mr. Kraemer's exposure to asbestos, the employers and executive officers knew that asbestos posed substantial health risks to those exposed to it, knew that there were specific engineering and industrial hygiene procedures which should have been employed to reduce exposures, including on the destroyer escorts, knew that those exposed to asbestos on the job could bring home asbestos on their clothes and thereby injuriously expose those in the household, yet the employers and executive officers consciously chose not to inform Petitioner of this information or implement any meaningful safety precautions, all of which was a substantial contributing cause of Petitioner's injuries.

25. During the course of the Plaintiff work, Plaintiff was exposed to asbestos and/or asbestos containing products, which were in the care, control, and custody of these defendants. Because of the extreme hazard it poses to humans, asbestos constitutes a defect or vice in the products to which Plaintiff was exposed, which defect, or vice was a cause in fact of Plaintiff's injuries described herein. Accordingly, these defendants are strictly liable to Plaintiff in accordance with Louisiana Civil Code article 2315 and 2317.

26. During the course of the Plaintiff's work, Plaintiff was exposed to asbestos released from these premises, which release was a cause in fact of Plaintiff's injuries described herein. Accordingly, these defendants are strictly liable to Plaintiff in accordance with, but not limited to, Louisiana Civil Code article 2315, former Louisiana Civil Code articles 660 and 669, and *Langlois v. Allied Chemical Corp*, 249 So.2d 133 (La. 1971).

27. The premises owner defendants knew or should have known that asbestos posed a hazard to humans and that there were specific engineering and industrial hygiene controls that could help reduce the levels of airborne asbestos fibers, nonetheless, failed or suppressed, through silence, neglect or inaction, the truth regarding asbestos to Plaintiff so as to obtain an unjust

advantage for themselves over and at expense of Plaintiff or to cause loss or inconvenience to Plaintiff. This action or inaction by the defendants was a direct and proximate cause of the damages described herein.

WHEREFORE, on the basis of all of the foregoing premises set out in paragraphs 1 through 27, Petitioner requests that defendants be served with this petition and that there be judgment against these defendants jointly, severally and in solido in a sum sufficient to compensate Petitioner for the following:

a. all past, present, and future medical costs or expenses related thereto;

b. all past, present and future lost earnings;

c. all past, present, and future mental suffering, anguish and pain sustained by Petitioner;

d. all past, present and future physical pain and suffering sustained by Petitioner;

e. the disfigurement suffered by Petitioner;

f. loss of quality of life;

g. past, present, and future disability.

h. all other forms of relief or categories of damages allowed by Louisiana law for survival claims, with interest from the date of injury until paid, plus costs of these proceedings.

WHEREFORE Petitioners pray that after due proceedings had, there be judgment herein in favor of Petitioner and against the defendants as prayed for.

Respectfully submitted,

PHILIP C. HOFFMAN, LLC

PHILIP HOFFMAN, Bar No. 32277
DAYAL S. REDDY, Bar No. 31928
643 Magazine Street, Suite 300-A
New Orleans, Louisiana 70130
Telephone: (504) 822-6050
Facsimile: (504) 313-3911

COUNSEL FOR PETITIONER

SERVICE INSTRUCTIONS ON THE FOLLOWING PAGES

A TRUE COPY
DEPUTY CLERK CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

PLEASE SERVE THE FOLLOWING DEFENDANT WITH THIS FORST SUPPLEMENTAL AND AAMENDING PETITION FOR DAMAGES:

1. **EAGLE, INC., f/k/a Eagle Asbestos & Packing Co., Inc.**
   Through its registered agent:
   Susan B. Kohn
   1100 Poydras Street
   30th Floor
   New Orleans, LA 70163

PLEASE SERVE THE FOLLOWING WITH THE ORIGINAL PETITION FOR DAMAGES AND THIS FIRST SUPPLEMENTAL AND AMENDING PETITION:

2. **INTERNATIONAL PAPER CO. F/K/A CHAMPION INTERNATIONAL F/K/A US PLYWOOD, A non-Louisiana company**
   Through its registered agent:
   CT Corporation System
   3867 Plaza Tower Drive
   Baton Rouge LA 70816

3. **PARAMOUNT GOBAL (f/k/a VIACOM, INC. *successor by merger with* CBS CORPORATION f/k/a WESTINGHOUSE ELECTRIC CORPORATION);Through the Louisiana Long Arm Statute:**
   CBS Headquarters
   51 W. 52nd Street
   New York, NY 10019-6188

4. **HOPEMAN BROTHERS, INC.**
   A Delaware Corporation
   Through the Secretary of State:
   C.T. Corporation System
   4701 Cox Road, Suite 285
   Glen Allen, VA 23060

5. **HOPEMAN BROTHERS, INC.**
   A Delaware Corporation
   Through the Louisiana Long Arm Statute:
   435 Essex Ave.
   Waynesboro, VA 22980

6. **LIBERTY MUTUAL INSURANCE COMPANY, As the insurer of Wayne Manufacturing Company**
   Through the Louisiana Secretary of State
   8585 Archives Avenue
   Baton Rouge, LA 70809

7. **HUNTINGTON INGALLS INCORPORATED f/k/a NORTHROP GRUMMAN SHIP SYSTEMS, INC. f/k/a AVONDALE INDUSTRIES, INC.**
   Through its registered agent:
   C.T. Corporation System
   3867 Plaza Tower Drive
   Baton Rouge, LA 70816

8. **CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, a non-Louisiana foreign insurer registered to do or doing business in the State of Louisiana, as the liability insurers of the Following Executive Officers of Avondale Industries, Inc.: James Bull, Henry "Zac" Carter, C. Edwin Hartzman, Albert Bossier, Jr., Hettie Margaret Dawes-Eaves, James O'Donnell, Steve Kennedy, John Chantry, Pete Territo, George Kelmell,**

John David "J. D." Roberts, Eddie Blanchard, Ollie Gatlin, J. Melton Garrett, Earl Spooner, John McQue, James T. Cole, Ewing Moore and Burnette "Frenchy" Bordelon (via service of process by the Direct Action Statute L. R. S. 22:655)
Through the Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

9. **THE TRAVELERS INSURANCE COMPANY, As the Liability Insurers of the Following Executive Officers of Avondale Industries, Inc.: James Bull, Henry "Zac" Carter, C. Edwin Hartzman, Albert Bossier, Jr., Hettie Margaret Dawes-Eaves, James O'Donnell, Steve Kennedy, John Chantry, Pete Territo, George Kelmell, John David "J. D." Roberts, Eddie Blanchard, Ollie Gatlin, J. Melton Garrett, Earl Spooner, John McQue, James T. Cole, Ewing Moore and Burnette "Frenchy" Bordelon (via Service of press via the Direct Action Statute L. R. S. 22:655)**
Through the Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

10. **FOSTER WHEELER, LLC, a foreign company authorized to do business in Louisiana, which can be served**
through its agent for service of process
Corporation Trust Company
1209 Orange Street
Wilmington, Delaware 19801

11. **LAMORAK INSURANCE COMPANY, f/k/a OneBeacon Insurance Company, f/k/a Commercial Union Insurance Company, as the Liability Insurers of the Following Executive Officers of Avondale Industries, Inc.: James Bull, Henry "Zac" Carter, C. Edwin Hartzman, Albert Bossier, Jr., Hettie Margaret Dawes-Eaves, James O'Donnell, Steve Kennedy, John Chantry, Pete Territo, George Kelmell, John David "J. D." Roberts, Eddie Blanchard, Ollie Gatlin, J. Melton Garrett, Earl Spooner, John McQue, James T. Cole, Ewing Moore and Burnette "Frenchy" Bordelon (via Service of press via the Direct Action Statute L. R. S. 22:655)**
Through the Louisiana Secretary of State
8585 Archives Avenue
Baton Rouge, LA 70809

12. **ZURICH AMERICAN INSURANCE COMPANY, as successor-by-merger to Maryland Casualty Company, as the insurer of MARQUETTE INSULATION, INC.**
Through the Louisiana Secretary of State:
8585 Archives Avenue
Baton Rouge, LA 70809

13. **PETRIN,LLC**
Through its registered agent:
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, LA 70816

14. **MCDERMOTT, INC., f/k/a J. Ray McDermott & Co., Inc.**
Through its registered agent for service of process:
C. T. Corporation Systems
3867 Plaza Tower Drive
Baton Rouge, LA 70816

15. **BOLLINGER SHIPYARDS,LLC.**
Through its registered agent:
Rachael B. Battaglia
8368 HWY 308
Lockport, LA 70374

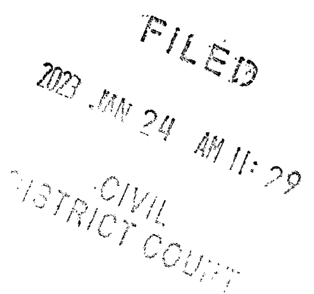
16. **ALLIED SHIPYARD, INC.**
Through its registered agent:
LEE A. CALLAIS
107 PINOT NOIR COURT
MATHEWS, LA 70375

17. **TEMPCON, INC.**
Through its registered agent:
DANIEL A. BABIN
6001 York St.
Metairie, LA 70003

18. **CHEVRON ORONITE COMPANY LLC**
Through its registered agent for service of process:
Corporation Service Company
501 Louisiana Avenue
Baton Rouge, LA 70802

19. **GENERAL ELECTRIC COMPANY**
Through its registered agent for service of process:
C. T. Corporation Systems
3867 Plaza Tower Drive
Baton Rouge, LA 70816

PETITIONERS WILL SERVE ALL OTHER DEFENDANTS THROUGH COUNSEL OF RECORD PURSUANT TO LA. C.C.P. 1313



CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.2022-9322 **SECTION** **DIVISION " A "**

DARWIN KRAEMER, ROSEANNE PIERRON, CHERYL BECNEL AND WENDY VONLIENEN

VERSUS

TAYLOR SEIDENBACH

FILED: ____________________________ ________________________________
DEPUTY CLERK

ORDER

Let the above and foregoing *First Supplement and Amendment* to the original *Petition for Damages* be filed as prayed for.

SO ORDERED this the ____ day of FEB 0 6 2023, 2023.

(Sgd.) ELLEN M. HAZEUR
Judge - Division "A"
____
DISTRICT JUDGE – ELLEN M. HAZEUR

A TRUE COPY
DEPUTY CLERK - MINUTE CLERK
CLERK OF CIVIL DISTRICT COURT
PARISH OF ORLEANS, STATE OF LA

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS FILED

STATE OF LOUISIANA

2022 OCT -6 AM 10:30

NO. 2022-9322 SECTION A DIVISION " 16 "

CIVIL DISTRICT COURT

DARWIN KRAEMER, ROSEANNE PIERRON, CHERYL BECNEL AND WENDY VONLIENEN

VERSUS

TAYLOR SEIDENBACH

FILED: ______________________ ______________________
DEPUTY CLERK

PETITION FOR DAMAGES

COMES NOW Petitioners Darwin Kraemer, Roseanne Pierron, Cheryl Becnel, and Wendy Vonlienen, by and through undersigned counsel, and respectfully represents as follows:

1. Petitioner Darwin Kraemer is an adult resident citizen of the state of Louisiana.

2. Petitioner Roseanne Pierron is an adult resident citizen of the state of Louisiana.

3. Petitioner Cheryl Becnel is an adult resident citizen of the state of Louisiana.

4. Petitioner Wendy Vonlienen is an adult resident citizen of the state of Iowa.

5. Made Defendants herein are the following, either foreign corporations licensed to do and doing business in the State of Louisiana or domestic corporations licensed to do and doing business in the State of Louisiana, or are individuals that are liable unto the Petitioner (also referred to as Plaintiff herein), for the claims asserted herein:

ASBESTOS MANUFACTURERS/CONTRACTORS/SELLERS/ SUPPLIERS/DISTRIBUTORS

A. EAGLE, INC;
B. TAYLOR-SEIDENBACH, INC.;

6. Orleans Parish is a proper venue for this matter pursuant to Louisiana Code of Civil Procedure Article 42(2) because Defendant Taylor-Seidenbach is a domestic corporation licensed to do business in this State and has designated as its primary business office and/or primary place of business in Louisiana as Orleans Parish.

7. Orleans Parish is a proper venue for this matter pursuant to Louisiana Code of Civil Procedure Article 42(2) because Defendant Eagle, Inc. is a domestic corporation licensed to do business in this State and has designated as its primary business office and/or primary place of business in Louisiana as Orleans Parish (1100 Poydras Street, New Orleans, Louisiana 70163).

8. This action is within the jurisdiction of the court and Orleans Parish is a proper

venue pursuant to Louisiana Code of Civil Procedure article 73 because each of the defendants listed above contributed to Petitioners' exposures to asbestos and subsequent contraction of asbestos related diseases . therefore each is solidarily liable to Petitioners with each of its co-defendants, and defendants Eagle, Inc., f/k/a Eagle Asbestos & Packing Co., Inc., Taylor-Seidenbach, Inc. are domiciled in Orleans Parish.

9. This action is within the jurisdiction of the court and Orleans Parish is a proper venue pursuant to Louisiana Code of Civil Procedure Article 74 because wrongful conduct occurred, and resultant damages were sustained within Orleans Parish.

10. Before and during Petitioners exposure period, each of the defendants designed, tested, evaluated, manufactured, packaged, furnished, stored, handled, transported, installed, supplied and/or sold asbestos-containing products.

11. When inhaled or otherwise ingested, asbestos causes irreparable and progressive lung damage that can manifest itself as asbestos-related pleural disease, asbestosis, mesothelioma, pulmonary and bronchogenic carcinoma, gastrointestinal cancer, cardiac problems, other lung diseases, pneumoconiosis, and various other injuries.

12. Each of the defendants knew or should have known through industry and medical studies, the existence of which were unknown to Petitioner or Petitioner's father, of the health hazards inherent in the asbestos-containing products they were selling and/or using.

CONTRA NON VALENTUM

13. As a direct and proximate result of having inhaled, ingested, or otherwise been exposed to asbestos as described directly above, Petitioners each contracted asbestos related diseases. Petitioners did not know that their conditions were caused by asbestos until Roseanne Pierron was diagnosed with lung cancer in August of 2022. Mrs. Pierron's treating physician told her that her lung cancer was not caused by smoking and must have been caused by asbestos. Because all the petitioners had similar exposure histories, they began to realize their own conditions were caused by asbestos. Once Roseanne was diagnosed with lung cancer, Wendy Vonlienen first realized her lung cancer was caused by asbestos. Darwin Kraemer has a growing mass on his lungs and has pleural asbestosis. Cheryl Becnel also has a growing mass on her lung and has plueral asbestosis.

14. Because of the latency period between exposure to asbestos and the onset of malignant mesothelioma, and because of the active concealment by some defendants of the causes

and effects of exposure to asbestos, Petitioners has only recently discovered her injuries and not more than one year preceding this filing of this Petition for Damages.

15. Petitioner disclaims any cause of action or recovery for any injuries caused by any exposure to asbestos dust that occurred in a federal enclave. Petitioners also disclaim any cause of action or recovery for any injuries resulting from any exposure to asbestos dust caused by any acts or omissions of a party committed at the direction of an officer of the United States Government.

16. Petitioners disclaim any cause of action or recovery for any injuries caused by any exposure to asbestos dust that occurred in a federal enclave, including but not limited to the Outer Continental Shelf. Specifically, Petitioner does not allege, nor will they claim that any asbestos exposure of Petitioner occurred on or arose from activities related to the Outer Continental Shelf.

NEGLIGENCE ALLEGATIONS AGAINST MANUFACTURING AND CONTRACTOR DEFENDANTS

17. The Defendants were all miners, manufacturers, sellers, users, distributors and/or suppliers of asbestos products or equipment utilizing asbestos products internally and externally, and were engaged in the business of using, manufacturing or facilitating the manufacture of asbestos products or equipment utilizing asbestos products internally and externally, or representing themselves as manufacturers of asbestos products, or were professional vendors of asbestos or asbestos-containing products.

18. The asbestos products and/or asbestos-containing equipment mined, manufactured, sold, distributed, supplied and/or used by these defendants negligently, recklessly, willfully and/or because of gross and wanton negligence or fault, failed to properly discharge their duties to the Petitioners in the following manner:

a. lack of warning or of sufficient warning of the hazards these products would present in the course of their normal foreseeable use or intended use;

b. lack of safety instructions or of sufficient safety instructions for eliminating or reducing the health risks associated with the intended use of these products;

c. failure of defendants to inspect these products to assure sufficiency and adequacy of warnings and safety cautions;

d failure to test or adequately test these products for defects or hazards they could

present to the intended or foreseeable users;

e. failure to truthfully report or adequately report the results of product testing and medical studies associated with foreseeable hazards of these products by intended or foreseeable users;

f. failure to recall these products mined, manufactured, sold, distributed and/or supplied;

g. failure to properly package these products so that they could be safely transported, handled, stored, or disposed of;

h. failure to inform Petitioners of the need for adequate engineering or industrial hygiene measures to control the level of exposure to asbestos, including but not limited to local exhaust, general ventilation, respiratory protection, segregation of work involving asbestos, use of wet methods to reduce the release of asbestos into the ambient air, medical monitoring, air monitoring, and procedures to prevent the transportation of asbestos fibers home on clothing; and

i. failure to inform or warn Petitioners of the hazards of asbestos exposure;

19. The use of defendants' products and asbestos-containing equipment, negligently, recklessly, willfully and/or because of gross and wanton negligence or fault, as noted above, are a proximate cause of Petitioner's injuries complained of herein.

20.. Petitioner also alleges that each and every one of the foregoing defendants were also negligent in engaging in the substandard conduct enumerated above and that this negligence was also a proximate cause of Petitioner's injuries.

WHEREFORE, on the basis of all of the foregoing premises set out in paragraphs 1 through 20, Petitioner requests that defendants be served with this petition and that there be judgment against these defendants jointly, severally and in solido in a sum sufficient to compensate Petitioner for the following:

a. all past, present, and future medical costs or expenses related thereto;

b. all past, present and future lost earnings;

c. all past, present, and future mental suffering, anguish and pain sustained by Petitioner;

d. all past, present and future physical pain and suffering sustained by Petitioner;

e. the disfigurement suffered by Petitioner;

f. loss of quality of life;

g. past, present, and future disability.

h. all other forms of relief or categories of damages allowed by Louisiana law for survival claims, with interest from the date of injury until paid, plus costs of these proceedings.

WHEREFORE Petitioners pray that after due proceedings had, there be judgment herein in favor of Petitioner and against the defendants as prayed for.

Respectfully submitted,

PHILIP C. HOFFMAN, LLC

PHILIP HOFFMAN, Bar No. 32277
643 Magazine Street, Suite 300-A
New Orleans, Louisiana 70130
Telephone: (504) 822-6050
Facsimile: (504) 313-3911

COUNSEL FOR PETITIONER

PLEASE SERVE THE FOLLOWING:

1. TAYLOR-SEIDENBACH, INC.
   A corporation duly organized, created, and existing under and by virtue of the laws of the state of Louisiana, with its principal place of business in New Orleans, Louisiana
   Through its registered agent:
   Robert I. Shepard
   731 South Scott Street
   New Orleans, Louisiana 70119

2. **EAGLE, INC., f/k/a Eagle Asbestos & Packing Co., Inc.**
   Through its registered agent:
   Susan B. Kohn
   1100 Poydras Street
   30th Floor
   New Orleans, LA 70163

A TRUE COPY
DEPUTY CLERK CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

Exhibit B-2

Sample Roussel Claimants Complaint

AO 441 (Rev. 07/10) Summons on Third-Party Complaint

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

ERICA DANDRY CONSTANZA, et al
Plaintiff
v.
HUNTINGTON INGALLS INC.
Defendant, Third-party plaintiff
v.
LIBERTY MUTUAL INSURANCE COMPANY
Third-party defendant

Civil Action No. 24-871 G/5

SERVED ON
NANCY LANDRY
MAY 13 2024
SECRETARY OF STATE
COMMERCIAL DIVISION

SUMMONS ON A THIRD-PARTY COMPLAINT

To: *(Third-party defendant's name and address)*
LIBERTY MUTUAL INSURANCE COMPANY

A lawsuit has been filed against defendant HUNTINGTON INGALLS INC. , who as third-party plaintiff is making this claim against you to pay part or all of what the defendant may owe to the plaintiff ERICA DANDRY CONSTANZA, et al .

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff and on the defendant an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the defendant or defendant's attorney, whose name and address are:

Brian C. Bossier
Blue Williams LLP
3421 N. Causeway Blvd.
Metairie, LA 70002

It must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

Gerolyn Petit Roussel
Roussel & Clement
1550 West Causeway Approach
Mandeville, LA 70471

If you fail to respond, judgment by default will be entered against you for the relief demanded in the third-party complaint. You also must file the answer or motion with the court and serve it on any other parties.

A copy of the plaintiff's complaint is also attached. You may – but are not required to – respond to it.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Carol L. Michel
Name of clerk of court

Date: **May 01 2024**

Deputy clerk's signature

AO 441 (Rev. 07/10) Summons on Third-Party Complaint (Page 2)

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________

was received by me on *(date)* ______________ .

☐ I personally served the summons on the individual at *(place)* ______________________

______________________ on *(date)* ______________ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* ______________

______________________ , a person of suitable age and discretion who resides there,

on *(date)* ______________ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* ______________________ , who is

designated by law to accept service of process on behalf of *(name of organization)* ______________

______________________ on *(date)* ______________ ; or

☐ I returned the summons unexecuted because ______________________ ; or

☐ Other *(specify)*: ______________________

______________________ .

My fees are $ __________ for travel and $ __________ for services, for a total of $ __________ .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

FILED
2024 MAR -1 PM 3:08
CIVIL DISTRICT COURT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NUMBER: 2024-01931 DIVISION " " D SECTION 12

ERICA DANDRY CONSTANZA and MONICA DANDRY HALLNER

versus

SPARTA INSURANCE COMPANY; HUNTINGTON INGALLS INCORPORATED (formerly NORTHROP GRUMMAN SHIPBUILDING, INC., formerly, NORTHROP GRUMMAN SHIP SYSTEMS, INC., formerly, AVONDALE INDUSTRIES, INC. and formerly AVONDALE SHIPYARDS, INC., formerly AVONDALE MARINE WAYS, INC.); EAGLE, INC. (f/k/a EAGLE ASBESTOS & PACKING COMPANY, INC.); BAYER CROPSCIENCE, INC. (successor TO RHONE POULENC AG COMPANY, formerly AMCHEM PRODUCTS, INC., formerly BENJAMIN FOSTER COMPANY); FOSTER-WHEELER LLC (formerly FOSTER-WHEELER CORPORATION); GENERAL ELECTRIC COMPANY; HOPEMAN BROTHERS, INC.; TAYLOR-SEIDENBACH, INC.; PARAMOUNT GLOBAL (f/k/a ViacomCBS Inc., f/k/a CBS Corporation, a Delaware corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation); UNIROYAL, INC.; INTERNATIONAL PAPER COMPANY

FILED:______________________ DEPUTY CLERK

Register CDC Cash Register 1
Case Number 2024-01931
Grand Total $2135.50
Amount Received $2135.50
Balance Due $0.00
Payment/Transaction List
Check # 6248 $2135.50
Item Charged Paid Bal
Judicial College $0.50 $0.50 $0.00
Building Fund Fee $25.00 $25.00 $0.00
JSC $29.50 $29.50 $0.00
Jury

PETITION FOR DAMAGES

The petition of Erica Dandry Constanza and Monica Dandry Hallner, persons of the full age of majority, with respect represent:

1.

Defendants, Eagle, Inc. and Taylor-Seidenbach, Inc., are domestic corporations with their registered offices in the Parish of Orleans, State of Louisiana. In addition, tortious conduct of Eagle, Inc. and Taylor-Seidenbach, Inc. occurred in the Parish of Orleans. Moreover, Henry "Zac" Carter, C. Edwin Hartzman, and Hettie Dawes Eaves were domiciled in Orleans Parish at the time of their deaths. Additionally, Mr. Dandry was exposed to asbestos in the Parish of Orleans and received injury in the Parish of Orleans. Accordingly, venue is proper in Orleans Parish against all defendants pursuant to Louisiana Code of Civil Procedure Articles 42, 73, and 74.

2.

SPARTA INSURANCE COMPANY; HUNTINGTON INGALLS INCORPORATED (formerly NORTHROP GRUMMAN SHIPBUILDING, INC., formerly, NORTHROP GRUMMAN SHIP SYSTEMS, INC., formerly, AVONDALE INDUSTRIES, INC. and formerly AVONDALE SHIPYARDS, INC., formerly AVONDALE MARINE WAYS, INC.); EAGLE, INC. (f/k/a EAGLE ASBESTOS & PACKING COMPANY, INC.); BAYER CROPSCIENCE, INC. (successor TO RHONE POULENC AG COMPANY, formerly AMCHEM PRODUCTS, INC., formerly BENJAMIN FOSTER COMPANY); FOSTER-WHEELER LLC (formerly FOSTER-WHEELER CORPORATION); GENERAL ELECTRIC COMPANY; HOPEMAN BROTHERS, INC.;

VERIFIED
DCiaccio
03/01/24

TAYLOR-SEIDENBACH, INC.; PARAMOUNT GLOBAL (f/k/a ViacomCBS Inc., f/k/a CBS Corporation, a Delaware corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation); UNIROYAL, INC.; and INTERNATIONAL PAPER COMPANY (hereinafter collectively referred to as "defendants"), are all corporations incorporated under the laws of the various states of the United States. Defendants all have their principal place of business in various states of the United States, as well as some foreign countries. All of them may be served under and by virtue of the Long Arm Statute of the State of Louisiana, either through their authorized agents, servants, and/or employees, or through the Secretary of State, State of Louisiana.

3.

Michael P. Dandry, Jr. was employed in various positions by or on the premises of Huntington Ingalls Incorporated (formerly Northrop Grumman Shipbuilding, Inc., formerly, Northrop Grumman Ship Systems, Inc., formerly, Avondale Industries, Inc., formerly Avondale Shipyards, Inc., formerly Avondale Marine Ways, Inc.) (hereinafter "Avondale") between June 1, 1971, and August 16, 1971. At various times during this employment, Mr. Dandry was exposed to asbestos. Also, Mr. Dandry was exposed to asbestos carried home on his person, clothing, and other items. These exposures to Mr. Dandry caused and/or contributed to his development of mesothelioma and other related ill health effects. During Mr. Dandry's employment at Avondale, he was exposed to asbestos and asbestos-containing products manufactured, distributed, sold, and/or handled by the "defendants."

4.

From approximately June 1, 1971, and August 16, 1971, while Michael Dandry, Jr. was a direct employee of Avondale, Henry Zac Carter, C. Edwin Hartzman, Hettie Dawes Eaves, John Chantrey, James T. Cole, Ollie Gatlin, Earl Spooner, Steven Kennedy, Peter Territo, George Kelmell, J. Melton Garrett, Burnette Bordelon, Edward Blanchard, Albert Bossier, Jr., and Dr. Joseph Mabey were executive officers of Avondale with the specific responsibility for the health and safety of Mr. Dandry and his fellow employees during the time Mr. Dandry was exposed to substances which resulted in his mesothelioma and death.

5.

Sparta Insurance Company provided insurance coverage for the liability of the following executive officers of Avondale: Henry Zac Carter, C. Edwin Hartzman, Hettie Dawes Eaves, John Chantrey, James T. Cole, Ollie Gatlin, Earl Spooner, Steven Kennedy, Peter Territo, George

Kelmell, J. Melton Garrett, Burnette Bordelon, Edward Blanchard, Albert Bossier, Jr., and Dr. Joseph Mabey. Pursuant to Louisiana Revised Statute 22:1269, plaintiffs assert a direct action against Sparta Insurance Company for the liability of these alleged executive officers of Avondale.

6.

Defendant, Avondale, had the responsibility for the health and safety of Michael Dandry, Jr. and his fellow employees during the time Mr. Dandry was exposed to the asbestos which resulted in his mesothelioma. Avondale had the responsibility of providing him with a safe place to work; however, Avondale failed to protect him from the dangers of asbestos dust exposure, for which Avondale and its executive officers were aware or should have been aware of the dangerous condition presented by exposure to asbestos, and that Mr. Dandry would suffer from asbestos-related diseases and other ill health effects associated therewith as a result of this exposure, but they failed and/or willfully withheld from these individuals knowledge of the dangers from exposure to asbestos fiber.

7.

In addition to the foregoing acts of negligence and intentional concealment, Avondale and its executive officers are guilty of the following:

a) Failing to reveal and knowingly concealing critical medical information;

b) Failing to reveal and knowingly concealing the inherent dangers in the use of asbestos, and other harmful substances in their manufacturing process and/or in connection with the work which exposed Mr. Dandry;

c) Failing to provide necessary protection to Michael Dandry, Jr.;

d) Failing to provide clean, respirable air and proper ventilation;

e) Failing to provide necessary showers and special clothing;

f) Failing to segregate work areas so that workers would not be exposed to deadly asbestos fiber;

g) Failing to provide necessary and adequate respiratory protection;

h) Failing to warn employees of the dangers associated with exposure to asbestos;

i) Failing to use non-asbestos containing products on jobs where non-asbestos containing products were specified.

j) Requiring employees to dispose of asbestos in dumpsters, into the river, and onto the land instead of properly disposing of asbestos and asbestos fiber, thereby further exposing employees (and subsequently their family members) to asbestos;

k) Requiring employees to dispose of asbestos under buildings instead of properly disposing of asbestos and asbestos fiber, thereby further exposing employees (and subsequently their family members) to asbestos;

l) Failing to warn of the dangers of exposure to asbestos;

m) Requiring employees to dispose of asbestos without precautions to prevent exposure;

n) Failing to post warnings regarding asbestos and the hazards of same;

o) Failing to warn employees that exposure to asbestos could cause deadly diseases including mesothelioma, cancer, asbestosis, pleural thickening, and pleural plaques; and

p) Failing to warn employees of the invisible nature of harmful asbestos, that it could be carried home on clothing and other objects by a worker, and that it could cause diseases such as asbestosis, pleural plaques, pleural thickening, cancer, and mesothelioma.

These defendants and individuals committed these intentional acts knowing full well that Mr. Dandry's injuries would follow or were substantially certain to follow.

8.

As a result of these exposures to asbestos, Michael Dandry, Jr. contracted mesothelioma and other related ill health effects associated therewith, which was first diagnosed on approximately April 12, 2023.

9.

Michael Dandry, Jr. died on November 5, 2023, as a result of mesothelioma, complications therefrom and/or complications from treatment therefrom, and other ill health effects which resulted from exposure to asbestos. At the time of his death, Mr. Dandry was survived by his daughters, Erica Dandry Constanza and Monica Dandry Hallner. Erica Dandry Constanza and Monica Dandry Hallner assert all survival and wrongful death claims and rights to which they are entitled as a result of the injury and death of Michael Dandry, Jr.

10.

Avondale and its executive officers were aware or should have been aware of the dangerous condition presented by exposure to asbestos and that Mr. Dandry would suffer from asbestos-related disease, including mesothelioma, lung cancer, cancer, and other related ill health effects, as a result of this exposure, but they failed and/or willfully withheld knowledge of the dangers to his health from exposure to asbestos fiber and other toxic substances.

11.

Avondale and its executive officers had the responsibility of providing Michael Dandry, Jr. with a safe place to work and safety equipment with which to conduct their work; however, they negligently and/or intentionally failed to carry out these duties and failed to protect Mr. Dandry from

the dangers of toxic fiber and dust exposure knowing full well or being substantially certain that certain workers, including Mr. Dandry, would develop disease as a result thereof.

12.

Avondale had care, custody, and control of the asbestos, which asbestos was defective and which presented an unreasonable risk of harm, which asbestos resulted in the injury of Mr. Dandry and for which Avondale is strictly liable under Louisiana law.

13.

All defendants had care, custody, and control of the asbestos, which asbestos was defective and which presented an unreasonable risk of harm, which asbestos resulted in the injury of Mr. Dandry and for which these defendants are strictly liable under Louisiana law.

14.

Defendants, Avondale and its executive officers, are answerable for the conduct of those handling asbestos products on their premises, which asbestos was defective and which presented an unreasonable risk of harm, which asbestos resulted in the injury to Mr. Dandry, and for which defendants are liable under Louisiana law.

15.

Avondale failed to exercise reasonable care for the safety of persons on or around their property and failed to protect Michael Dandry, Jr. from the unreasonably dangerous conditions created by asbestos which existed at their job sites due to their failure to properly handle and control the asbestos which was in their care, custody, and control. At all times material herein, standards were in existence which required Avondale to provide to Michael Dandry, Jr. and his co-workers who handled or were exposed to harmful material with protection from the harms of asbestos. Avondale failed and/or willfully refused to comply with these standards thereby resulting in exposure to asbestos to Mr. Dandry, thereby resulting in his injuries.

16.

As a result of the aforementioned acts of the hereinabove named defendants, Mr. Dandry contracted asbestos-related mesothelioma, and other related ill health effects as a result thereof, for which all defendants are jointly, severally, and in solido liable.

17.

At all times material herein, Michael Dandry, Jr. was exposed to asbestos manufactured, distributed, and sold by Hopeman Brothers, Inc. and Wayne Manufacturing Company. The asbestos-containing products manufactured, distributed and/or sold by Hopeman Brothers, Inc. and Wayne

Manufacturing Company were unreasonably dangerous per se, were defective in design, and constituted a breach of warranty from said manufacturers. Further, these defendants failed and refused to warn Mr. Dandry of the danger of exposure to such products. They also failed to warn them of the invisible nature of the asbestos and that is could cause deadly diseases such as mesothelioma and cancer. As a result of the defective and unreasonably dangerous condition and composition of the asbestos-containing products manufactured, distributed, sold, and/or used by these companies, Mr. Dandry was exposed to asbestos fibers proximately causing his mesothelioma, cancer, and other related ill health effects. Plaintiffs further contend that said defendants are liable as a result of manufacturing, distributing, or selling an unreasonably dangerous per se product, a product defective in design, for breach of warranty, and for failing to provide adequate warnings and instructions. Further, defendants are liable for failing to substitute available alternative products and for fraudulently concealing the dangers of their products and the health hazards associated with the use and exposure to said products.

18.

During the employment of Michael Dandry, Jr., Hopeman Brothers, Inc. also performed contracting work wherein asbestos-containing products were used. During this contracting work, Hopeman Brothers, Inc. exposed these individuals to asbestos-containing products, which caused and/or contributed to Michael Dandry, Jr.'s asbestos-related diseases and other related ill health effects. Defendant, Hopeman Brothers, Inc., had care, custody, and control of the asbestos, which asbestos was defective and which presented an unreasonable risk of harm, which asbestos resulted in injury to Mr. Dandry and for which Hopeman Brothers, Inc. is strictly liable under Louisiana law. Moreover, defendant, Hopeman Brothers, Inc., is answerable for the conduct of those handling asbestos products over which it had control, which asbestos was defective and which presented an unreasonable risk of harm, which asbestos resulted in injury to Mr. Dandry and for which defendant is strictly liable under Louisiana law.

19.

In addition to the aforementioned acts of negligence, intentional tort, fraud, and strict liability of Hopeman Brothers, Inc. and Wayne Manufacturing Co., Hopeman Brothers, Inc. is also liable because Wayne Manufacturing Corporation was the alter ego of Hopeman Brothers, Inc. at all time material herein.

20.

Plaintiffs also make additional allegations against Hopeman Brothers, Inc. who was aware of the risk of harm presented by its asbestos products. Hopeman Brothers, Inc. either through exchange of information and/or industry sponsored studies was notified, either directly by its parent companies or by its manufacturing associations, that their products presented an unreasonable risk of harm. However, Hopeman Brothers, Inc. disregarded these notices, elected to conceal these hazards from plaintiff and continued to use and hold out these products as safe and non-toxic.

21.

Hopeman Brothers, Inc. was informed that asbestos dust presented health risks by the U.S. Government or agencies acting on behalf of the U.S. Government no later than 1945. The U.S. Government issued advisories, through the U.S. Maritime Commission, to all government contractors regarding their findings of enumerated health risks in the work place. During the 1950s, the Department of Defense adopted and distributed to all government contractors, safety standards that pertained to the use of these defendants' products in various work places. In 1952, Louisiana adopted a workers compensation remedy for asbestosis. In the 1960s, the U.S. Government promulgated and published the Walsh-Healy Act which adopted safety standards and regulations regarding asbestos dust. Based on information and belief, each of these companies, their predecessor, and corporation officers were made aware of these findings at the time they were issued. Despite this knowledge, these companies continued to manufacture, distribute, relabel, fabricate, sell and install these products at plaintiff's worksites. This was done without warning to plaintiff and without the knowledge on the part of the plaintiff that he was in danger. Additionally, these defendants continued to market their products without disclosing the dangers and simultaneously affirming that their products were safe and non-toxic.

22.

International Paper Company is the successor to U.S. Plywood. Throughout the time he was employed by Avondale, Michael Dandry, Jr. was exposed to asbestos fiber from asbestos-containing materials manufactured, distributed, and/or sold by U.S. Plywood. At the time of this exposure to these products, they were being used in the manner and for the purpose for which they were intended; and these products were in the same condition as when they left the control and possession of U.S. Plywood.

23.

The asbestos-containing products manufactured, distributed and/or sold by U.S. Plywood were unreasonably dangerous *per se*, were defective in design, and constituted a breach of warranty from said manufacturers. Further, U.S. Plywood failed and refused to warn of the danger of exposure to such products. They also failed to warn of the invisible nature of the asbestos and that it could cause deadly diseases such as lung cancer, asbestosis, and mesothelioma.

24.

Defendant, PARAMOUNT GLOBAL (f/k/a ViacomCBS Inc., f/k/a CBS Corporation, a Delaware corporation, f/k/a Viacom Inc., successor by merger to CBS Corporation, a Pennsylvania Corporation, f/k/a Westinghouse Electric Corporation), (hereinafter "Westinghouse"), was in the business of manufacturing, selling and/or distributing asbestos-containing materials to Avondale. Such products were installed, removed, and repaired by or in close proximity to Michael Dandry, Jr. during his employment, thus exposing him to asbestos dust released by the installation, removal, and repair of said products. Michael Dandry, Jr. was exposed to asbestos fiber from these asbestos-containing materials manufactured, distributed, and/or sold by Westinghouse. At the time he was exposed to these products, they were being used in the manner and for the purpose for which they were intended; and these products were in the same condition as when they left the control and possession of Westinghouse.

25.

The asbestos-containing products manufactured, distributed and/or sold by Westinghouse were unreasonably dangerous *per se*, were defective in design, and constituted a breach of warranty from said manufacturers. Further, Westinghouse failed and refused to warn of the danger of exposure to such products. They also failed to warn of the invisible nature of the asbestos and that it could cause deadly diseases such as lung cancer, asbestosis, and mesothelioma.

26.

Plaintiffs further allege that Westinghouse has through its actions sought to fraudulently conceal and suppress the truth about the dangerous nature of its asbestos containing products that it manufactured, sold and distributed.

27.

By the early 1940s, Westinghouse knew that exposure to asbestos could cause lung disease, asbestosis, lung cancer, and mesothelioma. Throughout the 1930s, 1940s, and 1950s, Westinghouse was a member of the IHF, American Ceramic Society and National Safety Council. Beginning in

the 1930's, Westinghouse received asbestos scientific and medical information through these organizations.

28.

The "Air Hygiene Foundation", was established in 1935 as a fellowship within the Mellon Institute (then a part of the University of Pittsburgh). The organizations' name was changed to "Industrial Hygiene Foundation" and, in 1968, it was again changed to the "Industrial Health Foundation." J-M joined in 1936. IHF members included, among others, General Electric Company, Westinghouse Electric Corporation, or their predecessors in interest. All of these companies are defendants in this case. The IHF was founded to conduct occupational health research, particularly with respect to the health effects of dust in the work place. One of the functions of the IHF was to gather and disseminate information regarding occupational health to its members. Since its inception, it has published special bulletins on items of general interest under the headings of legal bulletins, medical bulletins, management bulletins and engineering bulletins. Since 1937, member companies have been kept informed on occupational health issues by the Industrial Hygiene Digest, a monthly publication which is sent to all members in return for their annual membership fee. The Digest is a compilation of abstracts, grouped by topic, of the published domestic and foreign scientific and medical literature pertaining to industrial health and hygiene. In addition to scientific abstracts, the Digest included a section on legal developments, and also provide notice of any proposed changes in threshold limit values for various substances. Correspondence between members and the IHF established that members either participated in or knew of a number of studies and surveys dating as far back as the 1930's which had linked asbestos with various lung diseases. As part of its consultative services for its members, the IHF undertook a number of studies involving evaluations of asbestos dust conditions and asbestos-related disease. In 1947, the fruits of an industry survey conducted by the IHF for the ATI and its members were published in a "Report of Preliminary Dust Survey for Asbestos Textile Institute." The report is dated June 1947. The object of the investigation was stated as: "defining the specific nature and the magnitude of the (asbestosis) problem in all its phases....An original objective of most immediate importance was to facilitate the exchange of information between member companies on successful methods of dust control and otherwise to promote a general improvement in that field." The preliminary survey to be divided into three parts designated as "Engineering, Medical and Physical Testing" was based on visits made to member companies' plants over a three month period." While the actual report does not reveal the identity of the plants which were visited, deposition testimony

of Dr. Braum indicates that other companies evaluated in the report included defendants in this case. Minutes of the Air Hygiene Committee meetings throughout the 1940's and 1950's reflect frequent discussions and presentations pertaining to appropriate medical practices and industrial hygiene approaches to the problem of asbestos dust in the work place. It was continually stressed that both pre-employment and periodic follow-up medical examinations were essential to monitor the health of employees, the necessity of x-rays and lung function studies, and the proper requisites for a diagnosis of asbestos-related disease. Some annual meetings apparently were held by the IHF. The minutes for the Fifth Annual Meeting of the Air Hygiene Foundation of America, Inc., which was held on November 12 and 13 in 1940, revealed asbestos to be one of its two main topics of interest. An Interim Report of the Preventive Engineering Committee, written by Philip Drinker, discussed inter alia dust particle size and dust control. A second report by Foundation Research at the Saranac Laboratory entitled "Individual Susceptibility to Toxic Dusts", authored by Dr. Leroy Gardner, dealt primarily with the problems of silica dust. Also discussed were court decisions on Workers' Compensation cases. A case involving the death of a North Carolina man was discussed, the minutes indicating that the claimant sought compensation on grounds that the defendant's pneumonia was due to asbestosis. The Supreme Court of North Carolina upheld the award finding that asbestosis was a contributing cause of death. The Air Hygiene committee also recommended that pre-employment and periodic chest x-rays be conducted by a reputable radiologist, that the use of the Greenberg-Smith Midget Impinger be adopted for testing the levels of dust in the air, and that various procedures be implemented to reduce the dust in manufacturing facilities. In December of 1946, Mr. Hemeon of the Industrial Hygiene Foundation was invited to attend a meeting of the American Textile Institute (discussed infra) to respond to inquiries regarding IHF's proposed Industrial Hygiene Survey of the member companies. It was agreed at the February 5, 1947, meeting of the American Textile Institute (ATI) that the IHF be permitted to conduct its proposed survey. A June 18, 1947 report by W. C. L. Hemeon, Head Engineer for IHF, stated that the medical review reflected an incidence of asbestosis ranging between 3% and 20%. In one presentation at a regular meeting (prior to 1950) of the IHF, the suggested threshold limit value was criticized as being unsafe for persons exposed to asbestos fiber. Defendants thus had direct and actual knowledge that the suggested threshold limit value for asbestos was not safe. In addition, this criticism was published in the scientific literature and all defendants were put on notice of the hazards of the suggested threshold limit value.

29.

In addition, Westinghouse and/or its medical director and industrial hygienist became members of the Konicide Club from 1932 through 1940. The Konicide Club was created to understand and control the dust related diseases in the industry, and the members would meet to discuss the methods of accomplishing these goals. On January 22, 1939, The Konicide Club even conducted a meeting which focused on the health problems of the asbestos industry in particular.

30.

Also, Westinghouse's industrial hygienist, E.C. Barnes, wrote to Westinghouse's medical department in the 1940s regarding the high dust levels associated with asbestos cloth and the mixing of asbestos cement. Barnes further explained that the inhalation of asbestos dust could cause asbestosis, and he recommended that this hazard be minimized. Westinghouse was also aware of the dust problems associated with the use of the asbestos cloth on turbines. However, from 1946 through the late 1970s, Westinghouse failed to control or reduce the dust created from the asbestos cloth, cement, and other asbestos-components of its products at the various jobsites, and failed to warn with regard to these hazards.

31.

In 1953, Westinghouse produced its Asbestos Safe Practice Data Sheet, thus further evidencing Westinghouse's knowledge of the hazards associated with asbestos exposure. Also in 1953, Westinghouse acknowledged that it had a duty to warn contractors, who lacked the knowledge of potential hazards. However, Westinghouse still never warned the contractors nor the various jobsites of the hazards associated with exposure to asbestos.

32.

Westinghouse was also aware of the excessive dust produced from its Micarta product during the 1950s, as indicated in a letter from H.W. Speicher to James McClimans, a safety supervisor. In 1973, Westinghouse conducted dust studies at the Micarta facility and recorded high levels of airborne and settle asbestos-containing dust from the circular saw trimming of Micarta. Nevertheless, Westinghouse failed and refused to warn of health hazards of its asbestos-containing Micarta, and suppressed this information.

33.

Additionally, Westinghouse knew that asbestos was dangerous in the 1940s and began a program to clean up the manufacturing process in their plants in the 1950s while continuing to manufacture asbestos-containing products. Westinghouse began manufacturing asbestos-containing

wallboard systems in 1956 until the mid 1970s. Prior to 1972, Westinghouse failed to provide any warning regarding the asbestos hazard with its products. In 1972, in response to Occupational Safety and Health Administration ("OSHA") regulations, Westinghouse applied warning labels that would necessarily be obscured by the substrate of the wallboard system, thereby appearing to comply with OSHA regulations without actually warning the end users of the inherent dangers of Westinghouse's asbestos-containing products. Subsequent to this activity, Westinghouse learned through in-house counsel that there existed numerous documents that would implicate Westinghouse for its actions. These documents reflected early knowledge on the part of Westinghouse and contained product manufacturing information, air samples studies, architectural reports, work papers, old work files, and other similar materials. It was determined that all such documents be destroyed, despite Federal Regulations requiring their retention. This document destruction was done with the specific intention of defrauding asbestos victims and the courts before which Westinghouse would undoubtedly appear. In the past, Westinghouse has refused to respond to plaintiff's request for the production of these documents principally on the basis that said documents did not exist due to their destruction. Accordingly, plaintiff alleges that Westinghouse's conduct constitutes fraud under Louisiana law.

34.

Additionally, even when OSHA cited Westinghouse with willful, asbestos-related violations during 1970s at its Hampton Micarta plant and in the 1980s at the Lester turbine and blanket plant. Regarding these incidents, Westinghouse's attorneys maintained that Westinghouse would not comply with either the EPA or OSHA and would take an attitude of "respectful noncompliance".

35.

Westinghouse has engaged in a pattern of suppressing information with regard to its asbestos-containing products and the health hazards associated with same. Jeffrey J. Bair of Westinghouse states in what is known as "The Smoking Gun" documents that the Industrial Hygiene Department files, dating back to 1930, have been reviewed. After a general description of the categories of documents reviewed, Mr. Bair provides a discussion of the nature of these documents. The following are quotes from that discussion:

> The majority of the documents in Industrial Hygiene's files are potential "smoking gun" documents. This is so because of the nature, duties, obligations and responsibilities of the Industrial Hygiene Department. The approximately 57 years of Industrial Hygiene files which are in existence today are filled with technical information, procedural information, safe-handling information, hazard information, recommendations and tests results. The files are filled with documentation which critiques and criticizes, from an industrial hygiene perspective, Westinghouse

manufacturing and non-manufacturing operations. This documentation often times points out deficiencies in Westinghouse operations and suggests recommendations to correct these deficiencies. Industrial Hygiene's files contain information which details the various chemical substances used at Westinghouse sites over the years, and often times the inadequacies in Westinghouse's use and handling of the substances. The files contain many years of employee test results, some of them unfavorable. Industrial Hygiene, by performing its job, creates, daily, potential smoking gun documents (emphasis added).

Plant Correspondence and Files

Please see, for example, Wilber Speicher's letter...correspondence of this type was and continues to be, frequently generated by Industrial Hygiene. Dr. Speicher's correspondence might show early knowledge of the Corporation to certain health hazards associated with epoxy resin dissolving agents. What use did the Corporation make of this knowledge to protect employees and the public? If none or very little, then this document might become a "smoking gun" (emphasis added).

Industrial Hygiene audit and trip reports certainly qualify as potential smoking guns (emphasis added). Industrial Hygiene, in each plant audit, critiques and criticizes the facility from an industrial hygiene perspective. Industrial Hygiene also makes recommendations to improve the hygiene of the plant. The smoking gun possibilities of such documentation are readily apparent (emphasis added). Material Cards, Materials Safety Data Sheets, Purchasing [sic] Department Specification Cards, Safe Practice Data Sheets and Historical Safe Practice Data Sheet Files

Again, the smoking gun possibilities of these documents are clear. If, for example, the safe practices detailed in safe practice data sheets are not made a part of a site's industrial hygiene program and communicated to employees, the potential future problems are readily apparent. In addition, if the information is not or was not conveyed to customers, the public, etc., again the potential future problems are readily apparent (emphasis added).

Recommendations

Plant Correspondence Files (excluding air sampling data and employee test results such as bio-assay, radiation, etc.)

These records are not required pursuant to any federal, state or local laws and/or regulations. The Westinghouse domestic records retention guidelines do not specifically address these records. We recommend that all such files generated prior to 1974 should be discarded. As stated before, these records are filled with documentation dating back to the 1930's which critiques and criticizes Westinghouse operations, and points out deficiencies in such operations. The files are filled with technical product and chemical information, hazard information and safe-handling information, most of it generated by the industrial Hygiene Department in a "editorializing" and opinionated manner. The files are not used in the daily operation of the Department. In our opinion, the risks of keeping these files on the whole substantially exceed the advantages of maintaining the records for the following reasons:

The substantial bulk of the correspondence was written by the Department in an editorializing, opinionated and verbose manner, instead of strictly factual. In addition, the Industrial Hygiene Department, prior to 1974, was involved in testing and evaluating the safety of everything from water coolers to gloves. From a review of the files, it appears that the Department commented and editorialized on just about everything which might have been found in the workplace. This "self-analysis" and "editorializing" type of information can be dangerous. This is just the type of documentation which should be discarded from the files. Correspondence generated subsequent to 1974, generally speaking, does not suffer from these drawbacks.

"Historical Files or Industrial Hygiene Department"

These records are not required pursuant to any federal, state or local laws and/or regulations. The Westinghouse domestic Records Retention Guidelines do not specifically address these records. We recommend that, with the exception of the 1974 noise survey and the testing date which is contained in these files, these files be discarded.

Bair's Conclusions

Toxic tort litigation, including toxic tort-related workmen's compensation litigation, show no signs of abating in the near future. In fact, legislation such as the risk notification legislation currently being considered by Congress, will, according to many "experts", result in an increase in such litigation. Consequently, well reasoned and conceived document retention and destruction programs for departments such as Industrial Hygiene, and in fact the entire Corporation, are imperative.

Bair's conclusion clearly shows that Westinghouse fraudulently destroyed relevant documents all in furtherance of its fraudulent activities whereby it misrepresented the dangers of its asbestos-containing products in order to gain a commercial advantage, *i.e.* sell more of its dangerous products. More importantly, his conclusion shows that Westinghouse had motive for destroying the documents, which was ***avoiding litigation*** and having to answer fraud allegations therein.

36.

It is well-settled that parties have a duty to preserve discoverable evidence, both during and prior to litigation, if it is reasonably foreseen that litigation will occur. Westinghouse knew litigation was likely to occur and destroyed their documents in anticipation therof. This activity amounts to fraud and spoliation. In fact, at least one court has already found that the activities set out in the Jeffrey Bair memo demonstrate a "plan to commit a fraud on the Courts of the United States."

37.

The document destruction program set out in Bair's memo was actually implemented by Westinghouse, as is evidenced by a memorandum entitled "Document Retention" that was written by Wayne C. Bickerstaff on January 29, 1988, directed to J.W. Fisch and copied to S.R. Pitts and Jeffrey Bair. On March 3, 1988, Jeffrey Bair wrote another memo, indicating that he had "informed Wayne to begin discarding [certain documents]." These acts of intentional destruction of records by Westinghouse in order to avoid public knowledge that it had knowledge of health hazards associated with its products constitute fraud under the laws of the state of Louisiana.

38.

Defendant, General Electric ("GE"), was in the business of manufacturing, selling and/or distributing asbestos-containing materials to Avondale. Such products were installed, removed, and

repaired by or in close proximity to Michael Dandry, Jr., thus exposing him to asbestos dust released by the installation, removal, and repair of said products. Mr. Dandry was exposed to asbestos fiber from these asbestos-containing materials manufactured, distributed, and/or sold by GE. At the time of his exposure to these products, they were being used in the manner and for the purpose for which they were intended; and these products were in the same condition as when they left the control and possession of GE.

39.

The asbestos-containing products manufactured, distributed and/or sold by GE were unreasonably dangerous *per se*, were defective in design, and constituted a breach of warranty from said manufacturers. Further, GE failed and refused to warn of the danger of exposure to such products. They also failed to warn of the invisible nature of the asbestos and that it could cause deadly diseases such as lung cancer, asbestosis, and mesothelioma.

40.

Plaintiffs further allege that General Electric has through its actions sought to fraudulently conceal and suppress the truth about the dangerous nature of its asbestos containing products that it manufactured, sold and distributed.

41.

Furthermore, as scientists became more concerned with the connection between asbestos and occupational exposure, General Electric, along with others in the asbestos industry, sponsored both animal and human research on the biological effects of asbestos at the Saranac Laboratory of the Trudeau Foundation. General Electric's association with the Saranac Laboratory extends at least to the 1940s, where Saranac Laboratory correspondence documents the contractual relationship between the Laboratory and General Electric. This research performed by the Saranac Laboratory revealed that exposure to asbestos produced harmful effects to those individuals who inhaled asbestos dust. More specifically, the Saranac Laboratory held the Seventh Saranac Symposium in 1952, whereupon General Electric representatives attended. The presentations by various doctors indicated that a link existed between asbestos and several lung diseases, including asbestosis and lung cancer.

In his presentation at the Seventh Saranac Laboratory in 1952, Dr. Kenneth M. Lynch indicated that he tested the effects of asbestos from a period of twenty five years (1926-1950). The testing resulted in the knowledge of a causal relationship between asbestos and cancer in 1934. This discovery was formally set in a published record. Additionally, in 1947, Dr. Lynch discovered that

13.2% of persons suffering from asbestosis also developed cancer. Furthermore, Dr. Lynch spoke of several reports, dated from 1918 to 1952, discussing the association of cancer with asbestos.

Also, Dr. Merewether began noting the deaths from asbestos exposure in the United Kingdom during the years of 1924 to 1947, including asbestos with tuberculosis and asbestos with lung cancer. Dr. Merewether discovered that 16.2% of persons suffering from asbestosis also developed cancer, as apposed to the 13.2% found earlier, thus further indicating a causal relationship between exposure to asbestos dust and lung cancer. In addition, Dr. Merewether discussed the original cases of asbestosis discovered around 1902. Another doctor, Dr. Arthur J. Vorwald, discussed the discovery of asbestosis in the early 1900s and the availability of information concerning the disease through several reports, ever since. Dr. Vorwald also admitted that individuals exposed to asbestos fibers develop asbestosis. Thus, General Electric's attendance at the Seventh Saranac Symposium in 1952 indicates that it knew, or at least should have known, of the hazardous nature of asbestos in causing asbestosis and lung cancer. Despite this knowledge, General Electric failed to warn its workers and customers of the harmful effects that result from the inhalation of asbestos fibers.

42.

General Electric contracted Harvard University to conduct research regarding the various hazards existing in their plants. Dr. Alice Hamilton, along with other Harvard medical doctors, conducted the research for General Electric. She recommended that chest x-rays be taken of all employees working with asbestos. She additionally recommended an overhaul in the ventilation system on certain apparatus at their plants due to the hazardous nature of asbestos fibers and the fact that moving belts blew the asbestos dust about the room so that it accumulates in the room. Also, in the 1930s, asbestos victims began to sue Johns-Manville and Multibestos because of their asbestos-related illnesses. As a result, Dr. Hamilton wrote to Gerald Swope, President of General Electric, informing him that these suits were justified. She further recommended that General Electric take safety precautions, including an evaluation of the situation and dust counts, to avoid this litigation. Furthermore, Carl Obermaier, a GE plant manager, wrote to Hamilton acknowledging/admitting that he knew that inhalation of asbestos dust caused health problems, mainly asbestosis. Furthermore, Obermaier spoke of reports and pamphlets discussing the connection between asbestos exposure and lung cancer. Several letters, dated years 1928 - 1934, between Hamilton and GE indicate that GE was well aware of the excessive asbestos dust contained

inside their various plants. Thus, GE had knowledge that asbestos dust was harmful, but still refused to warn its employees and its customers to whom it sold its asbestos-containing products.

43.

Throughout the relevant time periods, GE conducted various asbestos tests in their different plants, further indicating that they knew that asbestos was hazardous since they tested for levels of asbestos dust. Also, when tested, several times GE ran well above the maximum allowable level. For example, a survey done in 1973 of several GE plant buildings found an asbestos dust concentration count of 1540 fibers greater than five microns per milliliter of air, when the threshold limit value for asbestos at that time was five fibers greater than five microns per milliliter of air. GE was also aware that large quantities of asbestos fiber would blow into the exhaust system. Many times GE chose to use the cheaper asbestos fiber in the plants, even though the cheaper fiber produced more dust into the exhaust system. However, GE, knowing of the harmful effects of asbestos, still refused to warn those individuals/workers who would come into contact with their products. Instead, they used these cheaper asbestos fibers attempting to profit at the expense of those individuals who would inhale these fibers from their products. As a result of the tests conducted at General Electric's plants, various recommendations were given to GE during the 1950s to 1970s, including the improvement of ventilation (including exhaust systems), periodic chest X-rays, pulmonary function tests, medical surveillance programs, wearing of an approved respirator, gloves, and protective clothing, increasing air flow, better maintenance of dust filters, use of industrial vacuum to clean site, complete enclosure of saw and apparatus, checking filters at regular intervals to insure working properly, and the cutting of cloth where asbestos dust should be minimized. More specifically, in letters dated 1956 and 1959, Dr. Elkins informed the GE Lowell Plant that those employees working around asbestos should receive periodic chest x-rays due to the hazardous nature of asbestos. Also, he informed that the workers who sweep the area should wear respiratory equipment. Therefore, General Electric knew or should have known that asbestos could be harmful to those individuals exposed to this dust.

44.

Moreover, various published reports and articles available to GE, prove that GE was empowered with the knowledge that asbestos caused several diseases. Some of the reports and articles include:

(1) Safety Management: Accident Cost and Control, a published article written in 1956 by Dr. R. Simonds and Dr. J. Grimaldi, which discusses the fact that asbestos produces asbestosis, the symptoms of asbestos, and how asbestos dust can be found in all stages of asbestos handling;

(2) Asbestos-Dust Exposures at Various Levels and Mortality, a published article written in 1967 by Dr. P. Enterline and Dr. A. Kendrick discussing the first reports of asbestosis in the early 1900s, the first reports of mesothelioma were published in 1955, and the acceptance of a causal relationship between asbestos dust and asbestosis and mesothelioma;

(3) Asbestos Exposure Smoking, and Neoplasia, a published article written in 1968 by Dr. I. Selikoff, Dr. E. C. Hammond, and Dr. Jacob Churg, discussing that asbestos workers have a high risk of dying of bronchogenic carcinoma.

(4) Industrial Pneumoconiosis Prevention and Control, an published article written in 1969 by Edmund M. Fenner, director of environmental control at J-M, talks about how scientists became concerned about the connection between the exposure to asbestos fibers and asbestosis in the 1920s. Furthermore, the article speaks of the Saranac Laboratory's discovery, through animal and human research in the 1930s, that asbestos exposure did "produce a unique and identifiable pulmonary fibrosis." Additionally, the article also talks about how Britain had become concerned about the link between asbestos dust exposure and lung cancer in the 1950s.

(5) Asbestos And Health In 1969, a published article written in 1969 by George W. Wright, discusses the progression of knowledge about asbestos' relationship with different diseases. Wright begins by talking about the discovery of diseases associated with asbestos exposure in the early 1900s. Then, Wright mentions that in the 1930s, it was pointed out that asbestos poised a problem to the health of workers and that the health problem could be minimized by instituting protective measures to reduce the amount of asbestos airborne dust. Wright also speaks about the various tests conducted to determine the exact relationship between asbestos and diseases. Additionally, Wright indicates that an 80% incidence of asbestosis to workers exposed to asbestos 20 or more years was found, and also that the more asbestos dust concentration in the air the larger % of workers developing cancer. Furthermore, Wright explains that there is a strong relationship between the development of mesothelioma and the exposure to asbestos fibers.

(6) The Health of Chrysotile Asbestos Mine and Mill Workers of Quebec, a published article written in 1972 by Dr. C. McDonald, Dr. M. Becklake, G. Gibbs, Dr. A. McDonald, and C. Rossiter, talks about how asbestos has been known to cause three identifiable diseases, including asbestosis, lung cancer, and mesothelioma. The article also discusses the fact the percent of people who develop lung cancer rises with the increase in asbestos dust exposure.

(7) Recommended Safety Practices for Handling Asbestos Fiber, an article written by Johns-Manville indicating that asbestos should be handled in a way as to prevent asbestos dust and that approved asbestos respirators should be worn by when handling asbestos fibers.

(8) Encyclopedia Of Occupational Health And Safety, written in 1971 by J.C. Gilson, talks about the health hazards, including several diseases, associated with the inhalation of asbestos fibers and asbestos dust. The Encyclopedia also speaks of the first incidence of asbestosis discovered in 1899 in London and the fact that in the 1930s asbestos was seen as a major cause of health hazards in the asbestos textile industry in the U.S. and other countries.

45.

Avondale, Bayer Cropscience, Inc. (as successor of liability to Rhone-Poulenc AG Company f/k/a Amchem Products, Inc. f/k/a Benjamin Foster Company); Eagle, Inc. (formerly Eagle Asbestos & Packing Company, Inc.); Foster-Wheeler, LLC (formerly Foster Wheeler Corporation); General Electric Company; Westinghouse; Uniroyal, Inc.; Taylor-Seidenbach, Inc., and International Paper Company were in the business of manufacturing, fabricating, selling and/or distributing asbestos-containing products, including but not limited to asbestos-containing pipe covering, pipe coating,

blankets, special fittings, cloths, gaskets, blocks, valves, cements, mastics, jackets, board, turbines and/or boilers. These companies sold, installed, removed and/or abated these products to and/or at Avondale. In addition, Eagle, Taylor Seidenbach, Inc., Foster Wheeler, Westinghouse, International Paper, and General Electric, distributed asbestos-containing products manufactured, distributed, and sold by various companies including Bayer Cropscience, Inc. (successor to Rhone Poulenc AG Company, formerly Amchem Products, Inc., formerly Benjamin Foster Company)--(adhesives, coatings, sealants, and mastics), Foster Wheeler LLC (formerly Foster Wheeler Corporation)--(block and boiler insulation), General Electric Company –(electric wire and cable, block, cloth, generators and generator insulation, turbines and turbine insulation including, but not limited to sprayed asbestos insulation), Westinghouse–(block, boiler, turbine and turbine insulation, generators and generator insulation, cloth, blankets, adhesives, cement, pipe covering, and micarta); and Uniroyal, Inc.--(cloth, tape, yarn, and adhesives). During various periods of time, Eagle and Taylor Seidenbach, Inc. would package the above-described products from other distributors and manufacturers' products in their own boxes and packaging, and hold out the products as their own, thus, making them liable as the manufacturer under Louisiana law. During various periods of time, Eagle, Taylor Seidenbach, Inc., Foster Wheeler, General Electric, and Westinghouse also did contracting work at the locations where Michael Dandry, Jr. was working thereby exposing him during their handling of asbestos-containing products. Mr. Dandry was exposed to asbestos-containing products manufactured, distributed, sold, and/or handled by all "defendants" named in this petition.

46.

The asbestos-containing products manufactured, distributed and/or sold by Avondale, Eagle, Inc., Taylor-Seidenbach, Inc., Hopeman Brothers, Inc., Wayne Manufacturing Company, Bayer CropScience, Inc., Uniroyal, Inc., Westinghouse, General Electric Company, Foster Wheeler LLC, and International Paper Company were unreasonably dangerous per se, were defective in design, and constituted a breach of warranty from said manufacturers. Further, these defendants failed and refused to warn of the danger of exposure to such products. They also failed to warn of the invisible nature of the asbestos and that it could cause diseases such as mesothelioma, cancer, asbestosis, pleural diseases, and other ill health effects.

47.

As a result of the defective and unreasonably dangerous condition and composition of the asbestos-containing products manufactured, distributed, and/or sold by Avondale, Eagle, Inc.,

Taylor-Seidenbach, Inc., Hopeman Brothers, Inc., Wayne Manufacturing Company, Bayer CropScience, Inc., Uniroyal, Inc., Westinghouse, General Electric Company, Foster Wheeler LLC, and International Paper Company, Mr. Dandry inhaled asbestos fibers and other harmful substances emitted by the normal use of said products, proximately causing the mesothelioma and other related ill health effects from which he suffers. Plaintiff further contends that these companies are liable as a result of manufacturing, distributing, or selling an unreasonably dangerous per se product, a product defective in design, for breach of warranty, and for failing to provide adequate warnings and instructions. Further, these companies are liable for failing to substitute available alternative products and for fraudulently concealing the dangers of their products and the health hazards associated with the use and exposure to said products.

48.

Prior to the time Mr. Dandry was exposed to asbestos, all defendants were aware or should have been aware of the health hazards associated with exposure to asbestos, including but not limited to pleural plaques, fibrosis, asbestosis, cancer, and mesothelioma. Further, all defendants were aware or should have been aware that invisible asbestos particles could remain airborne for many hours and that exposure could occur even after actual use of the products ceased; nevertheless, defendants remained silent as to the unreasonably dangerous nature of the products which suppression of the truth was made with the intention of obtaining an unjust advantage over unsuspecting victims. Such conduct constitutes fraud under Louisiana law.

49.

All defendants made the misrepresentations cited in the foregoing paragraph despite their knowledge of the falsity, and defendants fraudulently concealed and suppressed the truth about the dangerous nature of the products with the intent to induce purchasers to buy the products and innocent users and employees to continue to be exposed to same without concern for their health.

50.

As a result of the misrepresentations of the defendants that asbestos-containing products were safe, nontoxic, fully tested, desirable, and suitable for use, and as a result of the defendants suppression of the truth about the health hazards associated with exposure to said products, Mr. Dandry was exposed to products manufactured, distributed, sold, and/or handled by "defendants," and he contracted mesothelioma and other related ill health effects, which was first diagnosed on approximately April 12, 2023, and from which he died on November 5, 2023.

51.

The misrepresentations and suppression of the truth of occupational health hazards were made by all defendants with the intent of obtaining an unjust advantage over Mr. Dandry, and other employees who remained uninformed and ignorant of the risks of contracting occupational lung diseases from their work environment. These misrepresentations and suppressions were calculated to produce the effect of misleading the employees so that they would not associate any lung disease with occupational exposures on the job. As a result of these misrepresentations and suppressions, all defendants sought to prevent or limit occupational disease claims by injured employees and claims from family members who also contracted disease. These actions constitute fraud under Louisiana law.

52.

The health hazards of asbestos have been recognized by those in the business for two thousand years. The Greek geographer Strabo and the Roman historian Pliny the Elder both recognized asbestosis in slaves whose task was to weave asbestos into cloth. There is conclusive evidence (more specifically outlined below) that by the end of 1930, it was widely known in the United States by those in the industry and their insurers that exposure to asbestos could cause asbestosis and cancer, that asbestosis was a fatal disease, and that the latency period of asbestosis and other asbestos-related disease was of many years duration subsequent to initial exposure, yet this knowledge was suppressed from workers like Mr. Dandry.

53.

By the time Mr. Dandry began working with and around asbestos products, virtually every state in the Unites States recognized asbestosis and silicosis as compensable claims under workers' compensation laws. In fact, the Louisiana legislature in 1952, when it enacted its first Workers' Compensation Occupational Disease Act, listed asbestosis and silicosis as a compensable occupational disease. Moreover, all suppliers (as well as independent contractors) to any company with government contracts were bound to comply with health and safety requirements of the Walsh Healey Public Contract Act first promulgated in 1936, as well as the regulations of the U.S. Navy and U.S. Maritime Commission in 1943. Likewise, there were industrial health standards regarding asbestos in Louisiana since 1943. These mandatory regulations addressed asbestos hazards and asbestosis as a resultant disease of exposure to asbestos. They also required isolation of dusty work, ventilation, use of respirators, and medical examinations by doctors. Despite this, Mr. Dandry was never warned of any hazard associated with asbestos or silica, was never protected by use of

adequate ventilation, and was required to work next to insulators using asbestos products. He never saw a warning on any asbestos product nor was he warned by any contractor using asbestos or silica products. Despite the fact that all defendants were aware of the hazards of asbestos and silica and other toxic substances to which Mr. Dandry was exposed, they failed and refused to warn of these dangers and, furthermore, concealed these hazards. Moreover, defendants suppressed and prevented the dissemination of information relating to the hazards of asbestos and silica exposure, thus constituting fraud under Louisiana law. Even after OSHA became the law in 1971, Mr. Dandry was not warned of the health hazards associated with exposure to asbestos.

54.

The acts of the defendants, as described above, constitute a fraudulent misrepresentation and/or concealment which proximately caused the injuries to the Petitioner in the following manner:

1) The material published or caused to be published was false and incomplete and that the defendants knowingly and deliberately deleted references to the known health hazards of asbestos and asbestos-related products.

2) The defendants intended the publication of false and misleading reports and/or the non-disclosure of documented reports of the health hazards of asbestos:
   a) To maintain a favorable atmosphere for the continued sale and distribution and use of asbestos and asbestos-related products;
   b) To assist in the continued pecuniary gain of the defendants through the sale of asbestos products to an ignorant public;
   c) To influence in the defendant's favor, legislation to regulate asbestos exposures and unlimited medical and disability claims for compensation;
   d) To provide a defense against lawsuits brought for injury resulting from asbestos disease;
   e) To prevent relevant medical inquiry about asbestos disease;
   f) To mislead the general public, and the Petitioner herein, about the hazards associated with asbestos products; and
   g) To induce the Petitioner to use and continue to use asbestos products.

3) The Petitioner reasonably relied upon the published medical and scientific data documenting the purported safety of asbestos and asbestos-related products, and the absence of published medical and scientific reports on the hazards of asbestos and asbestos-related products because Petitioner believed it to be safe.

4) Defendants, intended the Petitioner to rely upon the published reports regarding the safety of asbestos and asbestos-related products and upon the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-related products, and therefore to continue their exposure to those products.

5) Defendants are in a position of superior knowledge regarding the health hazards of asbestos and therefore the Petitioner and others deciding to use the said asbestos-containing products to which

> Petitioner was exposed, had a right to rely on the published reports commissioned by the defendants regarding the health hazards of asbestos and the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-related products.

55.

Insurance premiums were set based on the risks posed by the insured. Insurance companies discussed the hazards of asbestos with insured who manufactured, used, or distributed asbestos products. Insurance field inspectors would survey the premises or operations of the insured, advise the insured of the hazard, and set the premium accordingly. This was true prior to the time that Mr. Dandry was first exposed to asbestos and continued throughout his employment.. The fact that workers' compensation insurance carriers were concerned about asbestos is evidenced by the 1932 occupational disease report in "The National Underwriter" where asbestos was listed as a serious hazard receiving special attention "for some time" in insurance underwriting. When the Supreme Court of North Carolina (*McNeely v. Carolina Asbestos Co.*, May 23, 1934) determined that asbestosis was compensable under its workers' compensation law, insurance executive F. R. Jones wrote that the McNeely case and others like it injected elements of uncertainty that rendered the hazards of asbestosis "often uninsurable at practicable rates."; he wrote that even though rates for those in the asbestos business were high, "their adequacy ... is generally doubted." To avoid losing money, insurance companies instituted a practice of servicing claims as well as providing the insurance--"sort of a right pocket to left pocket...in other words there wasn't any way (insurance companies) could lose money on it." (See deposition of Harry J. Flynn in Bradley v. Todd Shipyards, Inc., C.A. No. 85 - 05657, Div. "D", Civil District Court for the Parish of Orleans.)

56.

That all defendants and the companies that insured them knew of the health hazards associated with exposure to asbestos since the 1930s (and suppressed this information) is shown by numerous documents and testimony. In fact, the knowledge was so well recognized in the asbestos industry that the insurance industry considered confessing liability; instead, they decided to make it "economically impossible" for plaintiffs to pursue their claims. The minutes of meetings in 1976 and 1977 of American Mutual Insurance Alliance (an insurance industry association) confirm that the hazards of asbestos exposure have been known for many years. These minutes specifically state that medical research in 1900 linked asbestos with asbestosis and by 1935 it was recognized that asbestos caused cancer. In a memorandum of a meeting of a discussion group dated April 21, 1977, it was stated: The meeting closed with a unanimous rejection of a suggestion that liability in asbestos cases be admitted and the carriers agreed between themselves as to their respective losses

and expenses. That insurance companies and their insureds were working together to discourage plaintiffs from pursuing valid claims is also demonstrated in earlier memos. In minutes dated May 22, 1974, discussing *Borel v. Fibreboard Paper Products Corporation*, 493 F.2d 1076, (5th Cir. 1973), cert. denied, 419 U.S. 869 (1974), it is stated: "The appeals court decision in the Borel case of course sets a very bad precedence for our other pending asbestosis cases and (sic) this jurisdiction we will soon have to formulate a **'game plan'** for the continued defense of these asbestosis cases **with the other defendants.**" In a memo dated October 22, 1974, it was decided that the asbestos defendants and their insurance companies would resist pending cases "and attempt to make this economocially (sic) impossible for the plaintiffs to pursue the other cases." These attempts to prevent and stifle valid claims by plaintiffs such as Mr. Dandry shows that the defendants, to this day, are committing fraud.

57.

Documents and testimony of defendants herein as well as associated asbestos companies is replete with the fact of knowledge and fraud. Although Johns-Manville (hereinafter sometimes referred to as "J-M" and Raybestos-Manhattan, Inc. (hereinafter sometimes referred to as "R-M") are not defendants herein, a discussion of their knowledge is necessary to show knowledge within asbestos industry associations, within the insurance industry, and among other defendants. In 1929, Johns-Manville Corporation and Raybestos-Manhattan, Inc. agreed to permit the Metropolitan Life Insurance Company to conduct a complete Industrial Hygiene survey of some of their facilities, including J-M's asbestos mines and mills in the Province of Quebec. The initial investigation began in October of 1929 and was completed in January of 1931. The study included the following: a survey of the dust conditions in the asbestos mines, mills and fabricating plants; physical examinations of asbestos workers, including X-ray films; and a study of the dust exhaust systems designed to eliminate asbestos dust. This survey was supervised by Dr. Anthony J. Lanza, Assistant Medical Director of Metropolitan; Dr. William J. McConnell, Assistant Medical Director of Metropolitan; and J. William Fehnel, a chemist with Metropolitan. Subsequent to this initial study, meetings were held among Dr. Anthony J. Lanza, W. R. Seigle (Vice President of J-M), Vandiver Brown (General Counsel for J-M), S. A. Williams (President of Johns-Manville Products Corporation), and Sumner Simpson (President of Raybestos-Manhattan, Inc.). The minutes of these meetings which occurred in November, 1933, through January, 1934, reflect that Metropolitan Life was desirous of conducting a follow-up study of the J-M and R-M facilities, as well as expanding the scope of the study to include additional J-M facilities and facilities of other members of the

asbestos industry. Dr. Lanza felt that the Metropolitan Life Insurance Company should advise the companies of the types of respirators which should be provided to the employees engaged in making a study of this problem. On December 7, 1934, Dr. Lanza forwarded to Vandiver Brown, counsel for J-M, the "galley proof" of the results of the 1929 through 1931 survey of the R-M and J-M plants, entitled "Effects of Inhalation of Asbestos Dust on the Lungs of Asbestos Workers." This "draft" was also circulated to representatives of Raybestos-Manhattan, who prepared editorial comments and recommendations for Dr. Lanza concerning the final publication of the report. Johns-Manville prepared similar comments. The Metropolitan report informed Raybestos-Manhattan and Johns-Manville of the following: that prolonged exposure to asbestos dust caused pulmonary fibrosis; that asbestosis could cause cardiac enlargement; that it was possible for uncomplicated asbestosis to have fatal results; and that the amount of dust in the air in the asbestos plants surveyed could be substantially reduced. After incorporating some of J-M's and R-M's editorial suggestions, Dr. Lanza published "Effects of the Inhalation of Asbestos Dust on the Lungs of Asbestos Workers" in the Public Health Reports, Volume 50, No. 1, January 4, 1935.

58.

In November 1936, Vandiver Brown of Johns-Manville, together with Sumner Simpson, President of Raybestos-Manhattan, solicited other members of the Asbestos Products Industry to participate in "asbestos dust experiments" by the Saranac Laboratory of the Trudeau Institute. Dr. Leroy U. Gardner was the director of the Trudeau Foundation at the time. A report of these works was prepared by Dr. Gardner on April 18, 1938. The report was sent to Vandiver Brown, who in turn sent it to Dr. Lanza for his comments.

59.

In 1942, Charles Roemer, a New Jersey attorney, was advised by his cousin, Dr. Jacob Roemer, that in the course of reviewing chest x-rays of employees at the Union Asbestos and Rubber Company's Paterson, New Jersey plant, he had observed a significant number with lung changes which he believed were due to asbestos exposure. Dr. Roemer advised that the men be informed of his findings and that they be instructed to secure outdoor employment which did not involve any exposure to asbestos dust. Dr. Roemer said that unless this was done immediately, the men would suffer and die from asbestos-related lung disease. Vandiver Brown acknowledged that J-M's physical examination program had produced similar findings of x-ray evidence of asbestos disease among workers, but told Mr. Roemer and the UNARCO representatives that it was foolish to be concerned. Mr. Brown explained that it was J-M's policy to let its employees die of asbestos

poisoning rather than inform them of health consequences which would undoubtedly lead to costly lawsuits against the company. As testified to by Mr. Roemer, "I'll never forget, I turned to Mr. Brown... and I said, 'Mr. Brown, do you mean to tell me you would let them work until they dropped dead?' He said, "Yes. We save a lot of money that way."' (Deposition Charles H. Roemer taken April 25, 1984, Johns-Manville Corp. et al. v. the United States of American, U.S. Claims Court Civ. No. 465-83C).

60.

As a result of the aforesaid Metropolitan Life study, additional health research on the effects of prolonged and excessive inhalation of asbestos fiber on human beings was undertaken at the Saranac Laboratory. A report on this research was delivered at the Seventh Saranac Lake Symposium in 1952 and was entitled "Pulmonary Function Studies in Men Exposed for Ten or More Years to Inhalation of Asbestos Fibers" by Fernand Gregorie and George W. Wright.

61.

In addition to the IHF, there were other trade associations which were formed to aid and service companies in the asbestos industry. Members of the Asbestos Textile Institute (ATI), founded on November 16, 1944, included companies which produced asbestos containing cloth and other products. Members included, among others, Uniroyal, Inc., which is a defendant in this action. At the June 13, 1946, meeting of the Asbestos Textile Institute, a question was posed as to whether or not a committee should be formed to deal with the question of dust control. Beginning on June 13, 1946, a subcommittee of the dust control committee of the Asbestos Textile Institute recommended that the committee contact the United States government, the state governments in which member plants were located, the Mellon Institute, and Metropolitan Life for the purpose of preparing a tentative program aimed at bringing to member companies the assistance of qualified technical and medical people. In 1946, the ATI was presented with a plan for a central medical committee which would call for individual medical programs at all facilities using asbestos as well as a central medical department which would be responsible to the association. Recommendations for initial medical examinations and periodic follow-up examinations were also made. The recommendation for periodic medical examinations was characterized by the presenting doctor as "fundamental in an industry where there was a 'known occupational health hazard'". While the ATI considered this proposal, it nonetheless elected to defer the plan. During the late 1940's and early 1950's, the ATI was presented with a number of other plans for wide ranging research on various

issues dealing with asbestos-related disease in the asbestos industry. However, in some instances, the research projects and proposals were discarded.

62.

Another trade organization was the National Insulation Manufacturers Association ("NIMA"), which formed in December of 1958 as a joint venture trade association to serve as a voice for the mineral insulation industry. After 1958, personnel of Ruberoid/GAF (defendant herein) attended most, if not all, NIMA meetings at which health hazards were frequently the topic of formal discussions. NIMA members had unequivocal knowledge of the potential health hazards posed by unprotected and prolonged exposure to excessive quantities of airborne asbestos fiber. The testimony of Harry Kaufman, who came to Ruberoid in 1958 as Assistant Director of Quality Control, admit knowledge of the potential health hazards to an unprotected worker from exposure to asbestos fiber as far back as 1943 when he attended a five month course at the University of Maryland on Industrial Safety. Charles Limerick, former manager of the Ruberoid Vermont Mines, has admitted that he was aware of dangers of asbestos as far back as the 1930's and 1940's. GAF/Ruberoid was put on notice of dangers in 1935 or 1936 through correspondence with "Asbestos" magazine. Ruberoid subscribed and advertised in "Asbestos". Moreover, Ruberoid was prodded by lawsuits brought by its employees alleging that they had developed asbestosis as early as 1934.

63.

Sumner Simpson, the first Raybestos-Manhattan Incorporated President, maintained a file or collection of documents, correspondence, and memoranda pertaining to the subjects of the health effects of asbestos, dust control, and dust levels. These documents clearly evidence knowledge, beginning in at least the 1930's, of dangers posed by exposure to asbestos and steps which could and should be taken to minimize the risk of asbestos-caused diseases. The "Sumner Simpson" documents, as a group, demonstrate the high level of awareness and early sophistication of the asbestos industry of knowledge that excessive exposure to asbestos over a prolonged period of time could and would produce asbestos-related diseases. Numerous letters in the "Sumner Simpson" document collection refer to the fact that many states were adding asbestosis as a compensable disease and that Raybestos-Manhattan Incorporated was going to have to deal with that reality.

64.

Eagle, Inc. and Taylor-Seidenbach, Inc. did contracting work as early as the 1940s. Accordingly, Eagle, Inc. and Taylor-Seidenbach were aware of the health and safety requirements of the Walsh Healey Public Contract Act, first promulgated in 1936, as well as the regulations of the

U.S. Navy and U.S. Maritime Commission in 1943 (discussed *infra*). Likewise, these companies were also aware of heath and safety requirements regarding asbestos adopted in Louisiana as early as 1943. These mandatory regulations addressed asbestos hazards and asbestosis as a resultant disease of exposure to asbestos. Moreover, these companies, being asbestos insulation contractors, had to pay higher insurance premiums as a consequence thereof. Mr. Dandry was exposed to asbestos both through their contracting work and through products manufactured, distributed, and sold by them throughout his career. Yet at no time was Mr. Dandry protected from these hazards nor warned of these hazards. Even after OSHA became the law in 1971, Mr. Dandry was not advised of the hazards associated with exposure to asbestos. These defendants were aware of the hazards of asbestos but failed and refused to warn Mr. Dandry of the dangers and, furthermore, concealed and suppressed its knowledge of these hazards, thus constituting fraud under Louisiana law. See deposition of Fred J. Schuber, Jr., 05/31/90, pages 149-155, 176-179 and exhibits attached to the deposition of Schuber taken 5/09/90; and deposition of Thomas R. Dimm, 02/03/86, pages 65-66; and Eagle, Inc.'s response #4 to plaintiffs' interrogatories in the case of Atzenhoffer, et al v. National Gypsum, Co., et al, C. A. #89-894, which responses are dated March 27, 1990; and Act No. 532 (1952) amendments to the Louisiana Workers' Compensation Act.

65.

Since the early 1940s, defendant, Foster-Wheeler LLC (formerly Foster-Wheeler Corporation), was a major manufacturer of boilers used in the construction of both commercial and U.S. Navy vessels at various shipyards throughout the US. Since that time through and including the time when Mr. Dandry was last exposed, they supplied boilers to virtually every shipyard constructing and repairing vessels in the country. Accordingly, since the early 1940s, they were aware of the health and safety requirements of the Walsh Healey Public Contract Act, first promulgated in 1936, as well as the regulations of the U.S. Navy and U.S. Maritime Commission in 1943 (discussed infra). These mandatory regulations addressed asbestos hazards and asbestosis as a resultant disease of exposure to asbestos. Despite this knowledge, at no time was Mr. Dandry advised of these hazards as defendants failed and refused to warn Mr. Dandry of the dangers and, furthermore, concealed and suppressed their knowledge of these hazards, thus constituting fraud under Louisiana law. In addition to manufacturing and selling boilers, (and providing the asbestos insulation products for insulation of their boilers and the piping connecting their boilers), they constructed their boilers on-site and provided an on-site representatives during the construction of their boilers.

66.

All defendants made the misrepresentations cited in the foregoing paragraphs despite their knowledge of the falsity, and defendants fraudulently concealed and suppressed the truth about the dangerous nature of the products with the intent to induce purchasers to buy the products and innocent users and employees to continue to be exposed to same without concern for their health.

67.

As a result of the misrepresentations of the defendants that asbestos-containing products were safe, nontoxic, fully tested, desirable, and suitable for use, and as a result of the defendants suppression of the truth about the health hazards associated with exposure to said products, Mr. Dandry was exposed to products manufactured, distributed, sold, and/or used by the defendants in this case, and he contracted mesothelioma, cancer, and other related ill health effects.

68.

The misrepresentations and suppression of the truth of occupational health hazards were made by all defendants with the intent of obtaining an unjust advantage over Mr. Dandry and other employees who remained uninformed and ignorant of the risks of contracting occupational lung diseases from their work environment. These misrepresentations and suppressions were calculated to produce the effect of misleading the employees so that they would not associate any lung disease with occupational exposures on the job. As a result of these misrepresentations and suppressions, all defendants sought to prevent or limit occupational disease claims by injured employees and claims from family members who also contracted disease. These actions constitute fraud under Louisiana law.

69.

Petitioners' causes of action are based upon the acts and omissions of defendants or those for whom the defendants are responsible, and are specifically not based upon any act committed at the direction of the United States Government.

70.

As a result of the aforementioned acts of the hereinabove named defendants, Mr. Dandry contracted mesothelioma and other related ill health effects and died from mesothelioma.

71.

All of the hereinabove named defendants are jointly, severally, and *in solido* liable to petitioner for the damages sustained as a result of Mr. Dandry's contraction of mesothelioma and other related ill health effects and death. Petitioners are entitled to damages for the following:

physical pain and suffering of Michael Dandry, Jr.; mental pain and anguish (including but not limited to fear of death) which Mr. Dandry suffered; fear of death, humiliation and emotional distress suffered by Mr. Dandry, loss of income and earning capacity of Mr. Dandry; medical expenses; care and personal assistance provided to Mr. Dandry; loss of personal services; loss of enjoyment of life and lifestyle; loss of support to children; loss of consortium and society, love, and affection; loss of services, loss of companionship; grief suffered by Erica Dandry Constanza and Monica Dandry Hallner, the children of Mr. Dandry, as a result of the death of Mr. Dandry; funeral expenses; lost income and expenses related to the injuries and death of Michael Dandry, Jr., funds expended by each of the plaintiffs herein for the care and treatment of their father, and all other general damages arising out of this survival and wrongful death action which may be shown at the trial of this matter.

72.

A trial by jury is demanded on all issues.

WHEREFORE, petitioners, Erica Dandry Constanza and Monica Dandry Hallner, pray that the defendants named herein be duly cited to appear and answer, and that after all due proceedings are had, that there be judgment rendered herein in favor of petitioners and against defendants for all damages suffered by petitioners together with legal interest and all costs associated with the prosecution of this claim. Petitioners further pray for all general and equitable relief.

Respectfully submitted,

ROUSSEL & CLEMENT

GEROLYN P. ROUSSEL - 1134
PERRY J. ROUSSEL, JR. - 20351
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1550 West Causeway Approach
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Telephone: (985) 778-2733
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ATTORNEYS FOR PETITIONERS,
ERICA DANDRY CONSTANZA and
MONICA DANDRY HALLNER

PLEASE SERVE THE PETITION FOR DAMAGES ON THE FOLLOWING:

1. SPARTA INSURANCE COMPANY
Through its agent for service of process:
Secretary of State
Legal Services Sections
8585 Archives Ave.
Baton Rouge, La. 70809

2. HUNTINGTON INGALLS INCORPORATED
(formerly NORTHROP GRUMMAN SHIPBUILDING, INC.,
formerly NORTHROP GRUMMAN SHIP SYSTEMS, INC.
formerly, AVONDALE INDUSTRIES, INC.
formerly AVONDALE SHIPYARDS, INC.
and formerly, AVONDALE MARINE WAYS, INC.)
Through its agent for service of process:
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, La. 70816

3. EAGLE, INC.
Through its agent for service of process:
Susan B. Kohn
1100 Poydras St.
New Orleans, LA 70163

4. BAYER CROPSCIENCE, INC. (SUCCESSOR TO RHONE POULENC AG COMPANY, FORMERLY AMCHEM PRODUCTS, INC., FORMERLY BENJAMIN FOSTER COMPANY) — **LONG ARM SERVICE**
(Via Louisiana Long Arm Statute)
through its agent for service of process:
Corporation Service Company
80 State Street
Albany, New York 12207

5. FOSTER WHEELER LLC — **LONG ARM SERVICE**
(formerly FOSTER WHEELER CORPORATION)
(Via Louisiana Long Arm Statute)
Through its registered agent for service of process:
United Agent Group, Inc.
1521 Concord Pike
Suite 201
Wilmington, DE 19803

6. GENERAL ELECTRIC COMPANY
Through its agent for service of process:
CT Corporation System
3867 Plaza Tower Dr.
Baton Rouge, La. 70816

7. HOPEMAN BROTHERS, INC. — **LONG ARM SERVICE**
(Via Louisiana Long Arm Statute)
AWH Corporation
435 Essex Ave., Suite 101
Waynesboro, Virginia 22980

8. TAYLOR-SEIDENBACH, INC.
Through its agent for service of process:
Hal Shepard
731 South Scott St.
New Orleans, LA 70119

9.	PARAMOUNT GLOBAL (f/k/a WESTINGHOUSE ELECTRIC CORPORATION) Through its agent for service of process: Corporation Service Company 251 Little Falls Dr. Wilmington, DE 19808	**LONG ARM SERVICE**
10.	UNIROYAL, INC. (Via the Louisiana Long Arm Statute) 70 Great Hill Road Naugatuck, CT 06770	**LONG ARM SERVICE**
11.	INTERNATIONAL PAPER COMPANY Through its agent for service of process: CT Corporation System 3867 Plaza Tower Dr. Baton Rouge, La 70816	

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ERICA DANDRY CONSTANZA AND MONICA DANDRY HALLNER	*	CIVIL ACTION
	*	NO.: 2:24-CV-00871
PLAINTIFFS	*	
	*	SECTION: "G" (5)
VERSUS	*	
	*	CHIEF JUDGE NANNETTE JOLIVETTE BROWN
SPARTA INSURANCE COMPANY, ET AL.	*	
	*	MAGISTRATE JUDGE MICHAEL NORTH
DEFENDANTS	*	

HUNTINGTON INGALLS INCORPORATED'S ANSWER, AFFIRMATIVE DEFENSES, CROSS-CLAIMS, THIRD PARTY COMPLAINT AND JURY DEMAND

NOW INTO COURT, through undersigned counsel, comes defendant, Huntington Ingalls Incorporated (f/k/a Northrop Grumman Shipbuilding, Inc., f/k/a Northrop Grumman Ship Systems, Inc., f/k/a Avondale Industries, Inc., f/k/a Avondale Shipyards, Inc., f/k/a Avondale Marine Ways, Inc.) (hereinafter "Avondale"), who responds to plaintiffs' Petition for Damages (hereinafter "Petition") as follows:

ANSWER TO THE PETITION FOR DAMAGES

I.

The allegations contained in Paragraph 1 of the Petition are denied for lack of sufficient information to justify a belief therein.

II.

Except to admit that Defendant is a corporation with a registered agent for service of process in Louisiana, the allegations contained in Paragraph 2 of the Petition are denied for lack of sufficient information to justify a belief therein.

III.

The allegations contained in Paragraph 3 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

IV.

The allegations contained in Paragraph 4 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

V.

The allegations contained in Paragraph 5 of the Petition are denied for lack of sufficient information to justify a belief therein.

VI.

The allegations contained in Paragraph 6 are denied.

VII.

The allegations contained in Paragraph 7 of the Petition, including all sub-parts, are denied.

VIII.

The allegations contained in Paragraph 8 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

IX.

The allegations contained in Paragraph 9 of the Petition are denied for lack of sufficient information to justify a belief therein.

X.

The allegations contained in Paragraph 10 of the Petition are denied.

XI.

The allegations contained in Paragraph 11 of the Petition are denied.

XII.

The allegations contained in Paragraph 12 of the Petition are denied.

XIII.

The allegations contained in Paragraph 13 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XIV.

The allegations contained in Paragraph 14 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XV.

The allegations contained in Paragraph 15 of the Petition are denied.

XVI.

The allegations contained in Paragraph 16 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XVII.

The allegations contained in Paragraph 17 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XVIII.

The allegations contained in Paragraph 18 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XIX.

The allegations contained in Paragraph 19 of the Petition are denied for lack of sufficient information to justify a belief therein.

XX.

The allegations contained in Paragraph 20 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXI.

The allegations contained in Paragraph 21 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXII.

The allegations contained in Paragraph 22 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XXIII.

The allegations contained in Paragraph 23 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXIV.

The allegations contained in Paragraph 24 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XXV.

The allegations contained in Paragraph 25 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XXVI.

The allegations contained in Paragraph 26 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXVII.

The allegations contained in Paragraph 27 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXVIII.

The allegations contained in Paragraph 28 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXIX.

The allegations contained in Paragraph 29 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXX.

The allegations contained in Paragraph 30 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXXI.

The allegations contained in Paragraph 31 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXXII.

The allegations contained in Paragraph 32 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXXIII.

The allegations contained in Paragraph 33 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXXIX.

The allegations contained in Paragraph 34 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXXV.

The allegations contained in Paragraph 35 of the Petition are for lack of sufficient information to justify a belief therein.

XXXVI.

The allegations contained in Paragraph 36 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXXVII.

The allegations contained in Paragraph 37 of the Petition are denied for lack of sufficient information to justify a belief therein.

XXXVIII.

The allegations contained in Paragraph 38 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XXXIX.

The allegations contained in Paragraph 39 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XL.

The allegations contained in Paragraph 40 of the Petition are denied for lack of sufficient information to justify a belief therein.

XLI.

The allegations contained in Paragraph 41 of the Petition are denied for lack of sufficient information to justify a belief therein.

XLII.

The allegations contained in Paragraph 42 of the Petition are denied for lack of sufficient information to justify a belief therein.

XLIII.

The allegations contained in Paragraph 43 of the Petition are denied for lack of sufficient information to justify a belief therein.

XLIV.

The allegations contained in Paragraph 44 of the Petition, including all sub-parts, are denied for lack of sufficient information to justify a belief therein.

XLV.

The allegations contained in Paragraph 45 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XLVI.

The allegations contained in Paragraph 46 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XLVII.

The allegations contained in Paragraph 47 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XLVIII.

The allegations contained in Paragraph 48 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

XLIX.

The allegations contained in Paragraph 49 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

L.

The allegations contained in Paragraph 50 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LI.

The allegations contained in Paragraph 51 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LII.

The allegations contained in Paragraph 52 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LIII.

The allegations contained in Paragraph 53 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LIV.

The allegations contained in Paragraph 54 of the Petition, including all sub-parts, are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LV.

The allegations contained in Paragraph 55 of the Petition are denied for lack of sufficient information to justify a belief therein.

LVI.

The allegations contained in Paragraph 56 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LVII.

The allegations contained in Paragraph 57 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LVIII.

The allegations contained in Paragraph 58 of the Petition are denied for lack of sufficient information to justify a belief therein.

LIX.

The allegations contained in Paragraph 59 of the Petition are denied for lack of sufficient information to justify a belief therein.

LX.

The allegations contained in Paragraph 60 of the Petition are denied for lack of sufficient information to justify a belief therein.

LXI.

The allegations contained in Paragraph 61 of the Petition are denied for lack of sufficient information to justify a belief therein.

LXII.

The allegations contained in Paragraph 62 of the Petition are denied for lack of sufficient information to justify a belief therein.

LXIII.

The allegations contained in Paragraph 63 of the Petition are denied for lack of sufficient information to justify a belief therein.

LXIV.

The allegations contained in Paragraph 64 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LXV.

The allegations contained in Paragraph 65 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LXVI.

The allegations contained in Paragraph 66 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LXVII.

The allegations contained in Paragraph 67 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LXVIII.

The allegations contained in Paragraph 68 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LXIX.

The allegations contained in Paragraph 69 of the Petition are denied to the extent that they are directed against this Defendant. Furthermore, to the extent plaintiffs are attempting to deprive this Defendant of access to a federal forum, those allegations are without legal effect. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LXX.

The allegations contained in Paragraph 70 of the Petition are denied to the extent that they are directed against this Defendant. Otherwise, the allegations are denied for lack of sufficient information to justify a belief therein.

LXXI.

The allegations contained in Paragraph 71 of the Petition, including all sub-parts, are denied. It being specifically denied that plaintiffs are entitled to the relief requested or to any relief whatsoever.

LXXII.

Paragraph 72 of the Petition contains a jury demand. Respondent joins in that demand.

AFFIRMATIVE DEFENSES

AND NOW, FURTHER ANSWERING, defendant, Avondale, asserts the following Affirmative Defenses herein:

FIRST DEFENSE

FURTHER ANSWERING, defendant herein affirmatively denies any and all allegations of fault or other bases of liability on the part of Avondale. Defendant herein specifically denies that it is guilty of wrongdoing with respect to the supervision of Michael P. Dandry, Jr. during his alleged employment at Avondale or with regards to the safety precautions taken on his behalf during that employment.

SECOND DEFENSE

FURTHER ANSWERING, in the alternative, Avondale avers that plaintiffs are barred from prosecuting this action because of Michael P. Dandry, Jr.'s knowledge and assumption of the risks and dangers associated with his employment at Avondale.

THIRD DEFENSE

FURTHER ANSWERING, in the alternative, Avondale herein avers that the alleged injuries complained of herein, if any, were caused by the sole and/or concurrent negligence of

Michael P. Dandry, Jr. in failing to properly care for his own personal protection and safety and/or utilize safety equipment, thus barring any recovery herein.

FOURTH DEFENSE

FURTHER ANSWERING, in the alternative, if the alleged injuries complained of by plaintiffs herein, if any, are found to have been caused by the acts, omissions, commissions, or conditions of Avondale, then the alleged negligence of Michael P. Dandry, Jr. was a contributing cause of those alleged injuries, thus either barring or diminishing plaintiffs' entitlement to recovery.

FIFTH DEFENSE

FURTHER ANSWERING, in the alternative, and in the event that Avondale is found liable, which liability is specifically denied, defendant avers that it is entitled to a set off of all amounts recovered under the Longshore and Harbor Workers' Compensation Act or, alternatively, the Louisiana Workers' Compensation Act, if any, against any judgment which may be rendered arising out of this litigation.

SIXTH DEFENSE

FURTHER ANSWERING, in the alternative, Avondale pleads that plaintiffs have failed to state a cause of action, as plaintiffs' sole remedy for the alleged injuries complained of herein, if any, is provided for exclusively in the Longshore and Harbor Workers' Compensation Act or, alternatively, the Louisiana Workers' Compensation Act, which bars all allegations herein.

SEVENTH DEFENSE

FURTHER ANSWERING, Avondale avers that the alleged injuries complained of by plaintiffs herein, if any, were caused by the acts, omissions, commissions, or conditions which

were the responsibility of persons other than Avondale and for whom Avondale has no legal responsibility.

EIGHTH DEFENSE

FURTHER ANSWERING, plaintiffs' injuries and/or damages, if any, were the result of an act of God or unavoidable accident.

NINTH DEFENSE

FURTHER ANSWERING, the cause of action stated by plaintiffs has prescribed or been extinguished in some other manner.

TENTH DEFENSE

FURTHER ANSWERING, the cause of action is barred by the doctrine of accord and satisfaction.

ELEVENTH DEFENSE

FURTHER ANSWERING, the cause of action is barred by the doctrine of *Res Judicata.*

TWELFTH DEFENSE

FURTHER ANSWERING, defendant herein affirmatively pleads that in the event plaintiffs settle with and/or otherwise release any manufacturers, distributors, suppliers, and/or vendors of asbestos-containing products to which plaintiffs claim decedent, Michael P. Dandry, Jr., was exposed, then that settlement and/or release extinguishes Avondale's secondary or derivative strict liability to plaintiffs.

THIRTEENTH DEFENSE

FURTHER ANSWERING, Defendant herein affirmatively pleads that in the event plaintiffs settle with and/or otherwise release any solidary obligors without reserving their right to proceed against the remaining solidary obligors, then the debt to plaintiffs are discharged as to any

remaining solidary obligors pursuant to La. Civil Code Art. 2203 in effect at the time of the alleged acts and omissions which form the basis of this lawsuit.

FOURTEENTH DEFENSE

FURTHER ANSWERING, Defendant affirmatively pleads that in the event plaintiffs settle with and/or otherwise release any persons or entities, whether named as defendants or not, then defendant is entitled to a credit for the virile share of those settling/released persons or entities.

FIFTEENTH DEFENSE

FURTHER ANSWERING, plaintiffs' claims are barred by the government contractor immunity defense established in *Boyle v. United Technologies Corporation.*

SIXTEENTH DEFENSE

FURTHER ANSWERING, plaintiffs' claims against Avondale are barred by the federal defense of derivative sovereign immunity as set forth in *Yearsley v. W.A. Ross Construction Co.*, 309 U.S. 18 (1940), and its progeny.

SEVENTEENTH DEFENSE

FURTHER ANSWERING, Avondale herein affirmatively pleads that should an agreement or contract govern any claims by or against Avondale, then Avondale reserves its right to enforce any and all arbitration clauses or provisions and specifically does not waive the enforcement of any such clauses or provisions.

EIGHTEENTH DEFENSE

FURTHER ANSWERING, Avondale herein affirmatively pleads that should an agreement or contract govern any claims by or against Avondale, then Avondale reserves its right to enforce any and all clauses or provisions and specifically does not waive the enforcement of any such clauses or provisions.

CROSS-CLAIMS AND THIRD PARTY COMPLAINT

1.

Plaintiffs, Erica Dandry Constanza and Monica Dandry Hallner, have filed a Petition for Damages seeking damages for injuries Michael P. Dandry, Jr. allegedly sustained as a result of his alleged asbestos exposure.

2.

Avondale has been named as a defendant by the Plaintiffs in this case.

3.

Avondale denies any and all liability in this case.

4.

Alternatively, while denying any and all liability, Avondale is entitled to virile share contributions from and/or application of comparative fault of the Cross-Claim and Third Party Defendants for any and all amounts for which it may be cast in judgment and virile share credits or set-offs with respect to all Cross-Claim and Third Party Defendants who may settle Plaintiffs' claims.

5.

Named as **Cross-Claim Defendants** are the following:

A. Eagle, Inc.;

B. Bayer CropScience, Inc. (successor to Rhone Poulenc AG Company, f/k/a Amchem Products, Inc., f/k/a Benjamin Foster Company);

C. Foster Wheeler, LLC (f/k/a Foster Wheeler Corporation);

D. General Electric Company;

E. Hopeman Brothers, Inc.;

F. Taylor-Seidenbach, Inc.;

G. Paramount Global (f/k/a Westinghouse Electric Corporation);

H. International Paper Company (f/k/a U.S. Plywood); and

I. Uniroyal, Inc.

6.

Avondale adopts herein by reference as though set forth *in extenso* all of the Plaintiffs' allegations against the cross-claim defendants as asserted in Plaintiffs' Petition for Damages, insofar as they assert the fault, negligence, strict liability, and other bases of liability against the cross-claim defendants. Avondale further alleges that Plaintiffs' allegations against the cross-claim defendants are equally applicable to the fault, negligence, strict liability, and other bases for liability against the Third Party Defendants and adopts those allegations and asserts them against the Third Party Defendants as though set forth herein *in extenso* and specifically against the Third Party Defendants. This defendant affirmatively disavows any allegations against the Cross-Claim and Third Party Defendants based on intentional tort.

7.

Made **Third Party Defendants** herein are:

I. Liberty Mutual Insurance Company as insurer of Wayne Manufacturing Co.; and

II. The Manville Personal Injury Trust, as successor-in-interest to the Johns-Manville Corporation, a trust organized and existing under the laws of the State of New York and administered through the Claims Resolution Management Corporation, a subsidiary of the Manville Personal Injury Settlement Trust, a company organized and existing under the laws of the Commonwealth of Virginia.

8.

Plaintiffs allege Michael P. Dandry, Jr. contracted mesothelioma from exposure to asbestos from several different sources.

9.

Cross-Claim and Third Party Defendants are allegedly all miners, manufacturers, sellers, distributors, suppliers, installers and/or users of asbestos products, or were insurers of miners, manufacturers, sellers, distributors, suppliers, installers and/or users of asbestos products, and were engaged in or materially participated in the business of manufacturing or facilitating the manufacturing of asbestos products, or representing themselves as manufacturers of asbestos products and/or were commercial suppliers and/or professional vendors of asbestos or asbestos-containing products, which were expected to and did reach the workplaces of Michael P. Dandry, Jr., which caused him to be allegedly exposed to them.

10.

The products mined, manufactured, distributed, supplied, sold, and/or used by the Cross-Claim and Third Party Defendants were defective, unreasonably dangerous, and unreasonably dangerous *per se*. Michael P. Dandry, Jr. was an intended and/or foreseeable user exposed to these products. These defects include, without limitation, the following:

a. the mining, manufacture, sale, supply, distribution and use of products that are unreasonably dangerous or unreasonably dangerous *per se*;

b. the mining, manufacture, sale, supply, distribution and use of products that possess inherent and known properties that make them unreasonably dangerous by presenting potential for causing serious injury and death to those who would be exposed to them;

c. lack of warning or of sufficient warning of the hazards these products would present in the course of their normal, foreseeable use or intended use;

d. lack of safety instruction or of sufficient safety instruction for eliminating or reducing the health risks associated with the intended ultimate use of these products;

e. failure to inspect these products to assure sufficiency and adequacy of warnings and safety cautions;

f. failure to test or adequately test these products for defects or hazards that they could present to the intended or foreseeable users;

g. failure to truthfully report or adequately report the results of product testing, and medical studies associated with foreseeable hazards of exposure to these products by intended or foreseeable users, bystanders and others;

h. failure to properly design these products where the nature of the product did not require use of asbestos mineral or where alternate, equally suitable substances were readily available;

i. defects in the composition and construction of these products;

j. failure to recall these products mined, manufactured, sold, supplied and distributed;

k. failure to properly package these products so that they could be safely transported, handled, stored, or disposed; and

l. over-warranting the safety of these products that were manufactured, sold or supplied by the Cross-Claim and Third Party Defendants.

11.

The negligence, fault, and defective products of Cross-Claims and Third Party Defendants are the proximate cause of plaintiffs' alleged harm, if any.

12.

Cross-Claim and Third Party Defendants are liable for negligence, fault, strict liability, professional vendor liability, and strict products liability in connection with the manufacturing, distributing, design and/or installation of asbestos-containing products which were defective in design and unreasonably dangerous *per* se, and for failure to warn Michael P. Dandry, Jr. concerning asbestos hazards posed by their products.

13.

Wayne Manufacturing Company was a manufacturer, seller, distributor, supplier and/or user of asbestos-containing products and was engaged in or materially participated in the business

of manufacturing or facilitating the manufacturing of asbestos-containing products and/or was a commercial supplier and/or professional vendor of asbestos-containing products.

14.

Wayne Manufacturing Company manufactured wallboard sold and/or supplied by Hopeman Brothers, Inc. at Avondale, which product was defective, unreasonably dangerous, and unreasonably dangerous *per se*. Wayne Manufacturing is strictly liable and is negligent as set forth above.

15.

At all material times herein, Liberty Mutual Insurance Company was the liability insurer of Wayne Manufacturing Company, which is now defunct. Liberty Mutual is therefore responsible for the liability of Wayne Manufacturing Company. Defendant hereby asserts a direct action under La. R.S. 22:1269 against Liberty Mutual Insurance Company for the liability of Wayne Manufacturing Company.

16.

Johns-Manville manufactured asbestos-containing Marinite board, which was used by Wayne Manufacturing in its manufacture of the wall board sold and installed by Hopemen Brothers at Avondale, as well as asbestos-containing pipe insulation, asbestos-containing mud, asbestos-containing insulation block, asbestos-containing cloth and other asbestos insulation materials to which Michael P. Dandry, Jr. allegedly was exposed. Johns-Manville is liable for negligence, fault, strict products liability and strict liability in connection with the manufacturing, distributing and design of asbestos-containing products which were defective in design, unreasonably dangerous *per* se, and for failure to warn Michael P. Dandry, Jr. concerning asbestos hazards posed by its products.

17.

Johns-Manville was aware or should have been aware of the dangers presented by exposure to its asbestos products and manufacturing premises and that Michael P. Dandry, Jr. could be injured as result of this exposure but negligently failed to institute protective measures and to warn Michael P. Dandry, Jr. of the potential dangers to his health from exposure to asbestos and was negligent in allowing Michael P. Dandry, Jr. to be exposed to unsafe levels of asbestos, which exposures caused or contributed to Michael P. Dandry, Jr.'s alleged injuries, including his alleged mesothelioma.

18.

As a manufacturer of asbestos products, Johns-Manville knew or should have known that exposing Michael P. Dandry, Jr., and those similarly situated, to asbestos would cause injury, and despite that knowledge, Johns-Manville did not provide proper instructions and/or warnings, for which Johns-Manville is liable pursuant to Louisiana Civil Code article 2315.

19.

In addition to exposures to asbestos from Johns-Manville products used at worksites of Michael P. Dandry, Jr., he was exposed to asbestos from asbestos-containing scrap material generated by the Johns-Manville manufacturing facility in Marrero, Louisiana (and earlier in its Gretna, Louisiana facility), as well as from asbestos generated and released from the Johns-Manville manufacturing facility into the atmosphere of Michael P. Dandry, Jr.'s neighborhood, where he regularly and frequently breathed substantial amounts of asbestos as a result of such operations. The asbestos scrap material was delivered on or near properties where Michael P. Dandry, Jr. resided or spent time, resulting in substantial exposures to Michael P. Dandry, Jr., which were the sole and exclusive proximate cause of the damages alleged by him in this lawsuit.

20.

Johns-Manville used raw asbestos at its Marrero facility, including crocidolite, and manufactured asbestos-containing transite pipe and other asbestos-containing materials and products to which Michael P. Dandry, Jr. was exposed. Johns Manville is liable for negligence, fault, strict products liability and strict liability in connection with the manufacture, sale and distribution of asbestos-containing products and waste material from its manufacturing processes at its Marrero facility, which products and material were defective in design and unreasonably dangerous *per* se, and for failure to warn Michael P. Dandry, Jr. concerning the hazards posed by its asbestos products and waste materials.

21.

As a manufacturer of asbestos products, Johns-Manville knew or should have known that exposing Michael P. Dandry, Jr., and those similarly situated, to asbestos would cause injury, and despite that knowledge, Johns-Manville did not provide proper instructions and/or warnings, for which Johns-Manville is liable pursuant to Louisiana Civil Code article 2315.

22.

The Manville Personal Injury Settlement Trust has succeeded to the liabilities of Johns-Manville Corporation, and is the entity subject to claims for contribution or for establishing credits or offsets with respect to the asbestos-related liabilities of Johns-Manville asserted herein. Insofar as Louisiana virile share liability law applies to the claims in this case, then Johns-Manville, by and through its respective trust, is brought into this action for the purpose of having its fault allocated in accordance with same. This third-party claim is being asserted against the Trust in accordance with the Trust Distribution Process ("TDP") for the sole purpose of listing the Trust on a verdict form or otherwise as necessary to ensure that any verdict reduction in respect of the

Manville (or Trust) liability share is made pursuant to applicable law. Avondale disclaims any claim for relief beyond that which is provided in the TDP. Further, out of an abundance of caution and insofar as it may be required, Avondale waives any requirement of that the Manville Personal Injury Settlement Trust appear, answer, be subject to discovery as a party, or be subject to default or other trial court process or procedure; and Avondale stipulates that it will not move for a continuance of trial on grounds that the Manville Personal Injury Settlement Trust was not required to appear and answer.

JURY DEMAND

Avondale demands a trial by jury on all facts and issues in this case, including all cross-claims and third party claims.

WHEREFORE, Huntington Ingalls Incorporated (f/k/a Northrop Grumman Shipbuilding, Inc., f/k/a Northrop Grumman Ship Systems, Inc., f/k/a Avondale Industries, Inc., f/k/a Avondale Shipyards, Inc., f/k/a Avondale Marine Ways, Inc.) prays that its Answer, Affirmative Defenses, Cross-Claims, Third Party Complaint, and Jury Demand be duly served, and that after due proceedings are had that there be judgment herein in favor of Avondale and against Plaintiffs, dismissing Plaintiffs' claims, with prejudice and at Plaintiffs' cost, and in the alternative, Avondale further prays that should it be found at fault and liable to the Plaintiffs, which is denied, that there be further judgment over and against cross-claim and third party defendants for virile share contributions from all cross-claim and third party defendants for any and all amounts owed to Plaintiffs, and for virile share credits or offsets with respect to all entities with whom Plaintiffs have settled or may settle, for all costs of these proceedings, and for all other equitable and legal relief as the nature of the case may permit and as the law may allow.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

/s/ Kimmier L. Paul

Brian C. Bossier (#16818) **T.A.**
Edwin A. Ellinghausen, III (#1347)
Christopher T. Grace, III (#26901)
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avondaleasbestos@bluewilliams.com
Counsel for Huntington Ingalls Incorporated

Exhibit B-3

Sample Hoffman Claimants Complaint

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2022-10435 **SECTION** 10 **DIVISION** C

CIVIL DISTRICT COURT 2022 NOV 30 PM 2:07 FILED

ANTHONY J. DITCHARO

VERSUS

UNION PACIFIC RAILROAD COMPANY, ET AL

FILED: ______________________ ______________________ DEPUTY CLERK

PETITION FOR DAMAGES

TO THE HONORABLE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA, AND THE JUDGES THEREOF:

1. Made Petitioner herein is:

ANTHONY J. DITCHARO, an adult resident of the State of Louisiana who resides in Bossier Parish.

2. Made Defendants herein are:

A. EMPLOYER/PREMISE OWNERS

1. **HUNTINGTON INGALLS, INCORPORATED**
(f/k/a Northrup Grumman Shipbuilding, Inc., f/k/a Northrup Grumman Ship Systems, Inc., f/k/a Avondale Industries, Inc., f/k/a Avondale Shipyards, Inc., f/k/a Avondale Marine Ways, Inc.)
This defendant is being sued for negligence/employer liability/premise/strict liability.

2. **ENTERGY LOUISIANA, LLC**
This defendant is being sued for negligence/premise/strict liability.

3. **UNION PACIFIC RAILROAD COMPANY**
(f/k/a Southern Pacific Transportation Company)
This defendant is being sued for negligence/employer/premise/strict liability/FELA

4. **WYETH HOLDINGS, LLC**
(f/k/a Wyeth Holdings Corporation. Individually and as successor in interest to American Cyanamid Company)
This defendant is being sued for negligence/premise/strict liability.

5. **PHARMACIA, LLC**
(f/k/a Pharmacia Corporation, f/k/a Monsanto Company, f/k/a Monsanto Chemical Company)
This defendant is being sued for negligence/premise/strict liability.

6. **GENUINE PARTS COMPANY (Individually and d/b/a "NAPA" Branded products)**
This defendant is being sued for negligence/employer/premise/strict liability.

B. SUPPLIER/MANUFACTURER/SELLER/CONTRACTOR DEFENDANTS

7. **ANCO INSULATIONS, INC.**
This Defendant is being sued as a seller/manufacturer/supplier/contractor defendant.

8. **HOPEMAN BROTHERS, INC.**
This Defendant is being sued as a seller/supplier/manufacturer/contractor defendant.

9. **LIBERTY MUTUAL INSURANCE COMPANY**
(Individually and as insurer of Wayne Manufacturing)
This Defendant is being sued as a seller/supplier/manufacturer/contractor defendant.

10. **INTERNATIONAL PAPER COMPANY**
(Individually and as successor by merger to Champion International Corporation and U.S. Plywood)
This defendant is being sued as a seller/supplier/product/manufacturer defendant.

11. **PARAMOUNT GLOBAL** (f/k/a Westinghouse Electric Corporation)
This defendant is being sued as seller/supplier/product/manufacturer defendant.

12. **3M COMPANY**
This Defendant is being sued as a seller/manufacturer/supplier defendant.

13. **EAGLE, INC.**
(f/k/a Eagle Asbestos & Packing Co., Inc., f/k/a Eagle Packing & Equipment Co., Inc.
This Defendant is being sued as a seller/manufacturer/supplier/contractor defendant.

14. **BAYER CROPSCIENCE, INC.**
(successor to Rhone Poulenc AG Company, f/k/a Amchem Products, Inc., f/k/a Benjamin Foster Company)
This Defendant is being sued as a seller/manufacturer/supplier/contractor defendant.

15. **CORBESCO, INC.**
This Defendant is sued as a seller/supplier/product/manufacturer/contractor defendant.

16. **FOSTER WHEELER ENERGY CORPORATION**
This Defendant is being sued as a seller/supplier/product/manufacturer defendant.

17. **GENERAL ELECTRIC COMPANY**
This defendant is being sued as seller/supplier/product/manufacturer defendant.

18. **SENTRY INSURANCE COMPANY**
(as insurer for Reilly-Benton Company)
This defendant is being sued as a seller/supplier/product/manufacturer/contractor defendant

19. **TAYLOR-SEIDENBACH, INC.**
A corporation duly organized, created, and existing under and by virtue of the laws of the state of Louisiana, with its principal place of business in New Orleans, Louisiana. This Defendant being sued as a seller/supplier/contractor defendant;

20. **RILEY POWER, INC.**
(f/k/a Babcock Borsig Power, Inc., f/k/a D.B. Riley, Inc., f/k/a Riley Stoker Corporation)
This Defendant is being sued as a seller/supplier/product/manufacturer defendant.

21. **UNION CARBIDE CORPORATION**
This defendant is being sued as seller/supplier/product/manufacturer defendant.

22. **GOULD PUMPS (IPG), INC.**
This Defendant is sued as a seller/supplier/product/manufacture defendant.

23. **ZURN INDUSTRIES, INC.** (a/k/a and successor-by-merger to Erie City Iron Works and d/b/a "Keystone" branded products)
This defendant is being sued as seller/supplier/product/manufacturer defendant.

24. **METROPOLITAN LIFE INSURANCE COMPANY**
This Defendant is sued as a seller/supplier/product/manufacture defendant.

25. **REDCO CORPORATION (f/k/a Crane Co.)**
This defendant is being sued as seller/supplier/product/manufacturer defendant.

26. **BURMASTER LAND AND DEVELOPMENT COMPANY, LLC (f/k/a Burmaster Land & Development Company, Inc.)**
This defendant is being sued as a seller/supplier/contractor defendant.

27. **HONEYWELL INTERNATIONAL, INC. (individually and as successor in interest to Allied-Signal, Inc. and The Bendix Corporation)**
This defendant is being sued for negligence/ supplier/product/manufacturer

3. Anthony Ditcharo was diagnosed with asbestos-caused mesothelioma on or about August of 2022, which was caused by and a consequence of his exposures to asbestos as set forth herein. As a direct and proximate result of the delictual conduct of the defendants, Plaintiff, Anthony Ditcharo has recently contracted asbestos-caused mesothelioma and has suffered physically, financially, mentally, and emotionally.

4. Orleans Parish is a proper venue for this matter pursuant to La. Stat. Ann. §22:1269B(1) because events, accident or injury occurred or in Orleans Parish. Orleans Parish is a proper venue for this matter pursuant to La. C. Civ. Proc. Art. 74 because Orleans Parish is where wrongful conduct occurred or where the damages were sustained. Additionally, Orleans Parish is a proper venue for this matter pursuant to Louisiana Code of Civil Procedure Article 42 and 74 because the Defendants Taylor-Seidenbach, Inc. and Eagle, Inc. are domestic corporations licensed to do business in this State and have designated their primary business office and/or primary place of

business in Louisiana as Orleans Parish, and because the exposure of Plaintiff originated in Orleans Parish.

5. Plaintiff is entitled to maintain this action under the terms and provisions of the Federal Employers' Liability Act ("FELA"), under the Federal Boiler Inspection Act, and under the laws of the United States, and the State of Louisiana. This Court may exercise subject matter jurisdiction over this claim and there is no basis for removal of this case to federal court.

6. The Defendants Eagle, Inc. and Taylor-Seidenbach, Inc., are domestic corporations with their registered offices located in Orleans Parish. Plaintiff was exposed to products, distributed and installed by the above-referenced defendant at the work sites listed below. Plaintiff specifically alleges that these products, in combination with other asbestos-containing products, caused his asbestos-related injuries. The actions or inactions of each of the defendants are a proximate cause of Plaintiff's injuries, and, as a result all defendants ae jointly and solidarily liable for the damages caused. Each of the defendant contributed with Eagle, Inc. and Taylor-Seidenbach, Inc. to Plaintiff's exposures and each of the defendants is liable in solido to Plaintiff. Thus, venue proper for these defendants is proper for all defendants pursuant to Louisiana code of Civil Procedure articles 42 and 73.

7. The damages sought by the Plaintiff, exclusive of interest and costs, exceed the minimum jurisdictional limits of the court.

8. Plaintiff Anthony Ditcharo was occupationally exposed to injurious levels of asbestos from approximately 1968 through 1979 while employed at the following sites, including, but not limited to the following:

- In the early – mid 1970s employed by Brown & Root as a rigger/pipefitter/laborer at Monsanto in Luling, LA; American Cyanamid in Waggaman, LA; and at Nine Mile Powerhouse in Westwego, LA;
- In approximately 1971 – 1972 as an employee of Genuine Auto Parts;
- At Avondale shipyards in approximately 1973 – 1974 while employed as an insulator/painter;
- In approximately 1975 an operator/laborer at Johns-Manville in Marrero;
- In approximately 1976-1979 as a clerk/yardman for Union Pacific Railroad;

While the Plaintiff used, handled, and/or was in the vicinity of others using or handling asbestos or asbestos containing products at these sites, dangerously high levels of asbestos fibers escaped into the ambient air of the workplace, resulting in Mr. Ditcharo breathing those fibers.

9. In addition to his occupational exposures to asbestos, Mr. Ditcharo worked as a shade tree mechanic and performed brake jobs, changed clutches and gaskets, and performed other general mechanic work for his own vehicles, and family and friends' vehicles, resulting in his exposure to injurious levels of asbestos exposure. Mr. Ditcharo purchased these asbestos containing products at automotive stores in the New Orleans area, including Genuine Auto Parts.

10. In connection with the Plaintiff's work at the sites identified above, from approximately 1968 through 1979, the Plaintiff suffered exposures to asbestos and asbestos-containing products designed, manufactured, sold, supplied, used and/or maintained at these sites by the Defendants.

11. Before and during Anthony Ditcharo's exposure periods, each of the defendants designed, tested, evaluated, manufactured, packaged, furnished, stored, handled, transported, installed, used, supplied and/or sold asbestos-containing products for use at, including but not limited to, each of the facilities listed above from which the Plaintiff was exposed to asbestos-containing products, materials, insulation, and products that contained fibrous, incombustible, chemical-resistant mineral substances commonly called "asbestos".

12. When inhaled or otherwise ingested, asbestos causes irreparable and progressive lung damage that can manifest itself as asbestos-related pleural disease, asbestosis, lung cancer, mesothelioma, pulmonary and bronchogenic carcinoma, gastrointestinal cancer, cardiac problems, other lung diseases, pneumoconiosis, and various other injuries.

13. Each of the defendants knew or should have known through industry and medical studies, the existence of which was unknown to the Plaintiff of the health hazards inherent in the asbestos-containing products they were selling and/or using. Instead of warning the Plaintiff, and the general public about these dangers, the defendants ignored or concealed such information, or condoned such concealment, in order to sell or use asbestos or asbestos-containing products to avoid litigation by those who were injured from asbestos inhalation.

14. As a direct and proximate result of having inhaled, ingested, or otherwise been exposed to asbestos as described above, Anthony Ditcharo contracted asbestos-caused mesothelioma. Mr. Ditcharo was diagnosed with mesothelioma on or about August 2022. The cause of Mr. Ditcharo's mesothelioma was his asbestos exposures.

15. Because of the latency period between exposures to asbestos and the onset of cancer, and because of the concealment by some defendants of the causes and effects of exposures to asbestos, the Plaintiff did not know nor could he have reasonably known that his injuries were caused by his asbestos exposures until recently, which occurred less than one year prior to the filing of the instant Petition for Damages. Further, Plaintiff only recently discovered his injuries, not more than one year preceding the filing of this Original Petition for Damages.

16. In connection with his own work at the aforementioned job sites, the Plaintiff was exposed to and inhaled or otherwise ingested significant quantities of asbestos, having neither knowledge or reason to believe that asbestos was dangerous.

GENERAL NEGLIGENCE ALLEGATIONS

17. On information and belief, all of the Defendants identified above were responsible to provide Plaintiff with warnings concerning hazardous conditions at their sites and/or their use of hazardous materials, and generally to provide Plaintiff with safe premises in order to protect life health, safety, and welfare of Plaintiff, and had the following responsibilities:

A. Inspection, approval, and supervision of these various premises for hazards and vices that may present a hazard to Plaintiff;

B. To see that proper safety rules were adopted, promulgated, and enforced concerning the use and handling of hazardous materials that may present harm to people on the premises;

C. To see that workers performed their duties pertaining to their work in a proper, safe and workmanlike manner so as not to present an unreasonable risk of harm to the workers, as well as Plaintiff;

D. To see that the Defendants and their employees used safe and sound principles and practices in their work involving the use and storage of hazardous materials;

E. To make health and hygiene decisions on any and all questions regarding the use of respiratory protection devices involving the use and storage of hazardous materials;

F. To keep abreast of state-of-the-art-knowledge, as it pertains to the dangers of asbestos inhalation, involving the use and storage of hazardous materials;

G. To provide adequate warnings, safety equipment, ventilation, and breathing apparatus, where such was unnecessary, in order to prevent Plaintiff from being harmed by exposure to asbestos in the environment in which he was requires to be present;

H. To make certain that Plaintiff was provided safe environment, free from excess asbestos dust inhalation and operations free from excess asbestos dust;

I. To comply with applicable state and federal regulations regulating exposure to asbestos, including but not limited to, those regulations regulating exposure to asbestos, including but not limited to, those regulations promulgated by the U.S. Department of Labor pursuant to the Walsh/Healy Act and Occupational Safety and Health Act.

18. Not only did defendants have the duties and responsibilities set forth in the foregoing paragraph, but they did actually undertake on an operational basis to perform said duties and fulfill said responsibilities, and they negligently failed to carry out those undertakings and assumed duties in the manner asserted in the paragraph below, and on information and belief, Defendants knew of the dust laden atmosphere in which Plaintiff were required to enter, and work, which was damaging and dangerous to Plaintiff, and each knew or should have known of the dangers to Plaintiff's health posed by working in an atmosphere polluted with asbestos dust without proper protection or warnings. Plaintiff alleges that these defendants knew or should have known that the mesothelioma sustained by Plaintiff could have been avoided by the use of adequate ventilation, warnings, packaging and safety equipment.

19. On information and belief, Defendants negligently failed in the performance of their responsibilities and/or actual undertakings to provide Plaintiff with safe premises and operations in the following particulars:

A. Failing to properly ventilate the area in which Plaintiff were required to enter in connection with his work;

B. Failing to warn or provide proper safety appliances, including but not limited to respirators, air-fed hoods, etc. for Plaintiff's use;

C. Failure to institute safety procedures and plans for the adequate protection of Plaintiff;

D. Failing to warn Plaintiff of the dangers posed by the polluted atmosphere in which he were required to work including, but not limited to the risk of asbestosis, pleural disease, lung cancer, lung cancer, mesothelioma, other cancers, and the carcinogenic effect of the risk of lung cancer/mesothelioma caused by asbestos exposure to persons with pre-existing smoking habits from the handling and use of asbestos;

E. Failing to enforce applicable safety rules after such rules were actually adopted;

F. Failing to keep abreast of the scientific and engineering knowledge regarding the dangers of, and protection against, the occupational exposure to asbestos;

G. Failing to properly supervise operations;

H. Commencing and continuation of operations which were under their control and supervision when they knew or should have known that such operations cause Plaintiff to be exposed to asbestos dust, without protections;

I. Failing to abide by applicable state and federal regulations regulating the premises' exposure to asbestos, including but not limited to, those regulations promulgated by the U. S. Department of Labor, pursuant to the Walsh/Healy Act and the Occupational Safety and Health Act;

J. Failing to measure the levels of asbestos dust in the premises working environment.

20. The negligence of these defendants was a substantial factor and contributed in causing damages to Plaintiff.

**FELA & BOILER INSPECTION ACT CLAIMS
AS TO UNION PACIFIC CORPORATION**

21. Plaintiff is entitled to maintain this action under the terms and provisions of the Federal Employers' Liability Act ("FELA"), under the Federal Boiler Inspection Act, and under the laws of the United States, and the State of Louisiana. This Court may exercise subject matter jurisdiction over this claim and there is no basis for removal of this case to federal court.

22. Plaintiff was employed by Union Pacific Railroad Company beginning in approximately 1976 as a yardman and clerk at Avondale Louisiana and West Bank Tower. While employed by Union Pacific Railroad Company, Plaintiff worked with and in the vicinity of others working with asbestos brake pads, machinery, steam insulation, asbestos containing cargo including but not limited to bags of raw asbestos fibers, asbestos block, asbestos pipe insulation, and asbestos gaskets. As a result, plaintiff was exposed to asbestos and subsequently developed mesothelioma.

23. At all times material herein, all or part of Plaintiff's duties as an employee of Union Pacific Railroad Company were in furtherance of interstate commerce of in work directly, closely, and substantially affecting interstate commerce as defined. The Federal Employer's Liability Act grants this Court jurisdiction over this action.

24. Plaintiff's injuries are due in whole or in part to the negligence of Union Pacific Railroad Company and associated agents, servants employees, from failure to provide a reasonably safe work place, failure to warn, failure to provide protective apparent, equipment, showers, clothing,

respirators, failure to utilize reasonable safety measures including but not limited to warnings, identification, ventilation, concealment and segregation from carcinogenic materials such as asbestos.

25. During the course and scope of his employment with Union Pacific Railroad Company, Plaintiff was engaged in interstate commerce as a common carrier by rail, and a all or part of the duties of the Plaintiff were in furtherance of and did closely, directly, and substantially affect interstate commerce, therefore the rights and liabilities are governed by the Federal Employer's Liability Act which grants this Court jurisdiction over this action. During the course and scope of his employment Plaintiff was engaged with railroad defendant, where he was required and caused to work with, and in the vicinity of others working with asbestos, which Plaintiff breathed.

26. The Railroad defendant is guilty of the following acts or omissions, in violation of the Federal Employer's Liability Act, which contributed to and caused Plaintiff's mesothelioma:

a. Failing to provide a safe work place;
b. Failing to test and determine the hazardous nature of the products and requiring employees to work with same;
c. Failing to formulate and use a method of handling asbestos and asbestos products ad thus exposing plaintiff to high concentrations of toxic dust;
d. Failing to exercise reasonable care in publishing and enforcing a safety plan and method of handling hazardous products;
e. Failing to provide employees with adequate protective clothing, mask, tools, equipment, and ventilation;
f. Failing to properly supervise, train, educate, and monitor employees working with and around hazardous materials such as asbestos;
g. Failing to provide a reasonably safe and suitable workplace free from toxic fumes and asbestos dust;
h. Failing to inspect warehouses and rail cars to ascertain any contamination by toxic dust and fibers.

27. As a direct and proximate result, in whole or in part, of one or more of the above or below negligent acts or omissions on the part of the Railroad defendant, plaintiff suffered exposures to asbestos which resulted in his mesothelioma.

28. The Federal Employers Liability Act (FELA), codified at 45 U.S.C.S. § 51-60, governs the right of railroad employees injured, sickened or killed in the course of their employment through an employer's negligence to sue the employer for damages. 45 U.S.C. § 51 (2006). By assertion of Congress, FELA claims are not removable. 28 U.S.C. § 1445(a) (prohibiting removal of any civil action based on 45 U.S.C. §§ 51-60); *Burnett v. N.Y. Cent. R.R. Co.,* 380 U.S. 424, 434 (1965) ("Congress, in . . . prohibiting removal of FELA cases to federal courts, has sought to protect the plaintiff's right to bring an FELA action in a state court."); *LaDuke v. Burlington Northern R. Co.,* 879 F.2d 1556, 1561 & n.9 (7th Cir. 1989); *Gamble v. Central of Ga. Ry. Co.*, 486 F.2d 781 (5th Cir. 1973)(noting that "Congress has unequivocally declared that in FELA suits filed in state courts, the federal courts are without jurisdiction to proceed in the matter until the cause has run its course at the state level." *Id.* at 785 (overruled on other grounds).

NEGLIGENCE AND STRICT LIABILITY AGAINST MANUFACTURER/SELLER/SUPPLIER/CONTRACTOR DEFENDANTS

29. The Defendants identified above as manufacturers, sellers, contractors and/or suppliers of asbestos products were engaged in or materially participated in the business of manufacturing, or assisted in the manufacturing, or facilitating the manufacturing of asbestos products, or representing themselves as manufacturers of asbestos products, or are professional vendors of asbestos or asbestos-containing products, or as a contractor, which were expected to and did reach the Plaintiff's job site(s) where he was exposed to them.

30. The products manufactured, distributed, supplied, sold and/or used by these defendants were defective, and unreasonably dangerous per se to Petitioner who was an intended and foreseeable user and bystander that was exposed to these products. These defects include, without limitation, the following:

A. the manufacture, sale, supply and use of products that are unreasonably dangerous, or unreasonably dangerous per se;

B. manufacture, sale, supply and use of products that possess inherent and known properties that make them unreasonably dangerous by presenting high potential for causing serious injury, such as respiratory disease, cancer, and other health problems to those who would be foreseeably exposed to them in the Plaintiff;

C. lack of warning or of sufficient warning of the hazards these products would present in the course of their normal foreseeable use or intended use;

D. lack of safety instructions or of sufficient safety instructions for eliminating or reducing the health risks associated with the intended use of these products;

E. failure of defendants to inspect these products to assure sufficiency and adequacy of warnings and safety cautions;

F. failure to test or adequately test these products for defects or hazards that they could present to the intended or foreseeable users;

G. failure to truthfully report or adequately report the results of product testing, and medical studies associated with foreseeable hazards of these products by intended or foreseeable users;

H. failure to properly design these products where the nature of the product did not require use of asbestos mineral or where alternate, equally suitable substances were readily available;

I. defects in the composition and construction of these products;

J. failure to recall these products manufactured, sold and supplied;

K. failure to properly package these products so that they could be safely transported, handled, stored or disposed of;

L. over-warranting the safety of these products;

M. are liable to Plaintiff in strict liability for things in their guard, possession, custody or control, pursuant to article 2317 of the Louisiana Civil Code that have caused harm to Plaintiff.

31. The defective conditions of defendants' products and fault, as noted above, are a cause of Plaintiff's injuries and damages complained of herein.

32. Plaintiff also alleges that each and every one of the foregoing defendants were also negligent in engaging in the substandard conduct enumerated above and that this negligence was also a proximate cause of Plaintiff's injuries.

STRICT LIABILITY AND NEGLIGENCE OF CERTAIN EMPLOYER/PREMISE DEFENDANTS

33. Pursuant to La. Civil Code Article 2317, Plaintiff alleges a claim for strict liability and negligence against certain Employer/Premise Defendants: Plaintiff alleges strict premise liability against these Defendants for failing to provide Plaintiff with a safe place in which to work free from hazards of asbestos, which failure was a proximate cause of the Plaintiff's injuries.

34. The premises within which the Plaintiff worked and was exposed to asbestos, were owned by and in the custody of these certain Employer/Premise Defendants and were unreasonably dangerous due to presence and use of asbestos and asbestos-containing products with little or no precautions taken to minimize the risk of exposure and absolutely no warning of that risk. This unreasonably dangerous condition was a direct and proximate cause of the Plaintiff's injuries set forth herein.

35. These employer/premise Defendants negligently, recklessly, willfully and/or because of gross and wanton negligence, fault, or strict liability, failed to properly discharge its duties to the Plaintiff in the following particulars.

A. Failure to provide Plaintiff with a safe place to work;

B. Failure to provide the Plaintiff with adequate engineering or industrial hygiene measures to control the level of exposures to asbestos, including but not limited to local exhaust, general ventilation, respiratory protection, segregation of work involving asbestos, use of wet methods to reduce the release of asbestos into the ambient air, medical monitoring air monitoring, and procedures to prevent the Plaintiff from being exposed to and breathing asbestos; and

C. Failure to inform or warn the Plaintiff of the hazards of asbestos exposure.

These specific acts of fault were a substantial contributing factor of the Plaintiff's injuries.

STRICT LIABILITY AND NEGLIGENCE OF PREMISE OWNERS

36. The Premise Defendants identified above, are liable for Plaintiff's injuries caused by their fault, in the form of strict liability and/or negligence as detailed herein, and in failing to provide Plaintiff with a safe place to work free from the dangers of respirable asbestos-containing dust.

37. The defendants are liable to the Plaintiff for the damages described in this Petition for the damages described in this Petition for the following acts of negligence while Plaintiff was working within their respective work sites:

A. Failing to provide respiratory protection to the Plaintiff;

B. Failing to provide safety equipment to Plaintiff;

C. Failure to provide general ventilation in Plaintiff's work areas;

D. Failing to provide local exhaust in Plaintiff's work areas;

E. Failing to provide air free from airborne asbestos fibers in Plaintiff's areas;

F. Failing to provide Plaintiff with proper medical monitoring;

G. Failing to educate Plaintiff of the hazards of asbestos;

H. Failing to post warning or caution signs regarding the hazards of asbestos;

I. Failing to implement wet methods to control the level of airborne asbestos fibers in Plaintiff's work areas;

J. Failing to implement the use of asbestos-free materials; and

K. Inducing Plaintiff to work in areas polluted with respirable asbestos fibers.

38. As a direct result of the aforementioned acts, Plaintiff inhaled and otherwise ingested asbestos fibers from the asbestos and asbestos-containing products present within his work sites listed above, and as a direct result, Plaintiff suffered injuries complained herein.

39. During the course of the Plaintiff work, Plaintiff was exposed to asbestos and/or asbestos containing products, which were in the care, control and custody of these defendants. Because of the extreme hazard it poses to humans, asbestos constitutes a defect or vice in the products to which Plaintiff was exposed, which defect or vice was a cause in fact of Plaintiff's injuries described herein. Accordingly, these defendants are strictly liable to Petitioner in accordance with Louisiana Civil Code article 2315 and 2317.

40. During the course of the Plaintiff work, Plaintiff was exposed to asbestos released from these premises, which release was a cause in fact of Plaintiff's injuries described herein. Accordingly, these defendants are strictly liable to Plaintiff in accordance with, but not limited to, Louisiana Civil Code article 2315, former Louisiana Civil Code articles 660 and 669, and *Langlois v. Allied Chemical Corp*, 249 So.2d 133 (La. 1971).

41. The premises owner defendants knew or should have known that asbestos posed a hazard to humans and that there were specific engineering and industrial hygiene controls that could help reduce the levels of airborne asbestos fibers, nonetheless failed or suppressed, through silence, neglect or inaction, the truth regarding asbestos to Plaintiff so as to obtain an unjust advantage for themselves over and at expense of Plaintiff or to cause loss or inconvenience to Plaintiff. This action or inaction by the defendants was a direct and proximate cause of the damages described herein.

INSURANCE COVERAGE

42. Plaintiff avers that Sentry Insurance Company issued policies of insurance to Reilly-Benton Company that provided coverage for the causes of action asserted by plaintiff. Plaintiff

avers that Liberty Mutual Insurance Company issued policies of insurance to Wayne Manufacturing that provided coverage for the causes of action asserted by plaintiff.

43. As such, Sentry Insurance Company and Liberty Mutual Insurance Company, are liable for the damages alleged in this Petition individually, jointly and *in solido.*

CONSPIRACY ALLEGATIONS AGAINST METROPOLITAN LIFE INSURANCE COMPANY

44. METROPOLITAN LIFE INSURANCE COMPANY ("MetLife"), is a foreign insurance company domiciled in New York, and licensed to do or doing business in the State of Louisiana, and subject to jurisdiction in this Honorable Court, which may be served through its agent for service of process: Louisiana Secretary of State, 8585 Archives Avenue, Baton Rouge, LA 70809, which knowingly agreed, contrived, combined, confederated and conspired with other entities, including Johns-Manville, to cause Plaintiff's injury, disease and illness by exposing Plaintiff to harmful and dangerous asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products, which directly expose worker like Plaintiff, which contaminate the clothing of the worker, which subsequently expose the innocent at off site locations. Defendant and other entities further knowingly agreed, contrived, combined, confederated and conspired to deprive Plaintiff and fellow Johns-Manville workers of the opportunity of informed free choice as to whether to use said asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products or to expose him/her to said dangers. In this connection, Plaintiff has sued MetLife in its capacity as a co-conspirator with asbestos companies to suppress and distort information provided to workers, doctors and the scientific community about the hazards of asbestos. Defendant committed the above-described wrongs by willfully misrepresenting and suppressing the truth as to the risks and dangers associated with the use of and exposure to Defendant's and/or co-conspirators asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

45. In furtherance of said conspiracy, Defendant MetLife, performed the following overt acts:

A. For many decades, Defendant MetLife, individually, jointly, and in solido, in conspiracy with other entities, has been in possession of medical and scientific data, literature and test reports that clearly indicated that the inhalation of asbestos dust and fibers resulting

from the ordinary and foreseeable use of said asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products were unreasonably dangerous, hazardous, deleterious to human health, carcinogenic and potentially deadly;

B. Despite the medical and scientific data, literature and test reports possessed by and available to Defendant MetLife individually, jointly, and in solido, in conspiracy with other entities, fraudulently, willfully and maliciously:

(1) Withheld, concealed and suppressed said medical and scientific data, literature and test reports regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases from Plaintiff and workers who were using and being exposed to Defendants' asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products;

(2) Caused to be released, published and disseminated medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis, cancer, mesothelioma and other illnesses and diseases, which Defendant knew were incorrect, incomplete, outdated and misleading; and

(3) Distorted the results of medical examinations conducted upon Plaintiff and/or Johns-Manville workers (or persons in the surrounding neighborhood to a JM plant) such as Plaintiff, who were using asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and being exposed to the inhalation of asbestos dust and fibers by falsely stating and/or concealing the nature and extent of the harm to which Plaintiff and workers/persons such as Plaintiff, have suffered.

C. In addition, MetLife contrived, combined, confederated and conspired through a series of industry trade meetings and the creation of organizations such as the Air Hygiene Foundation (later the Industrial Hygiene Foundation) to establish authoritative standards for the control of industrial dusts which would act as a defense in personal injury lawsuits, despite knowing that compliance with such standards would not protect workers/persons such as Plaintiff from contracting an asbestos disease or cancer.

D. In furtherance of said conspiracies, MetLife and/or its co-conspirators

contributed to cause the establishment of a Threshold Limit Value for asbestos exposure, and contributed to the maintenance of such Threshold Limit Value despite evidence that this supposed "safe" level of exposure to asbestos would not protect the health of workers/persons such as Plaintiff even if complied with.

E. As the direct and proximate result of the false and fraudulent representations, omissions and concealments set forth above, MetLife, individually, jointly, in solido, and in conspiracy with others, intended to induce the Plaintiff and/or workers to rely upon said false and fraudulent representations, omissions and concealments, to continue to be exposed to the dangers inherent in the use of and exposure to asbestos-containing products, and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products and/or products which caused the release of respirable asbestos fibers.

46. MetLife individually, and as members of a conspiracy, and as agents of other co-conspirators was in a position of superior knowledge regarding the health hazards of asbestos and therefore the Plaintiff and others deciding to use said asbestos-containing products (or reside in close proximity to a co-conspirator's facility or otherwise breathe asbestos dust attributable to a co-conspirator) to which Plaintiff was exposed had a right to rely and did rely on the published reports commissioned by the Defendant regarding the health hazards of asbestos and the absence of published medical and scientific data regarding the hazards of asbestos and asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products.

47. As a direct and proximate result of Defendant's intentional publication of deceptive and misleading medical data and information, as described in the preceding paragraphs, upon which data the Plaintiff (or index worker) reasonably relied, the Defendant caused asbestos and asbestos-containing products and/or machinery requiring or calling for the use of asbestos and/or asbestos-containing products to be used by or near Plaintiff and Plaintiff inhaled or otherwise ingested hazardous asbestos dust, and/or will inhale or ingest hazardous asbestos dust, resulting in injuries.

48. Additionally and alternatively, as a direct and proximate result of MetLife's actions and omissions as described above, the Plaintiff (or index worker) was caused to remain ignorant concerning the danger of human exposure to asbestos, resulting in damage to the Plaintiff by depriving the Plaintiff and workers/persons such as Plaintiff, of opportunities to be aware of the hazards of asbestos exposure, and thus theopportunity to take proper safety precautions and/or

avoid exposure to asbestos dust. Because of this ignorance on the part of the Plaintiff, Defendant's failure to warn, Defendant's concealment from the Plaintiff (or index worker) of the alteration of published test results, and the actions and omissions and concerted design and conspiracy of MetLife and others, all as described above, the Plaintiff was environmentally and/or occupationally exposed to asbestos and asbestos-containing products and/or machinery containing or calling for the use of asbestos and/or asbestos-containing products used at his/her or the index worker's places of employment and/or in his/her neighborhood, and has inhaled or otherwise ingested hazardous asbestos dust resulting in the development of mesothelioma.

49. As a direct and proximate result of one or more of the foregoing acts or omissions on the part of the Defendant METROPOLITAN LIFE INSURANCE COMPANY, the Plaintiff was exposed to and inhaled, ingested or otherwise absorbed asbestos fiber causing Plaintiff to develop an asbestos disease, which ultimately led or will lead to death and to incur and sustain damages as identified and pled in this and all other petitions for damages.

DAMAGES

50. The conduct of Defendants, as alleged hereinabove, was a direct, proximate and producing cause of the damages resulting from asbestos-caused mesothelioma of the Petitioner, and of the following general and special damages including:

A. The conscious physical pain and suffering and mental anguish sustained by Petitioner (past, present and future);

B. The disfigurement suffered by Petitioner;

C. The physical impairment suffered by Petitioner (past, present and future);

D. Reasonable and necessary medical expenses incurred by Petitioner;

E. All past, present and future lost earnings and loss of earning capacity;

F. Loss of quality of life;

G. All forms of relief or categories of damages allowed by Louisiana law for survival claims, against parties the law allows such claims to be alleged against, with interest from the date of injury until paid, plus costs of these proceedings.

51. Plaintiff demands a trial by jury on all issues.

WHEREFORE, Petitioner demands judgment against the Defendants, and each of them, jointly, severally and/or in solido for all damages, for their costs expended herein, for judicial

interest from the date of judicial demand, and for such other and further relief, both at law and in equity, to which Petitioner may show himself justly entitled.

Respectfully submitted,

BOLING LAW FIRM, LLC

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ATTORNEYS FOR PETITIONERS

A TRUE COPY
DEPUTY CLERK CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LA

PLEASE SERVE THE FOLLOWING DEFENDANTS WITH A COPY OF PLAINTIFF'S PETITION FOR DAMAGES:

1. ANCO INSULATIONS, INC
   Through its agent for service:
   CT Corporation System
   3867 Plaza Tower Drive
   Baton Rouge, LA 70816

2. FOSTER WHEELER ENERGY CORPORATION
   Through its agent for service:
   United Agent Group, Inc.
   1070-B West Causeway Approach
   Mandeville, LA 70471

3. GENERAL ELECTRIC COMPANY
   Through its agent for service:
   CT Corporation System
   3867 Plaza Tower Drive
   Baton Rouge, LA 70816

4. GOULDS PUMPS (IPG), INC.
   Through its agent for service:
   CT Corporation System
   3867 Plaza Tower Dr.
   Baton Rouge, LA 70816

5. RILEY POWER, INC.
   Through its agent for service:
   CT Corporation System
   3867 Plaza Tower Drive
   Baton Rouge, LA 70816

6. SENTRY INSURANCE COMPANY
   Through its agent for service:
   Louisiana Secretary of State
   8585 Archives Ave.
   New Orleans, LA 70125

7. TAYLOR-SEIDENBACH, INC.
   Through its agent for service:
   Hal Shepard
   731 South Scott St.
   New Orleans, LA 70119

8. ZURN INDUSTRIES, INC.
   Through its agent for service:
   CT Corporation System
   3867 Plaza Tower Drive
   Baton Rouge, LA 70816

9. UNION CARBIDE CORPORATION
   Through its agent for service:
   CT Corporation System
   3867 Plaza Tower Drive
   Baton Rouge, LA 70816

10. METROPOLITAN LIFE INSURANCE COMPANY
    Through the Louisiana Secretary of State:
    8585 Archives Avenue
    Baton Rouge, LA 70809

11. INTERNATIONAL PAPER COMPANY
    (individually and as successor by merger to Champion International Corporation and U.S. Plywood)
    Through its agent for service:
    CT Corporation System
    3867 Plaza Tower Drive
    Baton Rouge, LA 70816

12. HOPEMAN BROTHERS, INC. **LONG ARM SERVICE**
    AWH Corporation
    435 Essex Ave., Suite 101
    Waynesboro, Virginia 22980

13. LIBERTY MUTUAL INSURANCE COMPANY
    (as insurer for Wayne Manufacturing)
    Through its agent for service:
    Louisiana Secretary of State
    8585 Archives Ave.
    Baton Rouge, LA 70809

14. HUNTINGTON INGALLS INCORPORATED
    (f/k/a Northrup Grumman Shipbuilding, Inc., f/k/a Northrup Grumman Ship Systems, Inc., f/k/a Avondale Industries, Inc., f/k/a Avondale Shipyards, Inc., f/k/a Avondale Marine Ways, Inc.)
    Through its agent for service:
    CT Corporation System
    3867 Plaza Tower Drive
    Baton Rouge, LA 70816

15. ENTERGY LOUISIANA, LLC
    Through its agent for service
    John A. Braymer
    446 North Blvd.
    Baton Rouge, LA 70802

16. 3M COMPANY
    Through its agent for service:
    Corporation Service Company
    501 Louisiana Avenue
    Baton Rouge, LA 70802

17. BAYER CROPSCIENE, INC. **LONG ARM SERVICE**
    Corporation Service Company
    80 State Street
    Albany, New York 12207

18. Eagle, Inc.
    Through its agent for service:
    Susan B. Kohn
    1100 Poydras St.
    New Orleans, LA 70163

19. UNION PACIFIC RAILROAD COMPANY
    Through its agent for service:
    CT Corporation System
    3867 Plaza Tower Drive
    Baton Rouge, LA 70816

20. WYETH HOLDINGS LLC
    Through its agent for service:
    CT Corporation System
    3867 Plaza Tower Drive
    Baton Rouge, LA 70816

21. PHARMACIA LLC
    Through its agent for service:
    CT Corporation System
    3867 Plaza Tower Drive
    Baton Rouge, LA 70816

22. REDCO CORPORATION
    (Pursuant to the Louisiana Long Arm Statute)
    Through its agent for service:
    100 First Stamford Place
    Stamford, CT 06902

23. BURMASTER LAND & DEVELOPMENT COMPANY, LLC
    Through its agent for service:
    A.J. Burmaster
    7033 Edgewater Dr.
    Mandeville, LA 70471

24. GENUINE PARTS COMPANY
    Through its agent for service:
    CT Corporation System
    3867 Plaza Tower Dr.
    Baton Rouge, LA 70816

25. HONEYWELL INTERNATIONAL, INC.
    Through its agent for service:
    Corporation Service Company
    501 Louisiana Avenue
    Baton Rouge, LA 70802

26. PARAMOUNT GLOBAL
    Through its agent for service:
    Corporation Service Company
    501 Louisiana Ave.
    Baton Rouge, LA 70802

27. CORBESCO, INC.
Through its agent for service:
Kevin J. Webb
1261 West Causeway Approach, Suite 200
Mandeville, LA 70471

Exhibit C

By-Laws

Certified to be a true and correct copy of the By-Laws of the Hopeman Brothers Merger, Inc., adopted by the Board of Directors on January 30, 2007

David M. Lascell
Secretary

BY-LAWS

OF

HOPEMAN BROTHERS MERGER, INC.

ARTICLE I.
SHAREHOLDERS

Section 1. ***Annual Meeting.*** The annual meeting of shareholders, after the year 2006, shall be held on the 15th day of March of each year, if not a legal holiday, and if a legal holiday, then on the next business day following, or on such date and at such time as may be fixed by the Board of Directors. At the meeting the shareholders shall elect a board of directors by a plurality vote and transact such other business as may properly be brought before the meeting.

Section 2. ***Special Meetings.*** Special meetings of shareholders may be held at any time in the interval between annual meetings. Special meetings may be called by the President, or by the Chairman of the Board of Directors, or by request of a majority of the Board of Directors, or by the Secretary upon the written request of the holders of not less than twenty percent (20%) of the shares outstanding and entitled to vote at the meeting, which written request shall state the purpose or purposes of the meeting and the matters proposed to be acted on thereat. At the special meeting no business shall be acted upon which is not related to the purpose or purposes stated in the notice of the meeting. In the event that a special meeting of shareholders is called by the Secretary upon such written request, such requesting shareholders shall pay the reasonably estimated costs of preparing and mailing notices of such meeting. Nothing contained herein shall limit the right and power of directors or shareholders to require a special meeting for the election of directors pursuant to Section 655 of the Stock Corporation Act.

Section 3. ***Place of Meetings.*** Each meeting of shareholders shall be held at the principal office of the Corporation or at such other place within or without the State of Virginia as the Board of Directors may from time to time determine.

Section 4. ***Notice of Meetings.*** Written notice of the date, time and place of each meeting of shareholders, indicating that it is being issued by or at the direction of the person or persons

calling the meeting, shall be given personally or by mail (as hereinafter provided), not less than ten (10) days nor more than sixty (60) days before the date fixed for the meeting, to each shareholder entitled to vote at the meeting. In the case of each special meeting of shareholders, such notice shall also state the purpose or purposes of the meeting, and at the special meeting no business shall be acted upon which is not related to the purpose or purposes stated in the notice of the meeting. Each notice of meeting of shareholders shall be given to a shareholder by delivering it to him in person, or by placing it in the United States mail, first-class postage prepaid and addressed to him at his address as it appears on the books of the Corporation, unless he shall have filed with the Secretary of the Corporation a written request that notices intended for him be mailed to some other address, in which event it shall be mailed to the address designated in such request. Notice of meeting as required by this Section need not be given to any shareholder who submits, in person or by proxy, whether before or after the meeting, a signed waiver of notice. The attendance, in person or by proxy, of any shareholder at a meeting without protesting prior to the conclusion of the meeting the lack of notice to him of such meeting, shall constitute a waiver of notice by him. No notice of an adjourned meeting of shareholders need be given unless the Board of Directors fixes a new record date for the adjourned meeting.

Section 5. ***Record Dates.*** For the purpose of determining the shareholders entitled to notice of or to vote at a meeting of shareholders or any adjournment thereof, the Board of Directors may fix a date of record which shall not be more than sixty (60) days nor less than ten (10) days before the date of such meeting. For the purpose of determining shareholders entitled to express consent to or dissent from any proposal without a meeting, or for determining shareholders entitled to receive payment of a dividend or the allotment of any rights, or for any other action, the Board of Directors may fix a date of record which shall not be more than sixty (60) days prior to such action.

Section 6. ***Quorum.*** At each meeting of shareholders, in order to constitute a quorum there shall be present in person or represented by proxy shareholders holding a majority in number of the shares of the Corporation outstanding and entitled to vote thereat; but if there is no quorum, the holders of such shares so present or represented may by majority vote adjourn the meeting from time to time (but not for a period of more than thirty (30) days at any one time) without notice other than by announcement at the meeting, until a quorum shall attend. At any such adjournment at which a quorum shall attend, any business may be transacted which might have been transacted at the meeting as originally called. When a quorum is once present, it is not broken by the subsequent withdrawal of any shareholder.

Section 7. ***Voting.*** At each meeting of shareholders, each shareholder entitled to vote thereat may vote in person or by proxy, and shall have one vote for each share standing in his name on the books of the Corporation. Upon demand of one or more shareholders holding in the aggregate ten percent (10%) of the shares present in person or represented by proxy and entitled to vote at the meeting, voting shall be by ballot. A plurality of the votes cast shall be sufficient to elect directors, and a majority of votes cast shall be sufficient to take any other action, except as may otherwise be provided by these By-Laws.

Section 8. ***Shareholder List.*** A complete list of the shareholders entitled to vote at the ensuing election, arranged in alphabetical order, with the address of each, and the number of voting

shares held by each, shall be prepared by the secretary and filed in the office where the election is to be held, at least ten (10) days before every election, and shall at all times, during the usual hours for business, and during the whole time of said election, be open to the examination of any shareholder.

Section 9. ***Proxies.*** Every proxy shall be in writing and subscribed by the shareholder giving the same, or his duly authorized attorney, and dated. Proxies may be submitted by hand, facsimile, telegram, electronic delivery or mail. No proxy which is dated more than eleven (11) months before the meeting at which it is offered shall be accepted, unless such proxy shall, on its face, name a longer period for which it is to remain in force.

Section 10. ***Conduct of Meetings.*** Each meeting of shareholders shall be presided over by the President of the Corporation or, in his absence, by the Chairman of the Board (if any) or, in the absence of both of them, by an Executive Vice President (if any) or, in the absence of all such officers, by a chairman chosen at the meeting. The Secretary of the Corporation or, in his absence, a person chosen by the chairman of the meeting, shall act as secretary of the meeting.

Section 11. ***Action Without a Meeting.*** Whenever shareholders are required or permitted to take any action by vote, such action may be taken without a meeting on written consent, setting forth the action so taken, signed by the holders of all shares, all in accordance with Section 657 of the Stock Corporation Act. The Corporation shall promptly provide written notice to any shareholder who does not consent in writing to the action taken. Such written consent shall have the same effect as a vote of the shareholders entitled to vote thereon.

ARTICLE II.
BOARD OF DIRECTORS

Section 1. ***Election and Powers.*** The Board of Directors shall have the management and control of the business and affairs of the Corporation. The directors shall be elected by the shareholders entitled to vote thereon at each annual meeting of shareholders, and each director shall serve until his successor is duly elected or appointed and qualifies, unless his directorship shall be earlier vacated by his death, resignation or removal as provided by this Article.

Section 2. ***Number.*** The number of directors constituting the entire Board of Directors shall be such number as shall be designated in the Articles of Incorporation or as amended, from time to time, by the shareholders or by a majority vote of the entire Board. As used in these By-Laws, the term "entire Board" shall mean the total number of directors which the Corporation would have if there were no vacancies.

Section 3. ***Vacancies.*** Vacancies on the Board of Directors (including any vacancies resulting from an increase in the number of directors) created for any reason except the removal of one or more directors by the shareholders, may be filled by vote of the Board of Directors. If the number of directors then in office is less than a quorum, such vacancies may be filled by a majority vote of the directors then in office. A successor director elected under this Section shall hold office for the unexpired portion of the term of the director whose place was vacated. In the event of an increase in the number of directors, each additional director elected under this

Section shall hold office until his successor has been duly elected or appointed and shall have qualified.

Section 4. ***Removal.*** Any one or more directors may be removed from office, with or without cause, by the shareholders entitled to vote in the election of directors. Any vacancy on the Board resulting from such removal may be filled by the shareholders entitled to vote in the election of directors, and any successor director elected to fill such vacancy shall hold office for the unexpired portion of the term of the director who was removed.

Section 5. ***Meetings.*** Regular meetings of the Board of Directors shall be held at such times as the Board may from time to time determine. Special meetings of the Board of Directors shall be held at any time, upon call by the Chairman of the Board, the President or at least one-third of the directors then in office.

Section 6. ***Place of Meetings.*** Each meeting of the Board of Directors shall be held at the principal office of the Corporation or at such other place, within or without the State of Virginia, as the Board may from time to time determine.

Section 7. ***Notice of Meeting.*** Written notice of the date, time and place of each regular and special meeting of the Board of Directors shall be given to each director either (a) by delivering the same to him personally, or sending the same to him by telecopier, telex, telegraph or similar mode of communication, or leaving the same at his residence or usual place of business, in each case at least twenty-four (24) hours before the meeting, or (b) by placing the same in the United States mail, first-class postage prepaid, or delivering the same to a reputable express mail delivery service, and addressed to him at his last known address according to the records of the Corporation, in either case at least three (3) days before the meeting. No notice of any adjourned meeting of the Board of Directors need be given other than by announcement at the meeting.

Section 8. ***Waiver of Notice.*** Notice of any meeting of the Board of Directors need not be given to any director who submits a signed written waiver thereof whether before, during or after the meeting, nor to any director who attends the meeting without protesting, either prior thereto or at its commencement, the lack of notice to him.

Section 9. ***Quorum.*** A majority of the entire Board shall be necessary to constitute a quorum for the transaction of any item of business at each meeting of the Board of Directors; but if at any meeting there is less than a quorum present, a majority of those directors present may adjourn the meeting from time to time without notice other than by announcement at the meeting, until a quorum shall attend. At any such adjournment at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 10. ***Action Without a Meeting.*** Any action required or permitted to be taken by the Board of Directors or by any committee thereof at a duly held meeting may be taken without a meeting if all members of the Board of Directors or of the committee, as the case may be, consent in writing to the adoption of resolutions authorizing the action. Such resolutions and such written consents shall be filed with the minutes of the proceedings of the Board of Directors or of the committee.

Section 11. ***Personal Attendance by Conference Communication Equipment.*** Any one or more members of the Board of Directors or of any committee thereof may participate in a meeting of the Board or of such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.

Section 12. ***Compensation.*** Directors shall not receive compensation for their services in that capacity, but by resolution of the Board of Directors a fixed sum and reimbursement of expenses may be paid to directors for attendance at each meeting of the Board. Nothing herein shall be construed to preclude a director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. ***Executive Committee and Other Committees.*** The Board of Directors may, in its discretion and by a majority vote of the entire Board, appoint an Executive Committee, or one or more other committees of the Board as the Board of Directors may from time to time determine. The Executive Committee shall have and may exercise between meetings of the Board all the powers of the Board of Directors in the management and control of the business and affairs of the Corporation, and other committees of the Board shall have such powers as are conferred upon them by the Board of Directors, except that neither the Executive Committee nor any other committee shall have power: (a) to recommend to shareholders any action requiring shareholder approval; (b) to fill vacancies on the Board of Directors or on any committee thereof; (c) to fix compensation of directors for service on the Board of Directors or on any committee thereof; (d) to adopt, amend or repeal By-Laws; (e) to amend or repeal any resolution of the Board of Directors which is not by its terms made amendable or repealable by such committee; or (f) to remove, or fix the compensation of, any officer who is elected by the Board of Directors. In the absence of any member of the Executive Committee or of any other committee of the Board, the members thereof present at any meeting may appoint a director previously so designated by the Board of Directors as a committee alternate to act in place of such absent member. The Board of Directors shall have the power at any time to change the membership of the Executive Committee or of any other committee of the Board, to fill vacancies in such committee or to dissolve it. A majority of the members of the Executive Committee or of any other committee of the Board shall constitute a quorum for the transaction of any item of business of such committee. The Executive Committee and each other committee of the Board may make other rules for the conduct of its business, and may appoint such subcommittees and assistants, as may from time to time be necessary, unless the Board of Directors shall provide otherwise.

ARTICLE III.
OFFICERS

Section 1. ***Election of Officers.*** The Board of Directors shall elect or appoint a President and a Secretary of the Corporation, and may elect or appoint a Chairman of the Board from among the directors, one or more Vice Presidents, a Treasurer and such other officers as it shall determine. Each officer shall serve at the pleasure of the Board of Directors and until his successor is duly elected or appointed and qualifies, or until the earlier of his death, resignation or removal as provided by this Article. Any or all offices may be held by the same person. Any vacancies in any office may be filled by the Board of Directors.

Section 2. ***Assistant and Subordinate Officers.*** The Board of Directors may from time to time elect or appoint one or more Assistant Secretaries, one or more Assistant Treasurers and such other subordinate officers or agents of the Corporation as it may deem proper, each of whom shall hold office at the pleasure of the Board of Directors and shall have such powers and duties as are assigned to him by the Board.

Section 3. ***Removal.*** Any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors.

Section 4. ***Compensation.*** The Board of Directors shall fix the compensation of all officers of the Corporation, except that the Board of Directors may authorize the President to fix the compensation of such officers (other than the President) as the Board may specify.

Section 5. ***Chairman of the Board.*** The Chairman of the Board, if there is one, shall preside at all meetings of the Board of Directors and shall perform such other duties as the Board of Directors may direct.

Section 6. ***President.*** The President shall be the Chief Executive Officer of the Corporation and shall, subject to the direction of the Board of Directors, have the general management of the affairs of the Corporation. The President shall preside at all meetings of the shareholders. If there is no Chairman of the Board, or in his absence or inability to act, the President shall also perform all duties of the Chairman of the Board subject, however, to the control of the Board of Directors.

Section 7. ***Vice Presidents.*** Any one or more of the Vice Presidents may be designated by the Board of Directors as an Executive Vice President. At the request of the President, or in his absence or inability to act, the Executive Vice President shall perform the duties and exercise the functions of the President. If there is no Executive Vice President, or if there is more than one, the Board of Directors may determine which one or more of the Vice Presidents shall perform any of such duties or exercise any of such functions; if such determination is not made by the Board of Directors, the President may make such determination; otherwise, any of the Vice Presidents may perform any of such duties or exercise any of such functions. Each Vice President shall have such other powers and duties as may be properly designated by the Board of Directors and the President.

Section 8. ***Secretary.*** The Secretary shall keep full minutes of all meetings of shareholders and of the Board of Directors in books provided for that purpose. He shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law. He shall be the custodian of the records and of the corporate seal of the Corporation and he shall affix the corporate seal to all documents the execution of which on behalf of the Corporation is duly authorized by the Board of Directors, and when so affixed he may attest the same. The Secretary shall have such other powers and duties as may be properly designated by the Board of Directors and the President.

Section 9. ***Treasurer.*** The Treasurer shall keep correct and complete books and records of account of the Corporation. Subject to the control and supervision of the Board of Directors and the President, or such other officer as the Board of Directors and the President may designate, the

Treasurer shall: establish and execute programs for the provision of the capital required by the Corporation; maintain banking arrangements to receive, have custody of and disburse the Corporation's moneys and securities; invest the Corporation's funds as required; obtain insurance coverage as required; and direct the granting of credit by and the collection of accounts due to the Corporation. The Treasurer shall have such other powers and duties as may be properly designated by the Board of Directors and the President.

ARTICLE IV.
SHARE CERTIFICATES

Section 1. ***Form and Signatures.*** The interest of each shareholder of the Corporation shall be evidenced by certificates for shares in such form as the Board of Directors may from time to time prescribe. The share certificates shall be signed by the Chairman of the Board or the President or a Vice President, and by the Secretary or the Treasurer or an Assistant Secretary or Assistant Treasurer, sealed with the corporate seal of the Corporation, and countersigned and registered in such manner, if any, as the Board of Directors may prescribe. When any share certificate is countersigned by a transfer agent or registered by a registrar, other than the Corporation itself or its employee, the signatures of such officers, and the corporate seal, may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to hold such office before the share certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person had not ceased to hold such office.

Section 2. ***Transfer of Shares.*** Shares of the Corporation shall be transferred on the books of the Corporation upon surrender, by the registered holder thereof, in person or by his attorney, of one or more certificates for the same number of shares, accompanied by a proper assignment or powers of transfer endorsed thereon or attached thereto, duly signed by the person appearing by each certificate to be the owner of the shares represented thereby, with such proof of authenticity of the signature as the Corporation, or its agents, may reasonably require. Such certificate shall have affixed thereto all stock transfer stamps required by law. The Board of Directors shall have power and authority to make all such other rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates for shares.

Section 3. ***Mutilated, Lost, Stolen or Destroyed Certificates.*** The holder of any certificate representing shares of the Corporation shall immediately notify the Corporation of any mutilation, loss, theft or destruction thereof. The Board of Directors may, in its discretion, cause one or more new certificates, for the same number of shares in the aggregate, to be issued to such holder upon surrender of the mutilated certificate or, in case of loss, theft or destruction of the certificate, upon satisfactory proof of such loss, theft or destruction and the deposit of indemnity by way of bond or otherwise in such form and amount and with such surety or security as the Board of Directors may require to indemnify the Corporation and its transfer agent and registrar, if any, against loss or liability by reason of the issuance of such new certificates; but the Board of Directors may, in its discretion, refuse to issue such new certificates, save upon the order of a court having jurisdiction therein.

Section 4. ***Stock Ledgers.*** The stock ledgers of the Corporation, containing the name and address of each shareholder and the number of shares held by each, shall be maintained at the

principal office of the Corporation, or if there be a transfer agent, at the office of such transfer agent, as the Board of Directors shall determine.

Section 5. ***Transfer Agents and Registrars.*** The Corporation may have one or more transfer agents and one or more registrars of its shares or of any class or classes of its shares whose respective duties the Board of Directors may from time to time determine.

ARTICLE V.
INDEMNIFICATION

Section 1. ***Generally.*** Each person who was or is made a party to or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or his testator or intestate (a) is or was a director or officer of the Corporation or (b) is or was a director or officer of the Corporation who serves or served, in any capacity, any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise at the request of the Corporation (hereinafter an "indemnitee"), shall be indemnified and held harmless by the Corporation against all expense, liability and loss, including without limitation ERISA excise taxes or penalties, judgments, fines, penalties, amounts paid in settlement (provided the Board of Directors shall have given its prior consent to such settlement, which consent shall not be unreasonably withheld by it) and reasonable expenses, including attorneys' fees, suffered or incurred by such indemnitee in connection therewith, and such indemnification shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs and fiduciaries; provided, however, that no indemnification may be made to or on behalf of any director or officer if his acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or otherwise disposed of, or if he personally gained in fact a financial profit or other advantage to which he was not legally entitled. Notwithstanding the foregoing, except as contemplated by Section 3 of this Article, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 2. ***Advancement of Expenses.*** All expenses reasonably incurred by an indemnitee in connection with a threatened or actual proceeding with respect to which such indemnitee is or may be entitled to indemnification under this Article shall be advanced to him or promptly reimbursed by the Corporation in advance of the final disposition of such proceeding, upon receipt of an undertaking by him or on his behalf to repay the amount of such advances, if any, as to which he is ultimately found not to be entitled to indemnification or, where indemnification is granted, to the extent such advances exceed the indemnification to which he is entitled. Such person shall cooperate in good faith with any request by the Corporation that common counsel be used by the parties to any proceeding who are similarly situated unless to do so would be inappropriate due to an actual or potential conflict of interest.

Section 3. ***Procedure for Indemnification.***

(a) Not later than thirty (30) days following final disposition of a proceeding with respect to which the Corporation has received written request by an indemnitee for

indemnification pursuant to this Article or with respect to which there has been an advancement of expenses pursuant to Section 2 of this Article, if such indemnification has not been ordered by a court, the Board of Directors shall meet and find whether the indemnitee met the standard of conduct set forth in Section 1 of this Article and, if it finds that he did, or to the extent it so finds, the Board shall authorize such indemnification.

(b) Such standard shall be found to have been met unless (i) a judgment or other final adjudication adverse to the indemnitee established that the standard of conduct set forth in Section 1 of this Article was not met, or (ii) if the proceeding was disposed of other than by judgment or other final adjudication, the Board of Directors finds in good faith that, if it had been disposed of by judgment or other final adjudication, such judgment or other final adjudication would have been adverse to the indemnitee and would have established that the standard of conduct set forth in Section 1 of this Article was not met.

(c) If the Board of Directors fails or is unable to make the determination called for by paragraph (a) of this Section 3, or if indemnification is denied, in whole or part, because of an adverse finding by the Board of Directors, or because the Board of Directors believes the expenses for which indemnification is requested to be unreasonable, such action, inaction or inability of the Board of Directors shall in no way affect the right of the indemnitee to make application therefor in any court having jurisdiction therein. In such action or proceeding, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the issue shall be whether the indemnitee met the standard of conduct set forth in Section 1 of this Article, or whether the expenses were reasonable, as the case may be (not whether the finding of the Board of Directors with respect thereto was correct). If the judgment or other final adjudication in such action or proceeding establishes that the indemnitee met the standard set forth in Section 1 of this Article, or that the disallowed expenses were reasonable, or to the extent that it does, the Board of Directors shall then find such standard to have been met or the expenses to be reasonable, as the case may be, and shall grant such indemnification, and shall also grant to the indemnitee indemnification of the expenses incurred by him in connection with the action or proceeding resulting in the judgment or other final adjudication that such standard of conduct was met, or if pursuant to such court determination such person is entitled to less than the full amount of indemnification denied by the Corporation, the portion of such expenses proportionate to the amount of such indemnification so awarded. Neither the failure of the Board of Directors to have made timely a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in Section 1 of this Article, nor an actual determination by the Board of Directors that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct. In any suit brought by the indemnitee to enforce a right to indemnification, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to indemnification, under this Article or otherwise, shall be on the Corporation.

(d) A finding by the Board of Directors pursuant to this Section 3 that the standard of conduct set forth in Section 1 of this Article has been met shall mean a finding (i) by the Board of Directors acting by a quorum consisting of directors who are not parties to such proceeding, or (ii) if such a quorum is not obtainable, or if obtainable, such a quorum so directs, by the Board of

Directors upon the written opinion of independent legal counsel that indemnification is proper in the circumstances because the applicable standard of conduct has been met, or by the shareholders upon a finding that such standard of conduct has been met.

Section 4. ***Contractual Article.*** The rights conferred by this Article are contract rights which shall not be abrogated by any amendment or repeal of this Article with respect to events occurring prior to such amendment or repeal and shall, to the fullest extent permitted by law, be retroactive to events occurring prior to the adoption of this Article. No amendment of the Stock Corporation Act, insofar as it may reduce the permissible extent of the right of indemnification of an indemnitee under this Article, shall be effective as to such person with respect to any event, act or omission occurring or allegedly occurring prior to the effective date of such amendment, irrespective of the date of any claim or legal action in respect thereof. This Article shall be binding on any successor to the Corporation, including without limitation any person or entity which acquires all or substantially all of the Corporation's assets.

Section 5. ***Non-Exclusivity.*** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any person covered hereby may be entitled other than pursuant to this Article. The Corporation is authorized to enter into agreements with any such person providing rights to indemnification or advancement of expenses in addition to the provisions therefor in this Article, and the shareholders and the Board of Directors are authorized to adopt, in their discretion, resolutions providing any such person with any such rights.

Section 6. ***Insurance.*** The Corporation may, to the extent authorized from time to time by the Board of Directors, maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or of any other corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article or applicable law.

Section 7. ***Indemnification of Employees and Agents of the Corporation.*** The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and the advancement of expenses to any employee or agent of the Corporation with the same scope and effect as provided by this Article to directors and officers of the Corporation.

ARTICLE VI.
FINANCES

Section 1. ***Dividends.*** The Board of Directors, in its sole discretion, may declare dividends on the shares of the Corporation, payable upon such dates as the Board of Directors may designate.

Section 2. ***Reserves.*** Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums, as the Board of Directors, in its sole discretion, may from time to time deem proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose or purposes as the Board of Directors shall deem

conducive to the interests of the Corporation, and the Board of Directors may modify or abolish any such reserve or reserves in the manner in which it was created.

Section 3. ***Bills, Notes, Etc.*** All checks or demands for money and notes or other instruments evidencing indebtedness or obligations of the Corporation shall be made in the name of the Corporation and shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

ARTICLE VII.
AMENDMENTS

Section 1. ***Power to Amend.*** By-Laws of the Corporation may be adopted, amended or repealed by the shareholders entitled to vote in the election of directors. In addition, By-Laws of the Corporation may be adopted, amended or repealed by the Board of Directors by a majority vote of the entire Board, but any By-Law adopted by the Board of Directors may be amended or repealed by such shareholders.

Section 2. ***Notice of Amendment Affecting Election of Directors.*** If any By-Law regulating an impending election of directors is adopted, amended or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of shareholders for the election of directors the By-Law so adopted, amended or repealed, together with a concise statement of the changes made.

ARTICLE VIII.
IN GENERAL

Section 1. ***Definitions.***

(a) As used in these By-Laws, the term "Stock Corporation Act" shall mean the Virginia Stock Corporation Act, Title 13.1 of the Code of Virginia, as it may from time to time be amended.

(b) Wherever used in these By-Laws, the masculine pronoun shall include the feminine and the neuter, as appropriate in the context.

Section 2. ***Construction.*** The provisions of these By-Laws shall at all times be subject to the provisions of applicable law in effect from time to time and the provisions of the Articles of Incorporation of the Corporation, as it may from time to time be amended. In the event of any necessary conflict between any provision of these By-Laws and any provision of applicable law then in effect, such provision of law shall control. In the event of any necessary conflict between any provision of these By-Laws and any provision of the Articles of Incorporation then in effect, such provision of the Articles of Incorporation shall control. The Article and Section headings of these By-Laws are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention expressed hereby.

* * * * *

Exhibit D

Sample Insurance Policy

T/JK/4/10/68

New York - 505 - A/C #C475773
John C. Kemp, Inc.
Renewing XBC 1818
381706-0 (B)

EXCESS BLANKET CATASTROPHE LIABILITY POLICY

NO. XBC 41712

DECLARATIONS

Named Insured: Hopeman Brothers Inc., Et al.
(See Named Insured Endorsement Attached)

Address: 156 East 46th Street, New York, New York

Policy Period: From February 14, 1968 to February 14, 1971
12:01 A.M., standard time at the address of the Named Insured as stated herein.

Retained Limit - INA's Limit of Liability

Retained Limit

Item 1. $ 5,000,000.00 as the result of any one occurrence not covered by the underlying insurance listed in Schedule A or by other underlying insurance collectible by the Insured.

INA's Limit of Liability

Item 2. $ 15,000,000.00 as the result of any one occurrence on account of personal injury, property damage or advertising offense, or any combination thereof.

Item 3. $ 15,000,000.00 on account of all occurrences during each policy year arising out of the products hazard or the completed operations hazard, or both combined.

Premium: $13,500.00 Fixed Charge

In the event of cancellation by the Named Insured, INA shall receive and retain not less than $ 1,250.00 as the Minimum Premium.

Endorsements attached to policy at inception:

(1) Nuclear Energy Liability Exclusion Endorsement (Form #LC-1012)
(2) Premium Computation Endorsement
(3) Named Insured Endorsement
(4) Amendatory Endorsement

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Insurance Company of North America

CANADIAN DECLARATIONS

Canadian Agent and Location: Lukis Stewart Price Forbes & Co. Ltd. 505
Suite 611, Place Ville Marie
Montreal 2, Quebec

No. XBC-41712

1. NAMED INSURED ADDRESS (No., Street, Town, Co., State): HOPEMAN BROTHERS (CANADA) LTD.
132 St. Pierre,
Quebec 2,
Canada

Business of the Named Insured: Marine Interiors

2. Policy Period: From February 14, 1968 to February 14, 1971 ☑ 12:01 AM ☐ 12:00 NOON } Standard time at the Named Insured's Address

3. PREMIUM COMPUTATION: Description of Property, Coverages, including Limits of Liability	MAJOR PERIL OR LINE	PREMIUMS
$15,000,000. as the result of any one occurrence on account of personal injury, property damage or advertising offense or any combination thereof and excess of $5,000,000. retained limit		$200.00

J. K. [signature] Secretary.

[signature] President

C-1573 5M 2-21-63 Ptd. in U.S.A.

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INSURANCE COMPANY
OF NORTH AMERICA

A STOCK INSURANCE COMPANY herein called INA

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, agrees with the Named Insured as follows:

INSURING AGREEMENT

Coverage A - Personal Injury Liability

Coverage B - Property Damage Liability

Coverage C - Advertising Liability

INA will indemnify the Insured for ultimate net loss in excess of the retained limit hereinafter stated which the Insured shall become legally obligated to pay as damages because of

A. personal injury or
B. property damage or
C. advertising offense

to which this policy applies, caused by an occurrence.

DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS

When Underlying Insurance Does Not Apply to an Occurrence:

With respect to any occurrence not covered by the underlying insurance listed in Schedule A hereof, or any other underlying insurance collectible by the Insured, but covered by this policy except for the amount of retained limit specified herein, INA will, in addition to the amount of the ultimate net loss payable:

(a) defend any suit against the Insured seeking damages on account of personal injury, property damage or advertising offense, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient;

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(b) pay all expenses incurred by INA, all costs taxed against the Insured in any suit defended by INA and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before INA has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of INA's liability thereon;

(c) pay premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the Insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies but INA shall have no obligation to apply for or furnish any such bonds;

(d) pay reasonable expenses incurred by the Insured at INA's request, including actual loss of wages or salary (but not loss of other income) not to exceed $50 per day because of his attendance at hearings or trials at such request.

In jurisdictions where INA may be prevented by law or otherwise from carrying out this agreement, INA shall pay any expense incurred with its written consent in accordance with this provision.

The Insured shall promptly reimburse INA for any amount of ultimate net loss paid on behalf of the Insured within the retained limit.

When Underlying Insurance Does Apply to an Occurrence:

This policy does not apply to defense, investigation, settlement or legal expenses covered by underlying insurance, but INA shall have the right and opportunity to associate with the insured in the defense and control of any claim or proceeding reasonably likely to involve INA. In such event the Insured and INA shall cooperate fully.

In the event that the limits of liability of the underlying insurance listed in Schedule A are exhausted by an occurrence, INA shall be obligated to assume charge of the settlement or defense of any claim or proceeding against the Insured resulting from the same occurrence, but only where this policy applies and is immediately in excess of such listed underlying insurance without intervening excess insurance with another insurer.

RETAINED LIMIT - INA'S LIMIT OF LIABILITY

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of personal injury, property damage, or advertising offense, INA's liability is limited as follows:

With respect to personal injury, property damage or advertising offense, or any combination thereof, INA's liability shall be only for the ultimate net loss in excess of the Insured's retained limit defined as the greater of:

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(a) an amount equal to the limits of liability indicated beside the underlying insurance listed in Schedule A hereof, plus the applicable limits of any other underlying insurance collectible by the Insured; or

(b) the amount specified in Item 1. of the Limits of Liability section of the Declarations as the result of any one occurrence not covered by the said insurance;

and then for an amount not exceeding the amount specified in Item 2. of the Limits of Liability section of the Declarations as the result of any one occurrence.

There is no limit to the number of occurrences during the policy period for which claims may be made, except that the liability of INA arising out of either the products hazard or the completed operations hazard, or both combined, on account of all occurrences during each policy year shall not exceed the amount specified in Item 3. of the Limits of Liability section of the Declarations.

In the event that the aggregate limits of liability of the underlying policies listed in Schedule A are reduced or exhausted, INA shall, subject to INA's limit of liability which is stated above and to the other conditions of this policy, with respect to occurrences which take place during the period of this policy continue in force as excess of the reduced primary insurance or, in the event of exhaustion, continue in force as underlying insurance.

For the purpose of determining the limit of INA's liability, all damages arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

POLICY PERIOD, TERRITORY

This policy applies to personal injury, property damage or advertising offense which occurs anywhere during the policy period.

PERSONS OR ENTITIES INSURED

(a) The Named Insured;

(b) Each of the following is an Insured under this policy to the extent set forth below:

(1) if the Named Insured is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such, however, this policy does not apply to personal injury, property damage or advertising offense arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a Named Insured;

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(2) any person, organization, trustee or estate to whom or to which the Named Insured is obligated by virtue of a written contract to provide insurance such as is afforded by this policy, but only with respect to operations by or in behalf of the Named Insured or to facilities of or used by the Named Insured;

(3) subject to the terms and conditions of this policy, any additional Insured included in the underlying insurance listed in Schedule A but only to the extent that insurance is provided to such additional insured thereunder;

(4) except with respect to the ownership, maintenance or use, including loading or unloading, of automobiles or aircraft, (i) any executive officer, other employee, director or stockholder of the Named Insured while acting within the scope of his duties as such; (ii) any person or organization while acting as real estate manager for the Named Insured;

(5) any person while using, with the permission of the Named Insured, any automobile or aircraft owned by, loaned to or hired for use by or on behalf of the Named Insured and any person or organization legally responsible for the use thereof, provided the actual operation or other actual use is within the scope of such permission, and any executive officer, director or stockholder of the Named Insured with respect to the use of an automobile or aircraft not owned by the Named Insured but only while such automobile or aircraft is being used in the business of the Named Insured. The insurance with respect to any person or organization other than the Named Insured does not apply under paragraph (5):

(i) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any occurrence arising out of the operation thereof;

(ii) with respect to any automobile or aircraft hired by or loaned to the Named Insured, to the owner or a lessee (of whom the Named Insured is a sub-lessee) thereof other than the Named Insured, or to any agent or employee of such owner or lessee;

(iii) to any manufacturer of aircraft, aircraft engines or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents, with respect to any occurrence arising out of the operation thereof.

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EXCLUSIONS

This policy does not apply:

(a) to any obligation for which the Insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(b) to property damage to (1) property owned by the Insured, or (2) the Insured's products arising out of such products or any part of such products, or (3) work performed by or on behalf of the Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, or (4) property rented to, occupied or used by or in the care, custody or control of the Insured to the extent the Insured is under contract to provide insurance therefor;

(c) to personal injury or property damage resulting from the failure of the Insured's products or work completed by or for the Insured to perform the function or serve the purpose intended by the Insured, if such failure is due to a mistake or deficiency in any design, formula, plan, specifications, advertising material or printed instructions prepared or developed by any Insured; but this exclusion does not apply to bodily injury or property damage resulting from the active malfunctioning of such products or work;

(d) to damages claimed for the withdrawal, inspection, repair, replacement or loss of the use of the Insured's products or work completed by or for the Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;

(e) to damages arising out of advertising offense for (1) failure to performance of contract, (2) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans, (3) incorrect description of any article or commodity, or (4) mistake in advertised price.

DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"advertising offense" means libel, slander, defamation, infringement of copyright, title or slogan, piracy, unfair competition, idea misappropriation or invasion of rights of privacy, arising out of the Insured's advertising activities;

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"completed operations hazard" includes personal injury and property damages arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the personal injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

(a) when all operations to be performed by or on behalf of the Insured under the contract have been completed,

(b) when all operations to be performed by or on behalf of the Insured at the site of the operations have been completed, or

(c) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete shall be deemed completed.

The completed operations hazard does not include personal injury or property damage arising out of

(1) operations in connection with the transportation of property, unless the personal injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof,

(2) the existence of tools, uninstalled equipment or abandoned or unused materials:

"damages" includes damages for death and for care and loss of services resulting from personal injury and damages for loss of use of property resulting from property damage;

"Insured" means any person or organization qualifying as an Insured under the Persons or Entities Insured section of this policy. The insurance afforded applies separately to each Insured against whom claim is made or suit is brought, except with respect to the limits of INA's liability;

"Insured's products" means goods or products manufactured, sold, handled or distributed by the Insured or by others trading under his name, including any container thereof (other than a vehicle) but "Insured's products" shall not include a vending machine or any property other than such a container, rented to or located for use of others but not sold;

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"Named Insured" means the organization named in the Declarations of this policy and includes any subsidiary company (including subsidiaries thereof) of the Named Insured and any other company of which it assumes active management;

"occurrence", as respects property damage, means an accident, including injurious exposure to conditions, which results, during the policy period, in property damage neither expected nor intended from the standpoint of the Insured;

"personal injury" means, (a) bodily injury, sickness, disease, disability, shock, mental anguish and mental injury; (b) false arrest, detention or imprisonment, malicious prosecution or humiliation; (c) the publication or utterance of a libel or slander or of other defamatory material, including disparaging statements concerning the condition, value, quality or use of real or personal property, or a publication or utterance in violation of rights of privacy, except when any of the foregoing of this part (c) arises out of the Insured's advertising activities; (d) wrongful entry or eviction, or other invasion of the right of private occupancy; (e) racial or religious discrimination, unless insurance therefor is prohibited by law, not committed by or at the direction of the Insured; and (f) assault and battery not committed by or at the direction of the Insured, unless committed for the purpose of protecting persons or property;

"products hazard" includes personal injury and property damage arising out of the Insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the personal injury or property damage occurs away from premises owned by or rented to the insured and after physical possession of such products has been relinquished to others;

"property damage" means injury to or destruction of tangible property;

"ultimate net loss" means the sum actually paid or payable in cash in the settlement or satisfaction of losses for which the Insured is liable either by adjudication or compromise with the written consent of INA, after making proper deduction for all recoveries and salvages collectible, but excludes all loss expenses and legal expenses (including attorneys' fees, court costs and interest on any judgment or award) and all salaries of employees and office expenses of the Insured, INA or any underlying insurer so incurred.

CONDITIONS

1. Premium

The premium for this policy shall be as stated in the Declarations.

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2. Inspection and Audit

INA shall be permitted but not obligated to inspect the Insured's property and operations at any time. Neither INA's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant that such property or operations are safe. INA may examine and audit the Insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

3. Insured's Duties in the Event of Occurrence, Claim or Suit

(a) In the event of an occurrence, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the Insured to INA or any of its authorized agents as soon as practicable. The Insured shall promptly take at his expense all reasonable steps to prevent other personal injury or property damage or advertising offense from arising out of the same or similar conditions, but such expense shall not be recoverable under this policy.

(b) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to INA every demand, notice, summons or other process received by him or his representative.

(c) The Insured shall cooperate with INA and, upon INA's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of personal injury or property damage or advertising offense with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense; however, in the event that the amount of ultimate net loss becomes certain either through trial court judgment or agreement among the Insured, the claimant and INA, then, the Insured may pay the amount of ultimate net loss to the claimant to effect settlement and, upon submission of due proof thereof, INA shall indemnify the Insured for that part of such payment which is in excess of the retained limit, or, INA will, upon request of the Insured, make such payment to the claimant on behalf of the Insured.

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4. Appeals

In the event the Insured or the Insured's underlying insurer elects not to appeal a judgment in excess of the retained limit, INA may elect to do so at its own expense, and shall be liable for the taxable costs, disbursements and interest incidental thereto, but in no event shall the liability of INA for ultimate net loss exceed the amount specified in the Limits of Liability section of the Declarations plus the taxable costs, disbursements and interest incidental to such appeal.

5. Action Against INA

No action shall lie against INA with respect to any one occurrence unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy, nor until the amount of the Insured's obligation to pay an amount of ultimate net loss in excess of the retained limit shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and INA. The Insured shall make a definite claim for any loss in which INA may be liable within a reasonable time after such final determination. If any subsequent payments are made by the Insured on account of the same occurrence, the Insured shall make additional claims from time to time and these claims shall be payable within thirty (30) days after proof in conformity with this policy. Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join INA as a co-defendant in any action against the Insured to determined the Insured's liability.

Bankruptcy or insolvency of the Insured shall not relieve INA of any of its obligations hereunder.

6. Other Insurance with INA

If collectible insurance under any other policy of INA is available to the Insured, covering a loss also covered hereunder, INA's total liability shall in no event exceed the greater or greatest limit of liability applicable to such loss under this or any other such policy provided, however, this does not apply to insurance with INA which is written as underlying insurance or which is written as excess insurance over the limit provided in this policy.

7. Other Insurance Not with INA

If collectible insurance with any other insurer is available to the Insured covering a loss also covered hereunder the insurance hereunder shall be in excess of, and not contribute

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with, such other insurance provided, however, this does not apply to insurance which is written as excess insurance over the limit provided in this policy.

8. Subrogation

INA shall be subrogated to the extent of any payment hereunder to all the Insured's rights of recovery therefor; and the Insured shall do nothing after loss to prejudice such rights and shall do everything necessary to secure such rights. Any amount so recovered shall be apportioned as follows:

Any interest (including the Insured's) having paid an amount in excess of the retained limit plus the limit of liability hereunder shall be reimbursed first to the extent of actual payment. INA shall be reimbursed next to the extent of its actual payment hereunder. If any balance then remains unpaid, it shall be applied to reimburse the Insured or any underlying insurer, as their interest may appear. The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no recovery in proceedings conducted solely by INA, it shall bear the expenses thereof.

9. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop INA from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

10. Assignment

Assignment of interest under this policy shall not bind INA until its consent is endorsed hereon; if, however, the Named Insured shall die, such insurance as is afforded by this policy shall apply (a) to the Named Insured's legal representative, as the Named Insured, but only while acting within the scope of his duties as such, and (b) with respect to the property of the Named Insured, to the person having proper temporary custody thereof, as Insured, but only until the appointment and qualification of the legal representative.

11. Three Year Policy

If this policy is issued for a period of three years, the limits of INA's liability shall apply separately to each consecutive annual period thereof.

12. Cancellation

This policy may be cancelled by the Named Insured by surrender thereof to INA or any of its authorized agents or by mailing

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to INA written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by INA by mailing to the Named Insured at the address shown in this policy written notice stating when, not less than thirty days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by INA shall be equivalent to mailing.

If the Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If INA cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

IN WITNESS WHEREOF, INSURANCE COMPANY OF NORTH AMERICA has caused this policy to be signed by its Resident Vice President and Resident Assistant Secretary at New York, New York and countersigned by a duly authorized agent of the company.

Resident Vice President

R Gray
Resident Assistant Secretary

Countersigned:

J. E. Tompkins Agent

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NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

Named Insured Hopeman Brothers Inc., et al.

Effective February 14, 1968 Policy No. XBC 41712

Issued by Insurance Company of North America
(Name of Insurance Company)

The above is required to be completed only when this endorsement is issued subsequent to the preparation of the policy.

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

ALL AUTOMOBILE LIABILITY, GENERAL LIABILITY AND MEDICAL PAYMENTS INSURANCE OTHER THAN FAMILY AUTOMOBILE, SPECIAL PACKAGE AUTOMOBILE, COMPREHENSIVE PERSONAL AND FARMER'S COMPREHENSIVE PERSONAL INSURANCE

It is agreed that:

I. The policy does not apply:

A. Under any Liability Coverage, to bodily injury or property damage

(1) with respect to which an Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if

(1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (b) has been discharged or dispersed therefrom;

(2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or

(3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

II. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", **"special nuclear material"**, and **"byproduct material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

J. E. Tompkins
Authorized Agent

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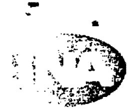

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

Named Insured Hopeman Brothers Inc.

Effective February 14, 1971 Policy No XBC 41712-Rend.#24815

Issued by Insurance Company of North America
(Name of Insurance Company)

The above is required to be completed only when this endorsement is issued subsequent to the preparation of the policy.

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

ALL AUTOMOBILE LIABILITY, GENERAL LIABILITY AND MEDICAL PAYMENTS INSURANCE OTHER THAN FAMILY AUTOMOBILE, SPECIAL PACKAGE AUTOMOBILE, COMPREHENSIVE PERSONAL AND FARMER'S COMPREHENSIVE PERSONAL INSURANCE

It is agreed that:

I. The policy does not apply:

A. Under any Liability Coverage, to bodily injury or property damage

(1) with respect to which an Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if

(1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an Insured or (b) has been discharged or dispersed therefrom;

(2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an Insured; or

(3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

II. As used in this endorsement:

"**hazardous properties**" include radioactive, toxic or explosive properties;

"**nuclear material**" means source material, special nuclear material or byproduct material;

"**source material**", "**special nuclear material**", and "**byproduct material**" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"**spent fuel**" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"**waste**" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"**nuclear facility**" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"**nuclear reactor**" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"**property damage**" includes all forms of radioactive contamination of property.

APR 5 1971

J. L. C. Fuchs
Authorized Agent

Confidential

EXCLUSION
(Environmental Pollution)

Named Insured Hopeman Brothers Inc., et al.

Effective February 14, 1971 Policy No XBC 41712-Rend.#24815

Issued by Insurance Company of North America
(Name of Insurance Company)

The above is required to be completed only when this endorsement is issued subsequent to the preparation of the policy.

This endorsement modifies such insurance as is afforded by the provisions of any General Liability Insurance.

This insurance does not apply:

to bodily injury, personal injury or property damage arising out of pollution or contamination

(1) caused by oil, or

(2) caused by the discharge or escape of any other pollutants or contaminants, unless such discharge or escape results from a sudden happening during the policy period, neither expected nor intended from the standpoint of the insured.

APR 5 1971

Authorized Agent

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INSURANCE COMPANY OF NORTH AMERICA

PREMIUM COMPUTATION ENDORSEMENT NO. 2

In consideration of the premium charged, it is agreed that Condition 1, Premium Computation, is amended to read as follows:

1. Premium — The premium for this policy shall be the amount set forth in the declarations which is payable upon delivery of the policy to the insured; provided, in the event of the acquisition of additional plants or property, any substantial changes in the insured's operations or if substantial new construction work is undertaken by or for the insured, such information shall be reported to the company as soon as practicable for the purpose of determining any premium adjustment required to reflect such changes in exposure, but failure on the part of the insured to so notify the company shall not invalidate this insurance.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date		Part of Policy No.
February 14, 1968	at the hour specified in the policy.	XBC 41712
Issued to	Hopeman Brothers Inc., et al.	

J. V. Tompkins
Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

H Richard Heilman
President.

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INSURANCE COMPANY OF NORTH AMERICA

NAMED INSURED ENDORSEMENT NO. 3

Hopeman Brothers, Inc.

Hopeman Lumber & Manufacturing Co., Inc.

Wayne Manufacturing Corporation

Hopeman Brothers (Canada) Ltd.

A. W. Hopeman & Sons Company

Royston Manufacturing Co., Inc. and

Hopeko Supply Corporation

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date February 14, 1968 at the hour specified in the policy.	Part of Policy No. XBC 41712
Issued to Hopeman Brothers Inc., et al.	

J. E. Tompkins
Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

H. Richard Heilman
President.

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INSURANCE COMPANY OF NORTH AMERICA

AMENDATORY ENDORSEMENT NO. 4

In consideration of the Premium charged, it is agreed that such insurance as is afforded by the Policy shall apply to any renewals or extensions thereof of the Policies listed in Schedule A, Schedule of Underlying Policies.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date		Part of Policy No.
February 14, 1968	at the hour specified in the policy.	XBC 41712
Issued to	Hopeman Brothers Inc., et al.	

J. C. Tompkins
Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

H Richard Heilman
President.

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SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A

POLICY NO. XBC 41712

1. HOPEMAN BROTHERS INC. AND HOPEMAN BROTHERS (CANADA) LTD.

Carrier, Policy Number & Period	Type of Policy	Applicable Limits
(a) Liberty Mutual Insurance Company WC1-121-010461-178R 1/1/68 to 1/1/69	Standard Workmen's Compensation & Employers' Liability	Coverage B-Employers' Liability $500,000. one accident
(b) Liberty Mutual Insurance Company LG1-121-010461-188R 1/1/68 to 1/1/69	General Liability	Bodily Injury Liability $100,000. each person $300,000. each occurrence $300,000. aggregate products Property Damage Liability $100,000. each occurrence $100,000. aggregate premises - operations $100,000. aggregate protective $100,000. aggregate products $100,000. aggregate contractual
(c) Liberty Mutual Insurance Company AE1-121-010461-168 1/1/68 to 1/1/69	Automobile Liability	Bodily Injury Liability $200,000. each person $500,000. each occurrence Property Damage Liability $100,000. each occurrence

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INSURANCE COMPANY OF NORTH AMERICA

It is agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As result of any one occurrence on account of Personal injury, Property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date 2/14/68 at the hour specified in the policy.	Part of Policy No. XBC 4 17 12
Issued to Hopeman Brothers Inc. & Hopeman Brothers (Canada) Ltd.	

rl 10/30

Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

President

Confidential

SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A

POLICY NO. XBC 41712

2. HOPEMAN LUMBER AND MANUFACTURING COMPANY, INC.

Carrier, Policy Number & Period	Type of Policy	Applicable Limits
(a) Liberty Mutual Insurance Company WC1-121-022356-018R 1/1/68 to 1/1/69	Standard Workmen's Compensation & Employers' Liability	Coverage B-Employers' Liability $500,000. one accident
(b) Liberty Mutal Insurance Company LG1-121-022356-028R 1/1/68 to 1/1/69	General Liability	Bodily Injury Liability $100,000. each person $300,000. each occurrence $300,000. aggregate products Property Damage Liability $100,000. each occurrence $100,000. aggregate premises - operations $100,000. aggregate protective $100,000. aggregate products $100,000. aggregate contractual
(c) Liberty Mutual Insurance Company AE1-121-010461-168 1/1/68 to 1/1/69	Automobile Liability	Bodily Injury Liability $200,000. each person $500,000. each occurrence Property Damage Liability $100,000. each occurrence

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INSURANCE COMPANY OF NORTH AMERICA

It is agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As result of any one occurrence on account of Personal injury, Property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date 2/14/68 at the hour specified in the policy.	Part of Policy No. XBC 4 17 12
Issued to Hopeman Lumber and Manufacturing Company, Inc.	

H. D. Fucks
Authorized Agent

Not valid unless countersigned by a duly authorized agent of the *INSURANCE COMPANY OF NORTH AMERICA*

rl 10/30

President

Confidential

SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A

POLICY NO. XBC 41712

3. WAYNE MANUFACTURING CORPORATION

Carrier, Policy Number & Period	Type of Policy	Applicable Limits
(a) Liberty Mutual Insurance Company WC1-121-010461-198R 1/1/68 to 1/1/69	Standard Workmen's Compensation & Employers' Liability	Coverage B-Employers' Liability $500,000. one accident
(b) Liberty Mutual Insurance Company LG1-121-010461-208R 1/1/68 to 1/1/69	General Liability	Bodily Injury Liability $100,000. each person $300,000. each occurrence $300,000. aggregate products Property Damage Liability $100,000. each occurrence $100,000. aggregate premises - operations $100,000. aggregate protective $100,000. aggregate products $100,000. aggregate contractual
(c) Travelers Indemnity Company SLA 7747032 10/25/67 to 10/25/68	Automobile Liability	Bodily Injury Liability $200,000. each person $500,000. each occurrence Property Damage Liability $100,000. each occurrence

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INSURANCE COMPANY OF NORTH AMERICA

It is agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As result of any one occurrence on account of Personal injury, Property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date 2/14/68 at the hour specified in the policy.	Part of Policy No. XBC 4 17 12
Issued to Wayne Manufacturing Corporation	

H. C. Fricks
Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

rl 10/30

President

Confidential

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SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A | **POLICY NO. XBC** 41712

4. ROYSTON MANUFACTURING CORPORATION

Carrier, Policy Number & Period	Type of Policy	Applicable Limits
(a) Liberty Mutual Insurance Company WC1-121-010461-228R 1/1/68 to 1/1/69	Standard Workmen's Compensation & Employers' Liability	Coverage B-Employers' Liability $500,000. one accident
(b) Liberty Mutual Insurance Company LG1-121-010461-238R 1/1/68 to 1/1/69	General Liability	Bodily Injury Liability $100,000. each person $300,000. each occurrence $300,000. aggregate products Property Damage Liability $100,000. each occurrence $100,000. aggregate premises - operations $100,000. aggregate protective $100,000. aggregate products $100,000. aggregate contractual
(c) Liberty Mutual Insurance Company AE1-121-010461-168 1/1/68 to 1/1/69	Automobile Liability	Bodily Injury Liability $200,000. each person $500,000. each occurrence Property Damage Liability $100,000. each occurrence

Confidential

INSURANCE COMPANY OF NORTH AMERICA

It is agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As result of any one occurrence on account of Personal injury, Property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date 2/14/68 at the hour specified in the policy.	Part of Policy No. XBC 4 17 12
Issued to Royston Manufacturing Corporation	

rl 10/30

Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

President

Confidential

SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A **POLICY NO. XBC** 41712

5. HOPEMAN BROTHERS, INC., SPECIFIC POLICIES FOR WORK AT INGALLS SHIPBUILDING, PASCAGOULA, MISSISSIPPI

	Carrier, Policy Number & Period	Type of Policy	Applicable Limits
(a)	American Mutual Liability Insurance Company WC 942528-01-7-E 3/1/67 to 3/1/68	Standard Workmen's Compensation & Employers' Liability	Coverage B-Employers' Liability $500,000. one accident
(b)	American Mutual Liability Insurance Company BLPL 942528-02-7-E 3/1/67 to 3/1/68	General Liability	Bodily Injury Liability $100,000. each person $300,000. each occurrence $300,000. aggregate products Property Damage Liability $100,000. each occurrence $100,000. aggregate premises - operations $100,000. aggregate protective $100,000. aggregate products $100,000. aggregate contractual
(c)	Liberty Mutual Insurance Company AE1-121-010461-168 1/1/68 to 1/1/69	Automobile Liability	Bodily Injury Liability $200,000. each person $500,000. each occurrence Property Damage Liability $100,000. each occurrence

Confidential

INSURANCE COMPANY OF NORTH AMERICA

It is agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As result of any one occurrence on account of Personal injury, Property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date 2/14/68 at the hour specified in the policy.	Part of Policy No. XBC 4 17 12
Issued to Hopeman Brothers, Inc., Specific Policies for work at Ingalls Shipbuilding, Pascagoula, Mississippi	

H. A. Fuchs
Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

rl 10/30

President

Confidential

SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A

POLICY NO. XBC 41712

6. A. W. HOPEMAN AND SONS COMPANY AND HOPEKO SUPPLY CORPORATION

	Carrier, Policy Number & Period	Type of Policy	Applicable Limits	
(a)	Liberty Mutual Insurance Company WC1-181-013754-118 1/1/68 to 1/1/69	Standard Workmen's Compensation & Employers' Liability	Coverage B-Employers' Liability	
			$500,000.	one accident
(b)	Liberty Mutual Insurance Company LG1-181-013754-128 1/1/68 to 1/1/69	General Liability	Bodily Injury Liability	
			$100,000.	each person
			$300,000.	each occurrence
			$300,000.	aggregate products
			Property Damage Liability	
			$100,000.	each occurrence
			$100,000.	aggregate premises - operations
			$100,000.	aggregate protective
			$100,000.	aggregate products
			$100,000.	aggregate contractual
(c)	Liberty Mutual Insurance Company AE1-181-013754-138 1/1/68 to 1/1/69	Automobile Liability	Bodily Injury Liability	
			$200,000.	each person
			$500,000.	each occurrence
			Property Damage Liability	
			$100,000.	each occurrence

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INSURANCE COMPANY OF NORTH AMERICA

It is agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As result of any one occurrence on account of Personal injury, Property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date 2/14/68 at the hour specified in the policy.	Part of Policy No. XBC 4 17 12
Issued to A.W. Hopeman and Sons Company and Hopeko Supply Corporation	

rl 10/30

H C Fuchs
Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

[signature]
President

Confidential

SCHEDULE OF UNDERLYING INSURANCE

SCHEDULE A

POLICY NO. XBC 41712

7. Hopeman Bros. Inc. and Hopeman Brothers (Canada) Ltd., Canadian Operations Only

	Carrier, Policy Number & Period	Type of Policy	Applicable Limits
(a)	Not Applicable	Standard Workmen's Compensation & Employers' Liability	Coverage B-Employers' Liability $ - - - one accident
(b)	Liberty Mutual Insurance Company LG1-121-010461-158 1/1/68 to 1/1/69	General Liability	Bodily Injury Liability $100,000. each person $300,000. each accident/ occurrence $300,000. aggregate products Property Damage Liability $100,000. each occurrence $100,000. aggregate premises - operations $100,000. aggregate protective $100,000. aggregate products $100,000. aggregate contractual

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INSURANCE COMPANY OF NORTH AMERICA

It is agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As result of any one occurrence on account of Personal injury, Property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date 2/14/68	at the hour specified in the policy.	Part of Policy No. XBC 4 17 12
Issued to Hopeman Brothers Inc. and Hopeman Brothers (Canada) Ltd., Canadian Operations Only		

Authorized Agent

Not valid unless countersigned by a duly authorized agent of the INSURANCE COMPANY OF NORTH AMERICA

rl 10/30

President

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INSURANCE COMPANY OF NORTH AMERICA

In consideration of the premium charged it is understood and agreed that the Declarations are amended in part to read as follows:

Retained Limit - INA's Limit of Liability

Retained Limit
Item 1 - $4,800,000.00

It is further agreed that Schedule A, Schedule of Underlying Insurance (7 Schedules) are amended by the addition of the following:

Lloyds of London $4,800,000.00 - As the result of any one occurrence on account of personal injury, property damage or advertising offense or any combination thereof.

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

Effective Date	February 14, 1968 at the hour specified in the policy.	Part of Policy No. XBC 41712
Issued to	Hopeman Brothers Inc., Etal	

Authorized Agent

Not valid unless countersigned by a duly authorized agent of the
INSURANCE COMPANY OF NORTH AMERICA

C-1762 100M 4-2-68 Ptd. in U.S.A.

President.

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REND. 24815

RENEWAL ENDORSEMENT

IN CONSIDERATION OF THE PAYMENT OF AN ADDITIONAL ADVANCE PREMIUM OF Six Hundred and 00/100 ($600.00) DOLLARS IT IS HEREBY UNDERSTOOD AND AGREED THAT THE POLICY TO WHICH THIS ENDORSEMENT IS ATTACHED IS CONTINUED IN FORCE FOR A FURTHER PERIOD OF One (1) MONTHS AND SHALL EXPIRE ON THE DATE SHOWN AT 12:01 A.M., STANDARD TIME AT THE PLACE DESIGNATED IN SAID POLICY.

It is agreed that the Company's limit of liability is amended to read as follows:

"5,000,000 each occurrence Bodily Injury Liability or Property Damage Liability or both combined, subject to a $5,000,000 aggregate where applicable."

Nothing herein contained shall vary, alter or extend any provision or condition of the policy other than as above stated.

THIS ENDORSEMENT, EFFECTIVE	FORMS A PART OF POLICY NO.	ISSUED FOR THE POLICY PERIOD:
February 14, 1971	XBC 41712	FROM: 2-14-71 TO: 3-14-71

To Hopeman Brothers Inc., et al.

By INSURANCE COMPANY OF NORTH AMERICA

3/18/jk

Not valid unless countersigned by a duly authorized representative of the company.

Countersigned: [signature] Authorized Representative

[signature] President

LC-355 (NYO) 2M SETS 5-2-66 Printed in U.S.A.

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EXCESS BLANKET CATASTROPHE LIABILITY POLICY

SPECIALLY PREPARED FOR

HOPEMAN BROTHERS INC., ET AL.

PRESENTED BY

JOHN C. KEMP INC.

Confidential