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Castorena v. General Elec. Clerk's Record v. 5 Dckt. 35123

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

MILDRED CASTORENA, et al,

Plaintiffs-Appellants,

vs.

GENERAL ELECTRIC, et al,

LAW CLERK Defendants-Respondents.

JOHN D. ADAMSON, et al,

Plaintiff-Appellant,

vs.

FMC CORPORATION, et al,

Defendants-Respondents.

Attorney_ for Appellant_

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Supreme Court	Clerk

35123 / 35124 / 35852

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MILDRED CASTORENA, et al,)
)
 Plaintiffs-Appellants,)
)
 vs.)
)
 GENERAL ELECTRIC, et al,)
)
 Defendants-Respondents.)
)
 _____)
)
 JOHN D. ADAMSON, et al,)
)
 Plaintiff-Appellant,)
)
 vs.)
)
 FMC CORPORATION, et al,)
)
 Defendants-Respondents.)
)
 _____)

Supreme Court Case No. 35123

(Consolidated Supreme Court Case
Nos. 25123, 25124 and 25852)

Volume V

CLERK'S TRANSCRIPT ON APPEAL

Appeal from the District Court of the Sixth Judicial District of the State of Idaho
in and for the County of Bannock.

HONORABLE PETER D. McDERMOTT, District Judge.

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually
and as Spouse and Personal Representative
of the Estate of Ted Castorena; ALENE
STOOR, Individually and as Spouse and
Personal Representative of the Estate of
John D. Stoor; STEPHANIE BRANCH,
Individually and as Personal
Representative of the Estate of Robert
Branch, Jr.; ROBERT L. HRONEK;
MARLENE KISLING, Individually and as
Personal Representative of the Estate of
William D. Frasure; NORMAN L. DAY,

Plaintiffs,

v.

GENERAL ELECTRIC, AMERIVENT,
SALES, INC., ALASKAN COPPER
WORKS, AMERIVENT SALES, INC.,
ANCHOR PACKING COMPANY, A.W.
CHESTERTON COMPANY, BABITT
STEAM SPECIALTY, CO, BECHTEL
a/k/a SEQUOIA VENTURES, BECHTEL
CONSTRUCTION COMPANY, INC.,
BULLOUGH ABATEMENT, INC., BELL
& GOSSETT, CERTAINTEED

Case No. CV-2006-2474-PI

**HONEYWELL, INC.'s ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

1019

ORIGINAL S

1020
CORPORATION, CLEAVER-BROOKS
a Division of Aqua Chem., Inc., COOPER
CROUSE-HINDS, COOPER
INDUSTRIES, CRANE CO., CROWN
CORK & SEAL COMPANY, INC.,
CUTLER HAMMER, INC., EBONY
CONSTRUCTION CO., INC., EMERSON
ELECTRIC CO., FAIRBANKS MORSE
PUMP CORPORATION, FMC
CORPORATION (Hamer), FOSTER
WHEELER COMPANY, GARLOCK
INCORPORATED, GOULD
INCORPORATED, GOULDS PUMPS
TRADING CORP., GUARD-LINE, INC.,
HENRY VOGT MACHINE, CO., HILL
BROTHERS, HONEYWELL, INC., IMO
INDUSTRIES, INDUSTRIAL HOLDING
CORPORATION, ITT INDUSTRIES,
INC., INGERSOLL-RAND COMPANY,
JOHNSTON PUMPS, KELLY-MOORE
PAINT COMPANY, INC., PILKINGTON
NORTH AMERICAN, INC., f/k/a LIBBY-
OWENS FORD, METROPOLITAN LIFE
INSURANCE COMPANY, NIBCO, INC.,
a/k/a Northern Indiana Brass, Co.,
NORDSTROM VALVE COMPANY,
OBIT INDUSTRIES, INC., OWENS-
ILLINOIS, INC., P & H CRANES, a/k/a
HARNISCHFEGOR CORPORATION,
PARAMOUNT SUPPLY COMPANY,
PAUL ROBERTS MACHINE SUPPLY
DIVISION, ADVANCED INDUSTRIAL
SUPPLY, INC., f/k/a POCATELLO
SUPPLY, INC., PROKO INDUSTRIES,
INC., RAPID AMERICAN, RELIANCE
ELECTRIC MOTORS, ROCKWELL
AUTOMATION, INC., RUPERT IRON
WORKS, SACOMA-SIERRA,
SCHNEIDER ELECTRIC, SHEPARD
NILES, INC., SIEMENS ENERGY &
AUTOMATION, INC., STEEL WEST,
INC., STERLING FLUID SYSTEM

(Peerless Pumps), UNION CARBIDE CORPORATION, UNION PACIFIC RAILROAD, VIACOM INC., WARREN PUMPS, INC., WESTINGHOUSE ELECTRIC CORPORATION, ZURN INDUSTRIES, INC., and Does I through IV,

Defendants.

1021
COMES NOW Defendant Honeywell, Inc., ("Honeywell") by and through its attorneys of record, Perkins Coie, LLP, and answers Plaintiffs' First Amended Complaint as follows:

FIRST DEFENSE

1. Plaintiffs' First Amended Complaint fails to state a claim against Honeywell upon which relief can be granted.

SECOND DEFENSE

2. Honeywell denies each and every allegation of the First Amended Complaint not specifically admitted herein.

3. With respect to the allegations contained in Paragraph 1 of Plaintiffs' First Amended Complaint, Honeywell incorporates each denial, admission, and affirmative defense asserted in Honeywell's Answer to Complaint previously filed with this Court.

4. Paragraphs 2-21 of Plaintiffs' First Amended Complaint do not state any allegations against Honeywell and, therefore, no response is required. To the extent a response is deemed necessary and appropriate, Honeywell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, therefore, denies the same.

DEMAND FOR JURY TRIAL

Honeywell hereby demands a trial by jury in accordance with the provisions of Rule 38(b) of the Idaho Rules of Civil Procedure.

DATED: April 26, 2007

PERKINS COIE LLP

By: 
Randall L. Schmitz, ISB No. 5600

Attorneys for Defendant Honeywell, Inc.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing Answer to be served upon the following counsel of record via U.S. Mail, postage prepaid, on April 26, 2007:

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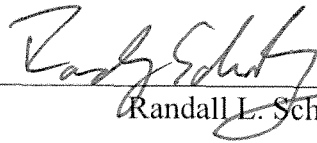
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1026



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1027
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually and as)
Spouse and Personal Representative of the Estate)
of Ted Castorena; *et al.*,)

Plaintiffs,)

vs.)

GENERAL ELECTRIC, *et al.*,)

Defendants.)
_____)

Case No.: CV-2006-2474-PI

ANSWER OF DEFENDANT HILL
BROTHERS CHEMICAL COMPANY

COMES NOW Defendant, Hill Brothers Chemical Company (“Hill Brothers”), by and through its attorneys of records, Moore, Baskin & Elia, LLP, and in response to Plaintiffs’ Complaint and Demand for Jury Trial on file herein, admits, denies and alleges as follows:

In answering the Complaint, Hill Brothers expressly reserves, in addition to the defenses set forth below, all defenses provided for or authorized by Rule 12(b) of the Idaho Rules of Civil Procedure and all other defenses provided by law.

FIRST DEFENSE

Plaintiffs' Complaint failed to state a claim against Hill Brothers upon which relief can be granted. Hill Brothers is therefore entitled to judgment in its favor as a matter of law.

SECOND DEFENSE

Hill Brothers denies each and every allegation of the Complaint not expressly and specifically admitted herein.

THIRD DEFENSE

I.

That as to the allegations contained in Paragraph 1 of Plaintiffs' Complaint, Defendant Hill Brothers admits it is, as a California corporation, a corporation foreign to the State of Idaho. That as to the remaining allegations contained in Paragraph 1, Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies the same at this time pursuant to I.R.C.P Rule 8(b).

II.

That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 2 through 28 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

III.

That Defendant Hill Brothers denies the allegations contained in Paragraph 29 of Plaintiffs' Complaint.

IV.

That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 30 through 63 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

V.

That Defendant Hill Brothers denies the allegations contained in Paragraphs 64 through 67 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

VI.

1029
That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 68 and 69 of Plaintiffs' Complaint, and therefore denies the same as this time pursuant to I.R.C.P. Rule 8(b). That Defendant Hill Brothers further disputes the legal assertions as contained therein insofar as they are directed to Defendant Hill Brothers.

VII.

That as to the allegations contained in Paragraph 70 of Plaintiffs' Complaint, Defendant Hill Brothers reserves all challenges to venue, jurisdiction and the constitutionality of the claims, rights and remedies asserted by Plaintiffs.

VIII.

That as to the allegations contained in Paragraph 71 of Plaintiffs' Complaint, Defendant Hill Brothers incorporates its response to the allegations contained in Paragraphs 1 through 70 by reference as if set forth in full herein.

IX.

That Defendant Hill Brothers denies the allegations contained in Paragraphs 72 through 78 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and

is without knowledge and information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

X.

That as to the allegations contained in Paragraph 79 of Plaintiffs' Complaint, Defendant Hill Brothers incorporates its responses to the allegations contained in Paragraphs 1 through 78 by reference as if set forth in full herein.

XI.

That Defendant Hill Brothers denies the allegations contained in Paragraphs 80 through 88 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XII.

That as to the allegations contained in Paragraph 89 of Plaintiffs' Complaint, Defendant Hill Brothers incorporates its responses to the allegations contained in Paragraphs 1 through 88 by reference as if set forth in full herein.

XIII.

That Defendant Hill Brothers denies the allegations contained in Paragraphs 90 through 93 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XIV.

That as to the allegations contained in Paragraph 94 of Plaintiffs' Complaint, Defendant Hill Brothers incorporates its response to the allegations contained in Paragraphs 1 through 93 by reference as if set forth in full herein.

XV.

1031
That Defendant Hill Brothers denies the allegations contained in Paragraphs 95 through 98 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XVI.

That Defendant Hill Brothers denies the allegations contained in Paragraphs 99 and 100 of Plaintiffs' Complaint.

XVII.

That Defendant Hill Brothers denies the allegations contained in Paragraphs 101 through 104 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XVIII.

That as to the allegations contained in Paragraph 105 of Plaintiffs' Complaint, Defendant incorporates its responses to the allegations contained in Paragraphs 1 through 104 by reference as if set forth in full herein..

XIX.

That Paragraphs 106 through 109 of Plaintiffs' Complaint do not reference Defendant Hill Brothers and this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XX.

1032
That Defendant Hill Brothers denies the allegations contained in Paragraph 110 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and specifically denies that it conspired with any entity or individual. Further, that Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XXI.

That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 111 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XXII.

That as to the allegations contained in Paragraph 112 of Plaintiffs' Complaint, Defendant Hill Brothers incorporates its responses to the allegations contained in Paragraphs 1 through 111 by reference as if set forth in full herein.

XXIII.

That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 113 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b).

XXIV.

That Defendant Hill Brothers denies the allegations contained in Paragraph 114 of Plaintiffs' Complaint to the extent they are directed against Defendant Hill Brothers, and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein as to others, and therefore denies the same at this time pursuant to I.R.C.P. Rule 8(b). Further that Defendant Hill Brothers denies it is liable to Plaintiffs in any amount.

XXV.

That as to the allegations contained in Paragraph 115 of Plaintiffs' Complaint, Defendant Hill Brothers incorporates its responses to the allegations contained in Paragraph 1 through 114 by reference as if set forth in full herein.

XXVI.

That Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 116 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. 8(b).

XXVII.

That Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 117 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. 8(b).

XXVIII.

That Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 118 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. 8(b).

XXIX.

That Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 119 of Plaintiffs' Complaint, and therefore denies the same at this time pursuant to I.R.C.P. 8(b).

XXX.

1034
That Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 120 of Plaintiffs' Complaint, but specifically denies the same as to Defendant Hill Brothers Chemical Company.

XXXI.

That Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 121 of Plaintiffs' Complaint, but specifically denies the same as to Defendant Hill Brothers Chemical Company and denies Defendant Hill Brothers Chemical Company acted negligently.

XXXII.

That Defendant Hill Brothers Chemical Company is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 122 of Plaintiffs' Complaint, but specifically denies that Defendant acted negligently, and denies Plaintiffs were damaged in any manner or in any amount as the proximate result of any alleged act or failure to act of Defendant Hill Brothers Chemical Company.

XXXIII.

That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 123 of Plaintiffs' Complaint, but specifically denies the same as to Defendant Hill Brothers.

XXXIV.

1035
That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 124 of Plaintiffs' Complaint, but specifically denies the same as to Defendant Hill Brothers and denies Defendant Hill Brothers acted negligently.

XXXV.

That Defendant Hill Brothers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 125 of Plaintiffs' Complaint, but specifically denies that Defendant Hill Brothers acted negligently, and denies that Plaintiffs were damaged in any manner or in any amount as the proximate result of any alleged act or failure to act of Defendant Hill Brothers Chemical Company.

AFFIRMATIVE DEFENSES

That at the time of the filing of this Answer, Defendant Hill Brothers has not been able to engage in discovery and lacks information or knowledge sufficient to form a belief as to all of those affirmative defenses that might apply in this instance. At this time, pursuant to I.R.C.P. Rule 12, Defendant Hill Brothers asserts the following affirmative defenses so that the same are not waived. If factual information is not developed sufficient to assert any specific affirmative defense, the affirmative defense in question will be withdrawn.

FIRST AFFIRMATIVE DEFENSE

That the claims in Plaintiffs' Complaint, and each count thereof, are barred by the applicable statute of limitations, including but not limited to Idaho Code §§ 5-201, 5-216, 5-217, 5-218, 5-219, 5-224, 5-241 and 6-1403.

SECOND AFFIRMATIVE DEFENSE

Defendant Hill Brothers asserts the comparative negligence doctrine found in Idaho Code § 6-801, *et. seq.* as a complete or partial bar to all the claims made in this case.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of waiver, estoppel and laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs assumed the risk of any injuries allegedly sustained as a result of exposure to products containing asbestos used by or near Plaintiffs.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint has failed to set forth facts and allegations with particularity as against Defendant Hill Brothers sufficient to maintain a cause of action for fraud.

SIXTH AFFIRMATIVE DEFENSE

Any damages suffered or incurred by Plaintiffs were the result of intervening and/or superceding acts and omissions of third parties over whom Defendant Hill Brothers had no control.

SEVENTH AFFIRMATIVE DEFENSE

At all times relevant hereto, the knowledge of the employers of Plaintiffs were superior to that of Defendant Hill Brothers with respect to possible health hazards associated with the employment of Plaintiffs, and therefore, if there was any duty to warn or provide protection to the allegedly injured party, it was the duty of said employers and not of Defendant Hill Brothers. The breach of that duty was an intervening and/or superceding cause of injuries allegedly sustained by Plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

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At all relevant times hereto, all products manufactured by Defendant Hill Brothers were in conformity with the state of the art in the industry and with the federal standards. Such products were not inherently dangerous to human safety. Any asbestos found in any product manufactured by Defendant Hill Brothers was locked in, encapsulated and firmly bound or otherwise contained. The products manufactured by Defendant Hill Brothers do not release dangerous amounts of asbestos fibers into the air.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs were not exposed to nor did they come into contact with, any products manufactured by Defendant Hill Brothers.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs did not reasonably rely on any alleged fact or failure to disclose or failure to act by Defendant Hill Brothers.

ELEVENTH AFFIRMATIVE DEFENSE

If it is shown that Plaintiffs used any product or material manufactured by Defendant Hill Brothers, as alleged in Plaintiffs' Complaint, which gave rise to the injuries as set forth therein, the same was misused, abused, modified, altered or subject to abnormal use and in an unreasonable manner for which they were not manufactured, warranted, or designed as set forth in Idaho Code § 6-1406.

TWELFTH AFFIRMATIVE DEFENSE

Defendant Hill Brothers made no warranties of any kind, either express or implied, to Plaintiffs. Any warranties which are deemed to have been made by this Defendant, were either fulfilled, terminated or disclaimed.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs and their employers were sophisticated purchasers and/or users of products containing asbestos and had adequate knowledge of the dangers and risks associated with using or working around asbestos, and Defendant Hill Brothers breached not duty to Plaintiffs.

FOURTEENTH AFFIRMATIVE DEFENSE

At all relevant times hereto, Defendant Hill Brothers did not know or believe and had no reason to know or believe that this Defendant's products posed a risk sufficient to give rise to a duty to warn the Plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

At all times since the enactment of the Occupation Safety and Health Act ("OSHA"), Defendant Hill Brothers has fully complied with the OSHA requirements, rules and regulations thereunder.

SIXTEENTH AFFIRMATIVE DEFENSE

To the extent the claims in Plaintiffs' Complaint seek an award of exemplary or punitive damages, such claims fail to state a claim against Defendant Hill Brothers upon which relief can be granted.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs failed to mitigate their damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant Hill Brothers claims a set-off as to any potential judgment or award if any should be given on behalf of Plaintiffs against this Defendant for monies paid by other co-defendants, Plaintiffs or any monies paid to Plaintiffs on behalf of this Defendant.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred due to other health conditions and/or exposure to harmful substances and/or harmful habits, such as smoking.

TWENTIETH AFFIRMATIVE DEFENSE

1039
Plaintiffs' Complaint, and each cause of action therein, is barred against Defendant Hill Brothers by the provisions of Idaho Code § 72-201 et seq., including but not limited to § 72-223, Idaho's workers' compensation statutes.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The workers' compensation carriers for said employer have made and will in the future make payment to the Plaintiffs herein for the injuries Plaintiffs allegedly received while in the course and scope of their employment for their various employers. The negligence of the employers bars recovery against this Defendant of all sums paid or to be paid on behalf of the Plaintiffs by way of workers' compensation benefits described above. The negligence of the employers is by law imputed to the insurance carriers for said employers.

TWENTY-SECOND AFFIRMATIVE DEFENSE

To the extent the claims in Plaintiffs' Complaint seek an award of exemplary or punitive damages, said claims violate Defendant Hill Brothers right to procedural due processes provided in the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 13, and all applicable provisions of the State of Idaho.

TWENTY-THIRD AFFIRMATIVE DEFENSE

To the extent the claims in Plaintiffs' Complaint seek an award of exemplary or punitive damages, said claims violate Defendant Hill Brothers right to equal protection under the law and are otherwise unconstitutional under the Fourteenth Amendment of the United States Constitution, Article I, Section 13, and all applicable provisions of the Constitution of the State of Idaho.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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Insofar as Plaintiffs' Complaint intends to assert a claim for exemplary or punitive damages, it is premised on an alleged course of conduct *vis á vis* the general public, and the Plaintiffs in this action is therefore not the real party in interest as to the purported exemplary or punitive damage claims and is therefore barred and foreclosed from asserting such claim.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant Hill Brothers did not offer, approve or ratify the acts or omissions attributed to it in Plaintiffs' Complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant Hill Brothers cannot be held liable as a matter of law for injuries or damages allegedly sustained as a result of exposure to products containing asbestos allegedly used by or near Plaintiffs, to the extent such exposure was to products containing asbestos designed, manufactured and distributed pursuant to and in conformity with regulations and specifications as mandated by the United States government or its agencies. The knowledge of the United State government or its agencies of any possible health hazards from use of such products was equal to or superior to that of this Defendant, and by reason thereof, this Defendant is entitled to such immunity from liability as exists in favor of the United States government or its agencies. Defendant Hill Brothers is entitled to a set-off or credit in the amount of any settlement or compromise heretofore or hereafter reached by Plaintiffs with any other person for any of Plaintiffs' alleged damages.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendant Hill Brothers cannot be liable to Plaintiffs for any amount greater than that represented by the degree or percentage of fault, if any, attributable to this Defendant, pursuant to Idaho Code § 6-802.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint should be dismissed for failure to comply with Rule 9(b) of the Idaho Rules of Civil Procedure.

TWENTY-NINTH AFFIRMATIVE DEFENSE

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Plaintiffs' claims for damages, if any, are limited by the Idaho Tort Reform Act, Idaho Code § 6-1601 et seq.

THIRTIETH AFFIRMATIVE DEFENSE

The alleged injuries or damages, if any, of Plaintiffs were proximately caused by or contributed to by exposure inhalation of noxious and deleterious fumes and residues from industrial products or byproducts prevalent on their job sites, by the cumulative effects of exposure to all types of environmental and industrial pollutants of air and water, and/or by substances, products or other causes not attributable to or connected with Defendant Hill Brothers.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to name both necessary and indispensable parties in whose absence complete relief cannot be accorded among those already parties. Therefore, Plaintiffs' action must be dismissed, or alternatively, the action should be stayed pending other appropriate relief by the Court.

THIRTY-SECOND AFFIRMATIVE DEFENSE

The events which allegedly form the basis for the Plaintiffs' alleged causes of action against Defendant Hill Brothers arose prior to the elimination of the common law requirement of privity in negligence and strict liability actions. As such, Plaintiffs are subject to the common law requirement that he be in privity with Defendant Hill Brothers. Inasmuch as no such privity existed, Defendant Hill Brothers is not a proper party to this action.

THIRTY-THIRD AFFIRMATIVE DEFENSE

That actions or omissions by Defendant Hill Brothers, alleged or otherwise, were not the legal or proximate cause of any damages suffered or claimed by Plaintiffs.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

That Plaintiffs are not the real parties in interest for all or a portion of their damages.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

Defendant Hill Brothers hereby incorporates by reference any and all affirmative defenses set forth by any other defendant in this matter.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

Defendant Hill Brothers has not conducted discovery in this action and, therefore, expressly reserves the right to amend this Answer to add additional or supplemental defenses, or to file and serve other responsive pleadings, allegations or claims.

REQUEST FOR ATTORNEY'S FEES AND COSTS

Defendant Hill Brothers has been required to retain defense counsel to defend it against this action and the allegations contained in Plaintiffs' Complaint, and is entitled by law to recover its reasonable attorney fees and costs incurred in the defense of this matter.

WHEREFORE, Defendant Hill Brothers prays that Plaintiffs' demand for relief be denied in every respect, that the Complaint be dismissed with prejudice as to Defendant Hill Brothers, and that this Defendant be awarded its costs and fees and such other and further relief as the Court deems just.

DEFENDANT REQUESTS TRIAL BY JURY.

DATED this 25th day of April, 2007.

MOORE, BASKIN & ELIA, LLP

By _____
Steven R. Kraft, of the firm
Attorneys for Defendant Hill Brothers Chemical
Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 25th day of April, 2007, I served a true and correct copy of the foregoing document, by the method indicated below, and addressed to the following:

<p>1043</p> <p>James C. Arnold Petersen, Parkinson & Arnold, PLLC 390 N. Capital Avenue P. O. Box 1645 Idaho Falls, ID. 83403-1645</p> <p>Attorneys for Plaintiff</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 522-8547 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email</p>
<p>G. Patterson Keahey G. Patterson Keahey, P.C. One Independence Plaza, Ste. 612 Birmingham, AL 35209</p> <p>Attorneys for Plaintiff</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (205) 871-0801 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Email</p>
<p>David H. Maguire/David R. Kress Maguire & Kress 1414 E. Center P. O. Box 4758 Pocatello, ID. 83205-4758</p> <p>Attorneys for A. W. Chesterton; Shepard Niles</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-5181 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email maguire@maguire-kress.com kress@maguire-kress.com</p>
<p>Christopher P. Graham Trout Jones Gledhill Fuhrman 225 N. 9th Street, Ste. 820 P. O. Box 1097 Boise, ID. 83701</p> <p>Attorneys for Anchor Packing Co.; Garlock, Incorporated, Fairbanks Morse Pump Co.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 331-1529 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email cgraham@idalaw.com</p>
<p>C. Timothy Hopkins/Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes 428 Park Avenue P. O. Box 51219 Idaho Falls, ID. 83405-1219</p> <p>Attorneys for Kelly-Moore Paint Company, Inc. and Alaskan Copper Works</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email tim@hrchh.com steveb@hrchh.com</p>

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<p>1044</p> <p>Howard D. Burnett Hawley, Troxell, Ennis & Hawley, LLP 333 S. Main Street P. O. Box 100 Pocatello, ID. 83204</p> <p>Attorneys for Eaton Electrical, Inc. fka Cutler Hammer, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 233-1304 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email hdb@hteh.com</p>
<p>Brian D. Harper 161 5th Avenue S., Ste. 202 P. O. Box 2838 Twin Falls, ID. 83303</p> <p>Attorney for Guard-Line, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email harper@cableone.net</p>
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<p>Mary Price Birk/Ronald L. Hellbusch Baker & Hostetler, LLP 303 East 17th Avenue, Ste. 1100 Denver, CO. 80203-1264</p> <p>Attorneys for CertainTeed Corporation; Union Carbide Corporation</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (303)861-7805 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email mbirk@bakerlaw.com rhellbusch@bakerlaw.com</p>
<p>Gary T. Dance/Lee Radford/Benjamin C. Ritchie Moffatt Thomas Barrett Rock & Fields Chtd. 412 West Center, Suite 2000 P. O. Box 817 Pocatello, ID. 83204</p> <p>Attorneys for FMC Corporaton; Warren Pumps, Inc.; Henry Vogt Machine Co.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-0150 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email gtd@moffatt.com klr@moffatt.com bcr@moffatt.com</p>

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<p>A. Bruce Larson 707 North 7th Avenue P. O. Box 6369 Pocatello, ID. 83201</p> <p>Attorneys for Cleaver Brooks, a Div. of Aqua Chem, Inc.; ITT Industries, Inc.; P&H Cranes aka Harnischfeger Corporation</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 478-7602 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email abalatty@qwest.net</p>
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<p>Donald J. Farley/Dana Herberholz Hall Farley Oberrecht & Blanton, P.A. 702 W. Idaho, Ste. 700 P. O. Box 1271 Boise, ID. 83701</p> <p>Attorneys for Nibco, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile 208-395-8585 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email djf@hallfarley.com djh@hallfarley.com</p>
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<p>1045</p> <p>Thomas J. Lyons Merrill & Merrill, Chtd. 109 North Arthur, 5th Floor P. O. Box 991 Pocatello, ID. 83204-0991</p> <p>Attorney for Owens-Illinois, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-2499 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email toml@merrillandmerrill.com</p>
<p>Jackson Schmidt Pepple, Johnson, Cantu & Schmidt, PLLC 1218 Third Avenue, Ste. 1900 Seattle, WA 98101-3051</p> <p>Attorney for Owens-Illinois, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (206) 625-1627 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email jacksonshmidt@pjcs.com</p>
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<p>E. Scott Savage/Casey K. McGarvey Berman & Savage 170 S. Main Street, Ste. 500 Salt Lake City, UT. 84101</p> <p>Attorneys for Union Pacific Railroad Co.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email asbestos@berman.savage.com</p>
<p>Kent Hansen Cheri K. Gotchberg Union Pacific Railroad Co. 280 S. 400 West, #250 Salt Lake City, UT. 84101</p> <p>Attorneys for Union Pacific Railroad Co.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email kwhansen@up.com</p>
<p>Gary L. Cooper/M. Anthony Sasser Cooper & Larsen, Chtd 151 N. Third Avenue, Ste. 210 P. O. Box 4229 Pocatello, ID. 83205-4229</p> <p>Attorney for Paramount Supply Company; Zurn Industries, Inc.</p> <p>1046</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile 208-235-1182 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email gary@cooper-larsen.com tony@cooper-larsen.com</p>

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<p>Andrew Grade/M. Mattingly Steven V. Rizzo, P.C. 1620 SW Taylor St., Ste. 350 Portland, OR. 97205</p> <p>Attorneys for Paramount Supply Company; Zurn Industries, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile 503-229-0630 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email agrade@rizzopc.com mmattingly@rizzopc.com
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<p>Clarence Dozier/Dan Trocchio Kirkpatrick Lockhart Nicholson & Graham Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15211-2312</p> <p>Attorney for Crane Co.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (412) 355-6501 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email dtrocchio@klng.com
<p>Michael F. Skolnick Kipp & Christian, P.C. 10 Exchange Place, 4th Floor Salt Lake City, UT 84111</p> <p>Attorneys for Bullough Abatement, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (801) 359-9004 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email mfskolnick@kippandchristian.com

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Steven R. Kraft

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DEPUTY CLERK

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E-Mail: chhansen@ajhlaw.com
Attorneys for Defendant IMO INDUSTRIES

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually and as
Spouse and Personal Representative of the
Estate of Ted Castorena; ALENE STOOR,
Individually and as Spouse and Personal
Representative of the Estate of John D.
Stoor; STEPHANIE BRANCH, Individually
and as Personal Representative of the
Estate of Robert Branch, Jr.,; ROBERT L.
HRONEK; MARLENE KISLING, Individually
and as Personal Representative of the
Estate of William D. Frasure; NORMAN L.
DAY,

Plaintiffs,

vs.

GENERAL ELECTRIC, AMERIVENT, SALES,
INC., ALASKAN COPPER WORKS,
AMERIVENT SALES, INC., ANCHOR
PACKING COMPANY, A.W. CHESTERTON
COMPANY, BABITT STEAM SPECIALTY
CO., BECHTEL aka: SEQUOIA VENTURES,
BECHTEL CONSTRUCTION COMPANY,
INC., BULLOUGH ABATEMENT, INC., BELL
& GOSSETT, CERTAINTEED
CORPORATION, CLEAVER-BROOKS a
Division of Aqua Chem., Inc., COOPER
CROUSE-HINDS, COOPER INDUSTRIES,
CRANE CO., CROWN CORK & SEAL
COMPANY, INC., CUTLER HAMMER, INC.,

Case No. CV 2006-2474-PI

ANSWER AND DEMAND FOR
JURY TRIAL

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EBONY CONSTRUCTION CO., INC.,
EMERSON ELECTRIC CO., FAIRBANKS
MORSE PUMP CORPORATION, FMC
CORPORATION (Hamer), FOSTER
WHEELER COMPANY, GARLOCK
INCORPORATED, GOULD INCORPORATED,
GOULDS PUMPS TRADING CORP.,
GUARD-LINE, INC., HENRY VOGT
MACHINE, CO., HILL BROTHERS,
HONEYWELL, INC., IMO INDUSTRIES,
INDUSTRIAL HOLDING CORPORATION, ITT
INDUSTRIES, INC., INGERSOLL-RAND
COMPANY, JOHNSTON PUMPS, KELLY-
MOORE PAINT COMPANY, INC.,
PILKINGTON NORTH AMERICAN, INC. f/k/a
LIBBY-OWENS FORD, METROPOLITAN LIFE
INSURANCE COMPANY, NIBCO., INC.,
A/K/A Northern Indiana Brass Co.,
NORDSTROM VALVE COMPANY, OBIT
INDUSTRIES, INC., OWENS-ILLINOIS, Inc.,
P & H CRANES, a/k/a HARNISCHFEGOR
CORPORATION, PARAMOUNT SUPPLY
COMPANY, PAUL ROBERTS MACHINE
SUPPLY DIVISION ADVANCED
INDUSTRIAL SUPPLY, INC., f/k/a
POCATELLO SUPPLY, INC., PROKO
INDUSTRIES, INC., PROKO INDUSTRIES,
INC., RAPID AMERICAN, RELIANCE
ELECTRIC MOTORS, ROCKWELL
AUTOMATION, INC., RUPERT IRON
WORKS, SACOMA-SIERRA, SCHNEIDER
ELECTRIC, SHEPARD NILES, INC.,
SIEMENS ENERGY & AUTOMATION, INC.,
STEEL WEST, INC., STERLING FLUID
SYSTEM (Peerless Pumps), UNION
CARBIDE CORPORATION, UNION PACIFIC
RAILROAD, VIACOM INC., WARREN
PUMPS, INC., WESTINGHOUSE ELECTRIC
CORPORATION, ZURN INDUSTRIES, INC.,
and Does I through IV,

Defendants.

COMES NOW, IMO Industries, by and through its counsel of record, Anderson, Julian & Hull and hereby answers the Plaintiffs' Complaint as follows:

FIRST DEFENSE

The Plaintiffs' Complaint fails to state a cause of action upon relief can be granted.

SECOND DEFENSE

I.

That with respect to Paragraph 31 of the Plaintiffs' Complaint, this Defendant admits that at one time it was authorized to do business in the State of Idaho and is a foreign corporation. This Defendant denies the remainder of the allegations contained in Paragraph 31.

II.

That with respect to Paragraphs 2 – 30, 32 - 63, 65 – 70, this Defendant denies each and every allegation contained therein as it relates to IMO Industries. To the extent the allegations do not relate to IMO Industries, this Defendant is without sufficient information or knowledge or information to determine the truth of the averments contained therein and therefore denies the same.

III.

That with respect to Paragraphs 1 and 64, this Defendant states it is without sufficient knowledge or information necessary to determine the truth of the averments contained therein and therefore denies the same.

IV.

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With respect to Count One, Paragraphs 71 - 78, this Defendant denies each and every allegation contained therein as it relates to IMO, but is without sufficient knowledge and/or information to determine the truth of the averments contained therein with respect to the remaining Defendants and therefore denies the same.

V.

With respect to Count Two, Paragraphs 79 – 88, this Defendant denies each and every allegation contained therein as it relates to IMO, but is without sufficient knowledge and information necessary to determine the truth of the averments contained therein with respect to other Defendants and therefore denies the same.

VI.

With respect to Count Three, Paragraphs 89 – 93, this Defendant denies each and every allegation contained therein as it relates to IMO, but is without sufficient knowledge and information necessary to determine the truth of the averments contained therein with respect to other Defendants and therefore denies the same.

VII.

With respect to Count Four, Paragraphs 94 – 104, this Defendant denies each and every allegation contained therein as it relates to IMO, but is without sufficient knowledge and information necessary to determine the truth of the averments contained therein with respect to other Defendants and therefore denies the same.

VIII.

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With respect to Count Five, Paragraphs 105 – 111, this Defendant denies each and every allegation contained therein as it relates to IMO, but is without sufficient knowledge and information necessary to determine the truth of the averments contained therein with respect to other Defendants and therefore denies the same.

IX.

With respect to Count Six, Paragraphs 112 – 114, this Defendant denies each and every allegation contained therein as it relates to IMO, but is without sufficient knowledge and information necessary to determine the truth of the averments contained therein with respect to other Defendants and therefore denies the same.

FIRST AFFIRMATIVE DEFENSE

That any and all damages allegedly incurred by the Plaintiffs in this matter were proximately caused and contributed to by Plaintiffs' own negligence which exceeds any alleged negligence of this answering Defendant and therefore, Plaintiffs are barred from any recovery.

SECOND AFFIRMATIVE DEFENSE

The Plaintiffs have failed to mitigate their damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs have failed to name or identify necessary parties contrary to Idaho Rules of Civil Procedure.

FOURTH AFFIRMATIVE DEFENSE

Any and all damages incurred by Plaintiffs were proximately caused by third parties or entities for whom this Defendant has no authority or control.

FIFTH AFFIRMATIVE DEFENSE

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The alleged injuries or damages sustained by the Plaintiffs or the Plaintiffs decedents were proximately caused by superseding intervening acts of third parties other than IMO.

SIXTH AFFIRMATIVE DEFENSE

To the extent, if any, to which Plaintiffs or Plaintiffs decedents have received payments or have been damages by or on behalf of answering Defendants or other third parties, Plaintiffs are not the real parties in interest to prosecute this action as required by Rule 17 of the Idaho Rules of Civil Procedure.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

The risks and dangers involved in this situation were open and obvious to the Plaintiffs and therefore, Plaintiffs assumed the risk of dangers incident thereto.

NINTH AFFIRMATIVE DEFENSE

That the Plaintiffs cannot assert any claim for equity in that they have unclean hands.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of laches, waiver and/or estoppel.

ELEVENTH AFFIRMATIVE DEFENSE

The conditions of which Plaintiffs complain were preexisting conditions and are not entitled to recover damages therefrom.

TWELFTH AFFIRMATIVE DEFENSE

The alleged injuries or damages sustained by the Plaintiffs or Plaintiffs decedents were not proximately caused by any acts or omission of IMO.

THIRTEENTH AFFIRMATIVE DEFENSE

The Plaintiffs alleged injuries or damages to Plaintiffs or Plaintiffs decedents were proximately caused by misuse, abuse, alteration and/or failure to properly utilize, maintain or care for IMO products by persons other than IMO.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the Idaho's applicable statute of repose.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because IMO's products at all times relevant hereto, met the state of the art applicable to the Industry in question.

SEVENTEENTH AFFIRMATIVE DEFENSE

IMO asserts that it did not participate in, authorize, ratify, conspire or benefit from the alleged wrongful acts which are asserted in the Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and/or damages are barred because IMO provided adequate and complete warnings.

NINETEENTH AFFIRMATIVE DEFENSE

IMO's products complied with the industry standards at all time relevant hereto at the time of their manufacture and/or sale. Said products were safe for their intended use and were not defective or unreasonably dangerous.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims against IMO are barred because Plaintiffs' or Plaintiffs decedents' exposure to IMO product, if any, was de minimis.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Plaintiffs' claims of fraud or conspiracy claim are barred by Rule 9(b) of the Idaho Rules of Civil Procedure which requires such assertions to be made with particularity.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' causes of action under state law are barred by the doctrine of federal preemption.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs cannot recover against IMO and their claims are barred for lack of personal jurisdiction against IMO.

WHEREFORE, this answering Defendant prays for judgment as follows:

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1. That the Plaintiffs take nothing by way of their Complaint and that the same be dismissed with prejudice.

2. That the Defendant, IMO, be awarded a reasonable sum of attorney's fees and costs incurred in suit herewith.

3. For such other and further relief as this Court deems proper.

DEFENDANT IMO INDUSTRIES DEMANDS A JURY TRIAL AS TO ALL ISSUES.

DATED this 30 day of April, 2007.

ANDERSON, JULIAN & HULL LLP

By 

Chris H. Hansen, Of the Firm
Attorneys for Defendant IMO
Industries

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30 day of April, 2007, I served a true and correct copy of the foregoing ANSWER AND DEMAND FOR JURY TRIAL by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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BANNOCK COUNTY
CLERK OF THE COURT

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BY _____
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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

MILDRED CASTORENA, et al,)

Plaintiffs,)

vs.)

**Case No. CV-2006-2474-PI
MEMORANDUM DECISION
and ORDER**

GENERAL ELECTRIC, ALASKAN COPPER)
WORKS; AMERIVENT SALES, INC.;)
ANCHOR PACKING COMPANY;)
A.W. CHESTERTON COMPANY;)
BABITT STEAM SPECIALTY, CO.,)
BECHTEL aka: SEQUOIA VENTURES,)
BULLOUGH ABATEMENT, INC.; BELL)
& GOSSETT; CERTAINTEED CORPORATION,)
CLEAVER-BROOKS a Division of Aqua Chem,)
Inc.; CRANE CO.; CROWN CORK &)
SEAL COMPANY, INC.; CUTLER HAMMER;)
EBONY CONSTRUCTION CO.;)
EMERSON ELECTRIC CO.;)
FAIRBANKS MORSE PUMP CORPORATION;)
FMC CORPORATION; FOSTER WHEELER)
COMPANY; GARLOCK INCORPORATED;)
GOULD INCORPORATED;)
GOULDS PUMP TRADING CORP.;)
GUARD-LINE, INC.; HENRY VOGT)
MACHINE CO.; HILL BROTHERS;)
HONEYWELL, INC.; IMO INDUSTRIES)
INDUSTRIAL HOLDING CORPORATION;)
ITT INDUSTRIES, INC.; INGERSOLL-RAND)
COMPANY; JOHNSTON PUMPS;)
KELLY-MOORE PAINT COMPANY, INC.;)
PILKINGTON NORTH AMERICAN, INC. f/k/a)
LIBBY-OWENS FORD; METROPOLITAN LIFE)
INSURANCE COMPANY; NIBCO, INC., A/K/A)
Northern Indiana Brass Co.;)
NORDSTROM VALVE COMPANY;)
OBIT INDUSTRIES, INC.;)
OWENS-ILLINOIS, INC.;)

Memorandum Decision and Order
Re: Parker-Hannifin Corporation's Motion to Dismiss
Case No. CV-2006-2475-PI

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P & H CRANES, aka HARNISCHFEGOR)
CORPORATION; PARAMOUNT SUPPLY)
COMPANY; PAUL ROBERTS MACHINE)
SUPPLY DIVISION; ADVANCED INDUSTRIAL)
SUPPLY, INC. f/k/a POCATELLO SUPPLY, INC.)
RELIANCE ELECTRIC MOTORS;)
ROCKWELL AUTOMATION, INC.;)
RUPERT IRON WORKS; SACOMA-SIERRA;)
SCHNEIDER ELECTRIC; SHEPARD NILES,)
INC.; STEEL WEST, INC.; STERLING)
FLUID SYSTEM; UNION CARBIDE)
CORPORATION; UNION PACIFIC RAILROAD;)
VIACOM, INC.; WARREN PUMPS, INC.;)
WESTINGHOUSE ELECTRIC CORPORATION;)
ZURN INDUSTRIES, INC.)
))
Defendants.)
))
))

INTRODUCTION

This case is a products liability action wherein the Plaintiff generally alleges the above-named defendants are responsible for the manufacture of asbestos-containing products or machinery to which the Plaintiff alleges she was exposed.

The Complaint, filed on June 2, 2006, named Sacoma-Sierra as a defendant, but made no mention of the party at issue here, Parker-Hannifin, Corporation (hereinafter "Parker-Hannifin" or "the Defendants"). However, Parker-Hannifin, an admitted successor-in-interest to Sacoma Sierra, Inc., was served with process on December 8, 2006, as "Parker-Hannifin Corporation fka Sacoma-Sierra, Inc." (See Ex. A, attached to Aff. of Kevin J. Scanlan in Supp. of Parker-Hannifin Corporation's Mot. to Dismiss, (hereinafter "Scanlan Aff."), Dec. 29, 2006, ¶ 2.)

Parker-Hannifin is now moving this Court to dismiss the Plaintiff's complaint as it pertains to the

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Defendants, on several grounds. First, the Defendants argue for dismissal because the “plaintiffs failed to effectuate service within six months of filing the complaint as required by IRCP 4(a)(2).” (Parker-Hannifin Corporation’s Mot. to Dismiss (hereinafter “Defs.’ Mot. to Dismiss”), Dec. 27, 2006, 2.) The Defendants also argue for a dismissal based on a lack of personal jurisdiction and/or because there exists insufficiency of process. (*Id.*)

After reviewing the written record and hearing oral argument regarding the Defendants’ motion on March 12, 2007, this Court took the matter under advisement.

ISSUE

1. **Whether to dismiss the complaint as to Sacoma-Sierra and, to the extent applicable, Parker-Hannifin.**

DISCUSSION

1. **Whether the Plaintiff’s failure to timely serve the Defendants requires dismissal of the Complaint.**

The Defendants are first arguing for a dismissal based on the Plaintiff’s failure to serve process on Parker-Hannifin in accordance with the Idaho Rules of Civil Procedure (IRCP). (*Id.*) IRCP 12(b)(5)¹ entitles a party to dismissal if that party is insufficiently served with process. The Defendant claims the service of process effectuated by the Plaintiff was insufficient since such service violated IRCP 4(a)(2). That rule states:

(2) Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within six (6) months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without

¹ **Rule 12(b). How defenses and objections presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses shall be made by motion: ... (5) insufficiency of service of process

prejudice upon the court's own initiative with 14 days notice to such party or upon motion.

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It is undisputed here that service of the Complaint was untimely. The Plaintiff filed her Complaint on June 2, 2006; however, Parker-Hannifin was not served with process until December 8, 2006. (See Ex. A, attached to Scanlan Aff.) Therefore, because the Plaintiff failed to meet the six-month time frame for serving the summons and complaint by six days, Rule 4(a)(2) requires this Court to dismiss the action unless the Plaintiff can demonstrate good cause for her failure to timely serve the Defendants. *Sammis v. Magnetek*, 130 Idaho 342, 346, 941 P.2d 314, 318 (1997). In determining whether a party has met this good cause exception to Rule 4(a)(2), courts may consider whether the party made diligent attempts to effect service within six months of filing the complaint. *Id.* See also, *Martin v. Hoblit*, 133 Idaho 372, 987 P.2d 284 (1999).

The Plaintiff maintains that she "has a good cause exception to the six (6) month service requirement because she proceeded with diligence" (Pl.'s Resp. to Parker-Hannifin Corp.'s Mot. to Dismiss (hereinafter "Pl.'s Resp."), Jan. 19, 2007, 2.) Specifically, the Plaintiff argues she was diligent because:

Plaintiff was provided the incorrect address, but persisted in attempting to serve the defendant four (4) times through Richard Duty from Accurate Process Service in Wisconsin. Service was first attempted on June 27, 2006 in Carson City, Nevada just 20 days after the complaint was filed. Said service was returned on July 25, 2006. Again, on August 29, 2006, after research and attempts to locate defendant, service was attempted through a new address through Richard Duty from Accurate Process Service in Wisconsin. Said service was returned on September 29, 2006. Next, plaintiff continued trying to locate the defendant and attempted service to a Wisconsin address October 9, 2006 through Richard Duty from Accurate Process Service in Wisconsin, which was returned as well. Finally, plaintiff was able to locate the proper address and contacted the

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process server, Richard Duty from Accurate Process Service in Wisconsin and service was processed November 20, 2006. Plaintiff explained to Mr. Duty, the trouble of locating the defendant and instructed that service be performed immediately and before December 1, 2006. Defendant was served on December 8, 2006 by Richard Duty from Accurate Process Service in Wisconsin.

(*Id.* at 2-3.)

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While the service of process was insufficient here because it was accomplished six days late, this Court finds that the Plaintiff did exhibit diligent efforts, as the Plaintiff made four attempts to serve the Defendant beginning just 20 days after the Complaint was filed. Furthermore, this Court is opposed to disposing of cases based on procedural technicalities. Therefore, because the Plaintiff here accomplished service upon the Defendants only six days beyond the deadline after making several attempts as detailed above, this Court finds the Plaintiff acted with due diligence in processing service to the Defendants and therefore declines to dismiss the Plaintiff's Complaint because of her failure to timely serve the Defendants.

2. Whether this Court has personal jurisdiction over the named defendant, Sacoma – Sierra.

The Defendants next argue the Plaintiff's Complaint should be dismissed based on a lack of personal jurisdiction. (Parker-Hannifin Corporation's Mem. in Supp. of Mot. to Dismiss (hereinafter "Defs.' Mem. in Supp. of Mot. to Dismiss"), Dec. 29, 2006, 5.) The Defendants assert that Parker-Hannifin Corporation is "not subject to personal jurisdiction" because it does not have sufficient minimum contacts with Idaho. (*Id.*) Specifically, the Defendants argue that while the Plaintiff's Complaint names Sacoma-Sierra as a corporation subject to the jurisdiction of this Court, that corporation was "dissolved over twenty years ago, is not an active corporation

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currently licensed to do business in Idaho and does not have minimum contacts with Idaho.” (*Id.* at 6.) Furthermore, the Defendants note that the Complaint “makes no allegation that Parker Hannifin has any contact with Idaho or should have any involvement in this case.” (*Id.*)

a. Whether this Court has personal jurisdiction over Sacoma-Sierra.

In order to exercise personal jurisdiction over an out-of-state defendant, an Idaho court must demonstrate that the act giving rise to the cause of action falls under Idaho’s long arm statute and that constitutional standards of due process are met. *McAnally v. Bonjac, Inc.*, 137 Idaho 488, 490, 50 P.3d 983, 985 (2002). Idaho Code (IC) § 5-514(b), Idaho’s long arm statute, provides for personal jurisdiction over a non-resident defendant when a tort is committed within the state. *Id.* at 491, 50 P.2d at 986. In pertinent part, that statute states:

§ 5-514. Acts subjecting persons to jurisdiction of courts of state.

Any person, firm, company, association or corporation, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts hereinafter enumerated, thereby submits said person, firm, company, association or corporation, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

(a) The transaction of any business within this state which is hereby defined as the doing of any act for the purpose of realizing pecuniary benefit or accomplishing or attempting to accomplish, transact or enhance the business purpose or objective or any part thereof of such person, firm, company, association or corporation;

(b) The commission of a tortious act within this state;

....

IDAHO CODE ANN. § 5-515 (West 2007). “[A]n allegation that an injury has occurred in Idaho in a tortious manner is sufficient to invoke the tortious act language of I.C. § 5-514(b).” *St.*

Alphonsus Reg’l Med. Ctr. v. Wash., 123 Idaho 739, 743, 852 P.2d 491, 495 (1993). The Idaho Supreme Court has further held that “this section is designed to provide a forum for Idaho

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residents, is remedial legislation of the most fundamental nature and should be liberally construed.” *Id.* (internal citations omitted). Whether the alleged conduct is actually tortious is not relevant to an examination of jurisdiction under the long-arm statute. *Id.*

In this case, the Plaintiff has alleged that Sacoma-Sierra committed a tort by providing “asbestos twisted rope ... which was the product that caused Plaintiff’s illness.” (Pl.’s Resp. at 4.) Thus, given the remedial nature of the long-arm statute and because an allegation of tortious action is sufficient, this Court determines jurisdiction over Sacoma-Sierra does exist under IC § 5-514(b). However, as explained above, a determination that jurisdiction exists pursuant to Idaho’s long-arm statute does not end the jurisdictional inquiry since this Court must also determine whether the assertion of jurisdiction is permissible pursuant to the Due Process Clause of the United States Constitution. *McAnally*, 137 Idaho at 490, 50 P.3d at 985.

Due process “prohibits an Idaho court from exercising personal jurisdiction over a non-resident defendant unless that defendant has certain minimum contacts with Idaho such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *St. Alphonsus Reg’l Med. Ctr.*, 123 Idaho at 744, 852 P.2d at 496 (internal citations omitted). These minimum contacts require a defendant to “purposefully [avail] itself of the privilege of conducting activities within [Idaho], thus invoking the benefits and protections of [Idaho’s] laws.” *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240 (1958). Furthermore, a defendant’s contacts must be “such that he should reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 287, 100 S.Ct. 559, 562 (1980). Such minimum contacts are accomplished ‘if the defendant “purposefully directs” his

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activities at residents of the forum state and the litigation arises out of or relates to those activities.’ *St. Alphonsus Reg’l Med. Ctr.*, 123 Idaho at 744, 852 P.2d at 496 (citing *Houghland Farms, Inc. v. Johnson*, 119 Idaho 72, 76, 803 P.2d 978, 982 (1990), quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477, 105 S.Ct. 2174, 2182 (1985)). The Idaho Supreme Court has further determined that

[i]n analyzing whether there are sufficient contacts for the exercise of specific personal jurisdiction, ‘the suit for which jurisdiction is sought must arise out of or relate to the defendant’s contacts with Idaho. It is not just any contacts by the defendant with Idaho that will sustain the exercise of specific personal jurisdiction, but only those out of which the suit arises or those that relate to the suit.’

Id. (quoting *Houghland Farms, Inc.*, 119 Idaho at 75, 803 P.2d at 981).

In this case, Sacoma-Sierra conducted business with Food Machinery Corporation (FMC), a company located in and doing business in Idaho. In addition to other business, the Plaintiff alleges that Sacoma-Sierra provided “asbestos twisted rope to FMC, which was the product that caused Plaintiff’s illness.” (Pls.’ Resp. at 4.) Thus, Sacoma-Sierra conducted interstate business with an Idaho corporation, thereby purposefully availing itself of the privilege of conducting activities in Idaho, thus invoking the benefits and protections of Idaho’s laws. Consequently, Sacoma-Sierra’s contacts with Idaho are such that Sacoma-Sierra could reasonably anticipate being haled into an Idaho court. Therefore, because the act giving rise to the cause of action falls under Idaho’s long arm statute and the constitutional standards of due process are met, this Court can exercise personal jurisdiction over Sacoma-Sierra and declines to dismiss the lawsuit on that basis.

b. Whether this Court has personal jurisdiction over Parker-Hannifin.

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Although this Court has determined it can exercise personal jurisdiction over Sacoma-Sierra, it remains undisputed that *Parker-Hannifin* has no contacts with Idaho. Nevertheless, the Plaintiff asserts this Court still has personal jurisdiction of the Defendants under a successor-in-interest theory. The Plaintiff points to a Ninth Circuit ruling wherein it was determined that

a successor to a manufacturer might be held liable for product defects caused by the manufacturer if (1) the plaintiff has no remedy against the original manufacturer because it dissolved when the successor acquired its business, (2) the successor has the ability to assume the manufacturer's risk-spreading program, and (3) imposition of liability on the successor would be fair because the successor acquired the original manufacturer's trade name, good will, and customer lists.

Hydro-Air Equip., Inc. v. Hyatt Corp., 852 F.2d 403, 406 (Idaho Ct. App. 1988).

Parker-Hannifin is an admitted successor-in-interest to Sacoma-Sierra. (Defs.' Mem. in Supp. of Mot. to Dismiss at 3.) As such, in the event that Sacoma-Sierra is liable for any injury suffered by the Plaintiff, Parker-Hannifin might also be liable under a successor-in-interest theory if the above three factors are satisfied. At this juncture, it is unclear as to whether those factors could be satisfied; therefore this Court declines to dismiss the Plaintiff's Complaint because of a lack of personal jurisdiction over Parker-Hannifin.

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3. **Whether the Plaintiff's Complaint should be dismissed based upon insufficiency of process.**


The Defendants also argue the Plaintiff's Complaint must be dismissed because of insufficiency of service of process pursuant to IRCP 12(b)(4).² (Defs.' Mem. in Supp. of Mot. to Dismiss at 6.)

Parker-Hannifin is not a named party to this lawsuit, and the Plaintiff has not moved to amend her lawsuit to include the Defendants. As such, the process was improper because the Defendants have not been served with a lawsuit that involves them. Once the Plaintiff learned that Parker-Hannifin is the successor-in-interest to Sacoma-Sierra, she should have immediately moved to include the correct party.

Based on the foregoing, this Court hereby GRANTS the Defendants' request to dismiss the Plaintiff's Complaint on the grounds that there exists insufficiency of process. The Plaintiff should move to amend her Complaint and properly serve the Defendants.

IT IS SO ORDERED.

Dated this 18th day of May, 2007.


PETER D. McDERMOTT
DISTRICT JUDGE

² **Rule 12(b). How defenses and objections presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses shall be made by motion: ... (4) insufficiency of process

Memorandum Decision and Order

Re: *Parker-Hannifin Corporation's Motion to Dismiss*
Case No. CV-2006-2475-PI

CERTIFICATE OF MAILING

I, Kathy Smith, Deputy Clerk, do hereby certify that I sent a true and correct of the Memorandum Decision and Order to counsel listed below on this 16th day of May , 2007, with sufficient postage thereon prepaid:

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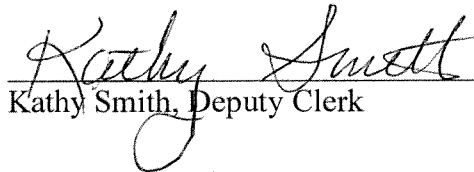
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2007 JUL -5 PM 4:19
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

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Mildred Castorena, Individually and as Spouse)	Case No.: CVC 2006-2474-PI
and Personal Representative of the Estate of)	
Ted Castorena; Alene Stoor, Individually and)	AMENDED ANSWER AND DEMAND FOR
as Spouse and Personal Representative of the)	JURY TRIAL
Estate of John D. Stoor; Stephanie Branch,)	
Individually and as Personal Representative of)	
the Estate of Robert Branch, Jr.; Robert L.)	
Hronek; Marlene Kisling, Individually and as)	
Personal Representative of the Estate of)	
William D. Frasure; Norman L. Day.)	
Plaintiffs ,)	
vs.)	
GENERAL ELECTRIC, et al.,)	
Defendants.)	

Comes now, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., by and through its undersigned attorney of record and responds to the Plaintiffs' Complaint for Wrongful Death and Loss of Consortium --- Asbestos and Jury Demand ("Complaint"), specially appearing, contesting jurisdiction and service and sufficiency

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of process, and preserving their objection to the attempt to assert jurisdiction and/or force it to defend in this action.

FIRST DEFENSE

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This court lacks jurisdiction over the subject matter of this action and lacks personal jurisdiction of the Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Plaintiffs have not sufficiently served Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation in this matter and accordingly, the Court lacks jurisdiction over Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation.

SECOND DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief can be granted, and should therefore be dismissed.

THIRD DEFENSE

Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation denies each and every allegation of Plaintiffs' Complaint not specifically admitted herein.

FOURTH DEFENSE

The Plaintiffs has failed to join all necessary and indispensable parties to this action.

ANSWER

1. Answering paragraph 1 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. admits only that it is a business entity organized and existing under the laws of a state other than Idaho and is authorized to do business in Idaho. Defendant ITT Corporation f/k/a ITT Industries Inc., and

Bell & Gossett a division of ITT Corporation is without knowledge or information sufficient to form a belief as the truth of the allegations contained in paragraph 1 relating to other Defendants. Defendant ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation denies the remaining allegations contained in paragraph 1.

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2. Answering paragraphs 2 through 10 and 12 through 32 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation has insufficient information to form a belief as to the truth of any of the allegations relating to the Plaintiffs or Defendants other than Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. and, therefore, denies the same.

3. Answering paragraph 11 and 33 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation admits only that it is a business entity organized and existing under the laws of a state other than Idaho.

4. Answering paragraphs 34 through 63 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation has insufficient information to form a belief as the truth of any of the allegations relating to the Plaintiffs or Defendants other than Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. and, therefore, denies the same.

5. Answering paragraph 64 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Further, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation has insufficient information to form a

belief as the truth of any of the allegations relating to Defendants other than Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation and, therefore, denies the same.

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6. Answering paragraphs 65 through 70, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 65 through 70 as they relate to other Defendants and, therefore, denies them.

7. Answering paragraph 71 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. incorporates its previous responses to the preceding paragraphs of Plaintiffs' Complaint.

8. Answering paragraphs 72 through 78 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 72 through 78 as they relate to other Defendants and, therefore, denies them.

9. Answering paragraph 79 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation. incorporates its

previous responses to the preceding paragraphs of Plaintiffs' Complaint.

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10. Answering paragraphs 80 through 88 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 80 through 88 as they relate to other Defendants and, therefore, denies them.

11. Answering paragraph 89 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. incorporates its previous responses to the preceding paragraphs of Plaintiffs' Complaint.

12. Answering paragraphs 90 through 93 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 90 through 93 as they relate to other Defendants and, therefore, denies them.

13. Answering paragraph 94 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. incorporates its previous responses to the preceding paragraphs of Plaintiffs' Complaint.

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14. Answering paragraphs 95 through 104 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation denies the allegations insofar as they are directed at ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 95 through 104 as they relate to other Defendants and, therefore, denies them.

15. Answering paragraph 105 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. incorporates its previous responses to the preceding paragraphs of Plaintiffs' Complaint.

16. Answering paragraphs 106 through 111 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 106 through 111 as they relate to other Defendants and, therefore, denies them.

17. Answering paragraph 112 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. incorporates its previous responses to the preceding paragraphs of Plaintiffs' Complaint.

18. Answering paragraphs 113 and 114 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. denies

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the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 113 and 114 as they relate to other Defendants and, therefore, denies them.

19. Answering paragraph 115 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. incorporates its previous responses to the preceding paragraphs of Plaintiffs' Complaint.

20. Answering paragraphs 116 through 122 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 113 and 114 as they relate to other Defendants and, therefore, denies them.

21. Answering paragraph 124 and 125 of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. denies the allegations insofar as they are directed at Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. Defendant ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation further responds that it is without knowledge or information sufficient to form a belief as to the truth of the allegations

contained in paragraphs 124 and 125 as they relate to other Defendants and, therefore, denies them.

AFFIRMATIVE DEFENSES

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22. That the Plaintiffs' claims are barred because they were not presented within the time prescribed by law for the commencement of an action upon the claim asserted, pursuant to the appropriate statute of limitation, including, but not limited to the following separate and distinct sections of the Idaho Code, §§ 5-201, 5-216, 5-219, 6-1303 and 6-1403(3).

23. That the Complaint, and all causes of action contained therein, have failed to set forth facts and allegations sufficient to constitute a cause of action against Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. in that the complaint fails to state with particularity the circumstances constituting the alleged fraudulent concealment of the alleged wrongs. Defendant ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation has never engaged in any deception or fraud. The claims asserted in the Complaint, therefore, are barred by the relevant statutes of limitation. Plaintiffs' claims are barred by the doctrine of laches, waiver, accord and satisfaction, and/or estoppel.

24. Plaintiffs accepted the risk of injury; Plaintiffs assumed any risks incident to their employment, including exposure to asbestos. Plaintiffs, at all times mentioned in the Complaint, were aware of all conditions of their employment, and fully appreciated all the risks, if any, that were involved, including exposure to asbestos. Notwithstanding such knowledge on the part of the Plaintiffs, Plaintiffs continued in their employment and voluntarily assumed the risk of the very injuries, if any, of which the Plaintiffs complain. Such an assumption of the risks is a bar to any recovery against Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a

division of ITT Corporation.

25. Acts or omissions of third parties over whom Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. had no control constitute an independent intervening cause.

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26. Based upon information and belief, Plaintiffs' injuries, if any, were caused by acts, conduct, as circumstances of an unknown or indeterminate character in nature. By reason of the foregoing, it is impossible to determine facts as to time, place, and causal relationship lacking which, as a matter of law, bars Plaintiffs' claims.

28. Plaintiffs have failed to mitigate their damages, if any, the monetary damages, which Plaintiffs are entitled if any, should be reduced by the amount of damages that would have otherwise been mitigated or reasonably avoided.

29. Plaintiffs' claims are barred by virtue of the fact that the product manufactured or distributed by Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., or its predecessor corporations, complied with the applicable codes, standards, or regulations adopted or promulgated by the United States, the State of Idaho, or other applicable jurisdiction at the time of sale.

30. The injuries and damages alleged in said Complaint, and each and every cause of action thereof, if any there were, were the direct and proximate result of the misuse, abuse, or alteration of said products after they left the custody and the control of Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. by Plaintiffs and/or their employers.

31. The products referred to in Plaintiffs' Complaint were misused, abuse, altered or not used in accordance with the recommended or manufacturer's instructions for the products in

question by Plaintiffs or by third parties over whom Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., has no control or right to control. Such misuse, abuse, or alteration was not reasonably foreseeable by Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., and proximately caused any loss, injury, or damage incurred by Plaintiffs.

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32. Plaintiffs knowingly, voluntarily, and unreasonably proceeded to encounter each of the known risks and hazards, if any, referred to in Plaintiffs' Complaint, and this undertaking proximately caused and contributed to any loss, injury, or damages incurred by Plaintiffs ; thus Plaintiffs' claim should be reduced or barred.

33. Any damage, injury, or condition, if any, alleged by Plaintiffs' Complaint was caused or substantially contributed to by Plaintiffs' own negligence, comparative fault, or knowing and voluntary assumption of known and appreciable risk, and such negligence, comparative fault, or assumption of risk bars Plaintiffs' claims.

34. This Court lacks jurisdiction regarding the subject matter of this action by virtue of the Workers' Compensation and Occupational Disease Act in this and other jurisdictions.

35. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., is entitled to a set-off as to any potential judgment or award on behalf of Plaintiffs against Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., for any moneys paid by other Defendants or nonparties at fault to Plaintiffs or any moneys paid to Plaintiffs on behalf of Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., or any benefits received or owed to Plaintiffs by any State or Federal insurance or workers' compensation fund or program.



36. Plaintiffs' claim should be dismissed or stayed for failure to join one or more necessary and indispensable parties.

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37. Pursuant to Idaho Code § 6-802, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., cannot be liable to Plaintiffs for any amount greater than that represented by the degree or percentage of fault, if any, attributable to Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation.

38. Even if Plaintiffs were exposed to asbestos, which Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., denies, such exposure did not cause or contribute to, nor was a substantial factor in bringing about, any injury, condition, or damages alleged in Plaintiffs' Complaint. Plaintiffs have not been injured by any product manufactured by Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. That at all relevant time, all Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. products were in conformity with the state of the art in the industry and with Federal Standard. The products made by Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. are not inherently dangerous to human safety. Any asbestos in any Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. product is locked in, encapsulated, and firmly bound or otherwise contained. Defendant ITT Corporation's f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation products do not release dangerous amounts of asbestos dust or fibers into the air.

39. The risk of any injury or damage alleged in Plaintiffs' complaint was unforeseeable at the time any relevant product was manufactured or sold.

40. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., denies all cross-claims that may be asserted against it in this matter.

41. Failure to warn, if any, was not a substantial cause of Plaintiffs' alleged injuries.

42. Plaintiffs' exposure to cigarette smoke, other tobacco products, or noxious fumes and residues caused or contributed to the damages alleged in Plaintiffs' Complaint.

43. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation. hereby incorporates by reference all of affirmative defenses heretofore and hereinafter set forth by co-defendants as though fully set forth herein.

44. Any exposure, if any, by Plaintiffs to Defendant ITT Corporation's f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation, products alleged to contain asbestos must be considered de minimus and not a proximate cause of Plaintiffs' alleged injuries.

45. There is no privity of contract or any other type of privity between Plaintiffs and Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation.

46. There is no concerted concurrence of action between Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., and any other defendant as alleged herein, and said Defendants are neither joint tortfeasors nor liable for conspiracy.

47. Plaintiffs' claims in damages, if any, are barred or limited by the Idaho tort Reform Act, Idaho Code § 6-1601, et seq.

48. Plaintiffs and Plaintiffs' employers were sophisticated users of products containing asbestos and had adequate knowledge of the dangers and risks associated with using or working around asbestos.

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49. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., has not conducted discovery in this action and, therefore, expressly reserves the right to amend its answer to add additional or supplemental defenses in the file and serve other responsive pleadings, allocations, or claims.

50. Plaintiffs is not entitled to recover from Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., because Plaintiffs, their agents or intervening third parties had virtually the same, if not the same, notice and knowledge as Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., with respect to the alleged hazard or defect, if any, in the products at issue in the complaint.

51. Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., did not act individually or together with any one or more of the other defendants for or in order to accomplish any unlawful purpose or by any unlawful means. Moreover, Plaintiffs did not suffer any injury as a result of the actions or inactions of Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., Accordingly, Plaintiffs cannot recover against Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., under a theory of civil conspiracy.

52. Insofar as the Complaint is based on allegations of concealment, misrepresentation, or fraud by Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., the Complaint fails to state with particularity the

circumstances constituting the alleged concealment, misrepresentation, or fraud. The Complaint, therefore, fails to state a claim against Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., upon which relief can be granted.

53. Plaintiffs' claims are barred as a matter of public policy in as much as a social utility and public benefit of asbestos-containing product outweigh any alleged risks of such product.

54. Whatever damages decedent for Plaintiffs may have suffered, if any, were the sole and proximate result of an unavoidable accident.

55. Plaintiffs have not sufficiently served Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., in this matter and accordingly, the Court lacks jurisdiction over Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation.

56. Plaintiffs' claim for punitive damages in this action violates the provisions of Idaho Code § 1604 (2).

57. Plaintiffs' claim for punitive damages violates provisions of the United States Constitution.

58. Plaintiffs' claims have been discharged under all relevant provisions of Federal and State law.

DEMAND FOR JURY TRIAL

Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation demands a trial by jury, composed of the number of persons allowed by law, on all issues, claims, and defenses so triable.

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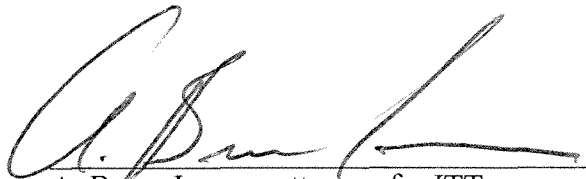
WHEREFORE, having fully answered the allegation of Plaintiffs' Complaint, Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation., prays for relief as follows:

1. That Plaintiffs' Complaint be dismissed with prejudice or, in the alternative, a judgment be rendered in favor of Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation.

2. That Defendant ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation, be awarded its cost necessarily incurred herein and reasonable attorney fees incurred in the defense of this action; and,

3. That ITT Corporation f/k/a ITT Industries Inc., and Bell & Gossett a division of ITT Corporation, be granted such other and further relief as the Court deems just and proper under the circumstances.

DATED this 4th day of June 2007.



A. Bruce Larson, attorney for ITT Corporation f/k/a ITT Industries Inc. and Bell & Gossett a division of ITT Corporation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of June 2007, a true and correct copy of the within and foregoing AMENDED ANSWER AND DEMAND FOR JURY TRIAL of ITT CORPORATION was served upon:

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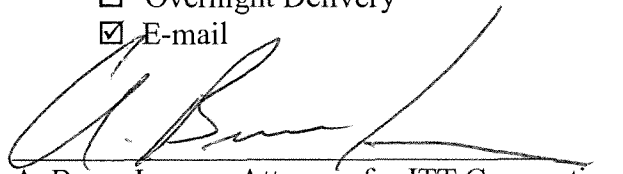
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7-10-07

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Attorneys for Defendant Bullough Abatement, Inc.

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

MILDRED CASTORENA, et al.,
Plaintiffs,

vs.

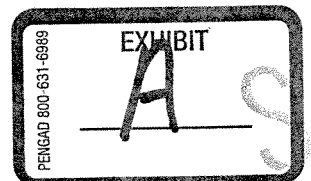
BULLOUGH ABATEMENT, INC. et al.,
Defendant.

: DEFENDANT BULLOUGH
: ABATEMENT INC.'S AMENDED
: ANSWER TO PLAINTIFFS'
: COMPLAINT

: Case No. CV-2006-2475-PI

Comes now Defendant Bullough Abatement, Inc., ("Bullough") through counsel
hereby amends their answer to Plaintiffs' complaint as follows:

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FIRST DEFENSE

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1. Plaintiffs' complaint fails to state any claim(s) against Bullough upon which relief may be granted. Most specifically, and without waiving any other bases for failure to state a claim, Bullough ceased operations in 1992 and was formally dissolved by the State of Utah in 1993. Plaintiffs' claims against Bullough are barred because Bullough lacks capacity to sue or be sued under all applicable corporate survival statutes, including Utah Code § 16-10a-1407 (2006).

2. Defendant Bullough Lacks knowledge sufficient to answer many of plaintiffs' allegations, to the extent such allegations are directed at defendants other than Bullough. To the best of its knowledge and belief, Bullough answers plaintiffs' numbered allegations as follows, and all allegations not specifically addressed are denied:

SECOND DEFENSE

(Answering numbered paragraphs in Complaint)

1. Bullough was a Utah corporation, dissolved in 1992, engaged in the industrial and commercial insulation business, and eventually in the asbestos abatement business. Bullough had some customers in Idaho. Bullough denies the balance of paragraph 1 for lack of knowledge sufficient to form a belief.

2-9. Paragraphs 2-9 are not directed to Bullough, and are denied for lack of knowledge.

10. See answer to paragraph 1. Additionally, Bullough , as a defunct corporation, denies jurisdiction of Idaho courts, subject to research of Idaho law. Bullough denies that it may be served with process at the Murray address listed in paragraph 10. Bullough is served via the Utah department of Commerce.

11-63. Paragraphs 11-63 are not directed toward Bullough, and are denied for lack of knowledge.

64. See Bullough answer to paragraphs 1 and 10, incorporated herein by reference.

65. Denied

66. Denied. The last phrase of paragraph 66, addressing joint and several liability, consists of legal argument or conclusion, and in any event, is also denied.

67. Denied. Plaintiffs' invocation of the doctrine of joint and several liability consists of legal argument or conclusion, and in any event is denied.

68. To the extent paragraph 68 states any factual allegations, such allegations are denied. In paragraph 68, plaintiffs' appear to state legal positions regarding other entities, not named in their complaint, who may be responsible for plaintiffs' alleged asbestos-related illness. Defendant Bullough specifically reserves its prerogative, to the full extent permitted by Idaho law, to apportion fault among all entities named in paragraph 68, including any claims, to the extent permitted by Idaho law, that Bullough's entire fault, if any, be assigned to said entities, plaintiffs' disclaimers notwithstanding. Bullough specifically reserves, to the extent permitted by applicable state and federal law, each and every defense, jurisdictional, procedural, and substantive, which plaintiffs' purport to overcome by their averments in paragraph 68.

69. Denied for lack of knowledge sufficient to form a belief; however, to the extent any identifiable or unidentifiable entities appear, via discovery, to bear fault for plaintiffs' alleged injuries, Bullough reserves its prerogative, to the extent permitted by applicable law, to apportion or transfer fault to all such entities or "Defendants."

70. Paragraph 70 contains legal conclusions. To the extent it alleges facts, such

allegations are denied for lack of knowledge sufficient to form a belief. Bullough reserves every jurisdictional and substantive defense available under applicable state and federal law to the extent discovery supports the same.

71. Bullough's answers to paragraphs 1-70 are incorporated herein.

72. Denied

73. Denied

74. Denied

a. Denied

b. Denied

c. Denied

d. Denied

e. Denied

f. Denied

g. Denied

h. Denied

i. Denied

75. Denied. For a lack of knowledge sufficient to form a belief.

76. Denied

77. Denied

78. Denied

79. Bullough's answers to paragraphs 1-78 are incorporated herein.

80. Denied

81. Denied

82. Denied

83. Denied

84. Denied for lack of knowledge sufficient to form a belief.

85. Denied for lack of knowledge sufficient to form a belief.

1097
86. Paragraph 86 appears to consist largely of legal argument and conclusions. To the extent facts are alleged, Bullough denies same.

87. Denied

88. Denied

89. Bullough answers to paragraphs 1-88 are incorporated herein.

90. Denied

91. Denied

92. Denied

93. Denied

94. Bullough's answers are incorporated herein.

95. Bullough does not understand the term "offensive acts" and in any event, denies paragraph 95 in its entirety, along with the unnumbered paragraph that follows paragraph 95.

96. Denied

97. Denied

98. Denied

a. Denied

b. Denied

i. Denied

ii. Denied

iii. Denied

c. Denied

99. Denied

100. Denied

101. Denied

102. Paragraph 102 does not appear directed towards Bullough. In any event, Bullough denies the allegations of paragraph 102 for lack of knowledge or information sufficient to form a belief.

103. See response to paragraph 102, incorporated herein.

104. See response to paragraph 102, incorporated herein.

105. Bullough's answers to paragraphs 1-104 are incorporated herein.

106. Paragraph 106 does not appear directed towards Bullough. In any event, Bullough denies the allegations of paragraph 106, including subparagraphs a, b, c, for lack of knowledge or information sufficient to form a belief.

107. Paragraph 106 does not appear directed towards Bullough. In any event, Bullough denies the allegations of paragraph 107 for lack of knowledge of information sufficient to form a belief.

108-111. Paragraphs 108-111 do not appear directed towards Bullough. In any event, Bullough denies the allegations of paragraphs 108-111 for lack of knowledge or information sufficient to form a belief.

112. Bullough's answers to paragraphs 1-111 are incorporated herein.

113. Paragraph 113 and subparagraphs (a) through (l) do not appear directed to

Bullough, which does not understand itself to be a "premise defendant" in this lawsuit. In any event, Bullough denies the allegations of paragraph 113 and its subparagraphs, for lack of knowledge or information sufficient to form a belief.

1099
114. See Bullough's response to paragraph 113 and its subparagraphs. The un-numbered paragraph beginning "WHEREFORE" containing subparts (a) through (m) appear to be a mixture of prayers for relief, factual allegations, and legal conclusions. In any event, Bullough denies the entirety of this section of the complaint and all its subparts.

115. Bullough's answers to paragraphs 1-114 are incorporated herein.

116-122. Paragraphs 116-122 do not appear to be directed to Bullough. In any event, Bullough denies the allegations of paragraph 116-122 for lack of knowledge or information sufficient to form a belief.

123-125. Paragraph 123-125 of the complaint do not appear directed towards Bullough. In any event, Bullough denies the allegations of paragraph 123-125 for lack of knowledge or information sufficient to form a belief.

THIRD DEFENSE

Any factual or legal injury resulting in loss of consortium is barred.

FOURTH DEFENSE

Bullough denies being a successor in interest or the mere continuation of any prior corporation for purposes of attaching liability for the acts or failure to act of any independent or pre-existing corporate entity alleged to have caused injury to the Plaintiff(s).

FIFTH DEFENSE

This Court lacks subject matter jurisdiction.

SIXTH DEFENSE

Plaintiff(s) did not reasonably rely on any alleged act, failure to disclose, or failure to act by Bullough.

SEVENTH DEFENSE

The fault of all parties, including the Plaintiff(s) and persons not named as parties, should be compared for allocation of fault as provided by law.

EIGHTH DEFENSE

1100
Plaintiff(s) plead insufficient facts to identify the specifics of their claim against Bullough. Bullough reserves all defenses of applicable statutes of limitation and statute for repose. Additionally, Bullough reserves all statutes of limitations and of repose in effect at the time and place of exposure of the Plaintiff(s) to asbestos as may be determined through discovery.

NINTH DEFENSE

To the extent Plaintiff(s) knew or should have known of the potential adverse health effects of asbestos and yet elected to continue such exposure as may have occurred, such election constitutes an assumption of the risk, waiver, or an estoppel of the claims made.

TENTH DEFENSE

To the extent applicable, Plaintiff(s)' claims are barred by the exclusive remedy provisions of the Workers Compensation Act.

ELEVENTH DEFENSE

The doctrine of laches bars the Plaintiff(s)' claims made.

TWELFTH DEFENSE

Bullough alleges, based upon information and belief, that the products in question were improperly maintained and used and/or abused and that such improper maintenance and use and/or abuse were the proximate cause of Plaintiff(s)' alleged injuries, damages, and illness.

THIRTEENTH DEFENSE

1101
Any alleged warranty made by Bullough for any product Plaintiff(s)' allege caused injury was not applicable in law or in fact to the Plaintiff(s) or is limited solely to the terms of any express warranty.

FOURTEENTH DEFENSE

Bullough reserves the defense of personal jurisdiction and subject matter jurisdiction where Plaintiff(s) have not identified the date, time and place of exposure of any product supplied by Bullough which is alleged to have caused injury.

FIFTEENTH DEFENSE

To the extent Plaintiff(s)' claim injury from an alleged product of Bullough at a time and location in which now existing legal doctrines of liability did not exist, Plaintiff(s) have no claim.

SIXTEENTH DEFENSE

Bullough denies making any false representation to the Plaintiff(s) and to the extent any identified statement was in error of fact, those statements were not material nor did Plaintiff(s) rely upon them.

SEVENTEENTH DEFENSE

1102
Plaintiff(s) have alleged a concerted conspiracy by some Defendants to withhold from general knowledge accurate information of the health effects of asbestos. To the extent such conspiracy is proven to be true, Bullough was also the victim of such conspiracy and is thereby relieved in equity from legal doctrines, such as strict liability, which might otherwise be used to create liability of for Bullough.

EIGHTEENTH DEFENSE

Plaintiff(s)' damages should be reduced to the extent Plaintiff(s) failed to mitigate the same.

NINETEENTH DEFENSE

Plaintiff(s)' claim for breach of warranty is barred to the extent that Plaintiff(s) seek recovery for breach of a warranty that was not expressly printed on the label or in supporting literature supplied with any product allegedly produced or supplied by Bullough.

TWENTIETH DEFENSE

To the extent Plaintiff(s) suffered injuries from the use of a product allegedly produced or supplied by Bullough Plaintiffs' claims are barred to the extent the injuries were solely caused by unreasonable, unforeseeable, and inappropriate purposes and use which Plaintiff(s) made of the product including the failure to follow any specific instructions on labels.

TWENTY FIRST DEFENSE

Should Plaintiff(s) establish injury because of exposure to a product allegedly produced or supplied by Bullough, such product conformed to all applicable statutes,

regulations, and industry standards based upon the state of knowledge and art existing at the time of such exposure.

TWENTY SECOND DEFENSE

1103
To the extent Plaintiff(s) may claim injury because of an exposure to a product allegedly produced or supplied by Bullough the manufacture, sale and labeling of such product is licensed and permitted by applicable federal and state laws.

TWENTY THIRD DEFENSE

To the extent the court applies a duty to Bullough concerning any product alleged to have caused harm to the Plaintiff(s), including doctrines of strict liability, the benefit of the products outweigh the risks of any danger inherent in the product so as to bar application of doctrines of strict liability or duty beyond mere negligence.

TWENTY FOURTH DEFENSE

To the extent Plaintiff(s) or others modified, altered or changed any product allegedly produced or supplied by Bullough alleged to have caused injury to the Plaintiff(s), such modifications constitute a superseding cause which would relieve Bullough of any liability.

TWENTY FIFTH DEFENSE

To the extent that Plaintiff(s)' own person had unusual physical characteristics, including allergies, beyond those reasonably foreseen to exist in the general population and such characteristics caused Plaintiff(s)' injury, Bullough had no duty to guard against such characteristic.

TWENTY SIXTH DEFENSE

To the extent Plaintiff(s) may show that a product allegedly produced or supplied by

1104
Bullough factually caused injury but such use of the product leading to the injury was by a sophisticated user or intermediary, such use relieves Bullough of any duty toward these Plaintiff(s) including any duty to independently warn the Plaintiff(s) of risks associated with the product.

TWENTY SEVENTH DEFENSE

To the extent Plaintiff(s) have failed to exhaust any legal or administrative remedies prior to bringing this action, the action is barred.

TWENTY EIGHTH DEFENSE

To the extent that Plaintiff(s) were injured by any product allegedly manufactured by Bullough, such product was in compliance with the state of knowledge and the state of the art concerning such products at the time of the alleged injury and any harm was not reasonably foreseeable.

TWENTY NINTH DEFENSE

Bullough was not engaged in any ultra hazardous activity or in the manufacture, formulation, packaging, labeling, distribution or sale of any product for which liability under any legal doctrine would attach.

THIRTIETH DEFENSE

To the extent Plaintiff(s) seek to assert a claim for trespass, no trespass resulting in injury to the Plaintiff(s) occurred either because Plaintiff(s) gave specific or implied consent to exposure of any product allegedly produced or supplied by Bullough or because no trespass of land or property occurred.

THIRTY FIRST DEFENSE

1105
Punitive damages against Bullough are not warranted in law or in fact. To the extent Plaintiff(s) seek punitive damages in excess of amounts allowed under the Fourteenth Amendment to the United States Constitution, under the Eighth Amendment to the United States Constitution, and under the Constitution of the State of Idaho, such damages are unconstitutional and may not be awarded. Furthermore, Plaintiffs' pleadings fail to state a proper claim for punitive damages until Plaintiffs comply with I.C. § 6-1604 and obtain an Order in compliance with that section.

THIRTY SECOND DEFENSE

Doctrines of res judicata and collateral estoppel, along with the Primary Right Doctrine bar this action. To the extent Plaintiff(s) have shown to have been exposed to any product allegedly produced or supplied by Bullough while Plaintiff(s) acted as an independent contractor, Bullough had no duty to the Plaintiff(s) caused by any condition or danger which was or should have been obvious to Plaintiff(s).

THIRTY THIRD DEFENSE

Plaintiff(s)' claims are barred by applicable statutes of limitation both in the State of Idaho and/or any other applicable state or jurisdiction.

THIRTY FOURTH DEFENSE

Bullough is entitled to an offset for any potential damages awarded Plaintiff(s) for payments made to Plaintiff(s) by other co-defendants or third parties relating to the alleged injuries, damages and/or disease of Plaintiff(s).

THIRTY FIFTH DEFENSE

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To the extent discovery in this action will support any additional affirmative defenses under Idaho law, Bullough asserts such defenses and specifically alleges those and any other matters constituting avoidance or affirmative defenses.

THIRTY SIXTH DEFENSE

Bullough incorporates by reference and alleges all affirmative defenses asserted by the other Defendants in this action.

THIRTY SEVENTH DEFENSE

Plaintiff(s)' claims are barred by virtue of the fact that the products manufactured or distributed by Bullough conform to the state-of-the-art applicable to such products at the time of sale or manufacture.

THIRTY EIGHTH DEFENSE

Plaintiff(s)' claims should be dismissed or stayed for failure to join one or more necessary and indispensable parties.

THIRTY NINTH DEFENSE

If Plaintiff(s) used tobacco products, including but not limited to cigarettes, or was exposed to smoke from these products, such use or exposure was the proximate cause of Plaintiff(s)' alleged injury, damage and illness and of the damages claimed by the Plaintiff(s), or such product and smoke contributed to the alleged injury, disease, and damage.

FORTIETH DEFENSE

Plaintiff(s)' alleged injuries, if any, were caused or contributed to by the failure of

1107
Plaintiff(s)' employers to provide Plaintiff(s) with a safe work place.

FORTY FIRST DEFENSE

Bullough hereby reserves the right to add additional affirmative defenses as discovery progresses.

FORTY SECOND DEFENSE

Bullough denies all cross-claims which have been asserted or which may be asserted against it in this matter and hereby incorporates the defenses in this Answer with regard to any and all cross-claims against it by any co-defendant.

FORTY THIRD DEFENSE

Bullough contends that the allegations of the Complaint are attempting to assert theories or liability based on concert of action, enterprise liability, market share liability or any similar theory of liability, and if applied by the court, would deny Bullough its rights to equal protection of law and due process of law as guaranteed by the Constitution of the United States and the Idaho Constitution.

FORTY FOURTH DEFENSE

It is affirmatively alleged that, to the extent that Plaintiff(s) have attempted to allege market share and/or enterprise and/or alternative liability and/or conspiracy and/or fraud and deceit and/or concealment and/or concert of action liability, Plaintiff(s) have not alleged causes of action upon which relief may be granted as against Bullough.

FORTY FIFTH DEFENSE

Service of process, including the Summons and Master Complaint, upon Bullough is defective and insufficient and this Court lacks jurisdiction over the person of Bullough.

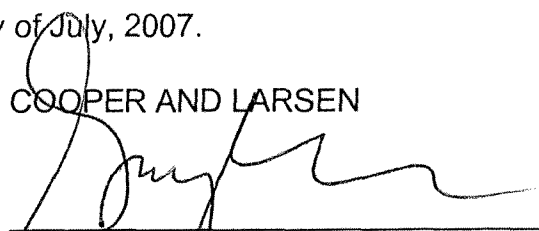
FORTY-SIXTH DEFENSE

At all relevant times, Bullough was a passive supplier of insulation products that were manufactured by entities other than Bullough, and neither knew, or should have known, that certain of those products might be defective. Therefore, Bullough cannot be liable for harm allegedly caused to any plaintiff(s) by any of the alleged defects in those products.

WHEREFORE, Bullough asks this Court to enter judgment of no cause of action upon Plaintiffs' Complaint and to award Bullough its costs and attorney's fees incurred in defense of this action as may be appropriate in law and in fact.

DATED this 10 day of July, 2007.

COOPER AND LARSEN



Gary L. Cooper
Local counsel for Bullough Abatement, Inc.

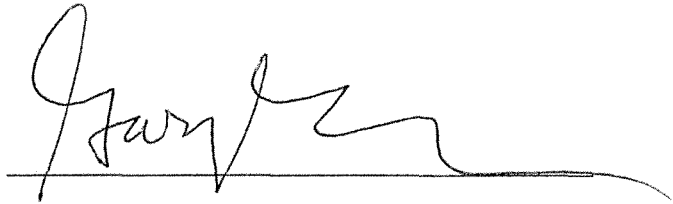
DATED this _____ day of July, 2007.

KIPP AND CHRISTIAN, P.C.

J. Kevin Murphy
Michael F. Skolnck
Counsel for Defendant Bullough Abatement, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of July 2007, I caused a true and correct copy of the foregoing **AMENDED ANSWER OF DEFENDANT BULLOUGH ABATEMENT INC.** to be mailed by US Mail, postage prepaid, or sent via e-mail to the individuals listed on the Asbestos Attorney List (attached) current as of this date:



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ORIGINAL

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2007 NOV -9 AM 9:51
BY *[Signature]*
DEPUTY CLERK

Christopher C. Burke; ISB No. 2098
Jennifer S. Dempsey, ISB No. 7603
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1110
Attorneys for 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 and Ingersoll-Rand Corporation

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually and as Spouse and Personal Representative of the Estate of TED CASTORENA; ALENE STOOR, Individually and as Spouse and Personal Representative of the Estate of JOHN D. STOOR; STEPHANIE BRANCH, Individually and as Personal Representative of the Estate of ROBERT BRANCH, JR.; ROBERT L. HRONEK; MARLENE KISLING, Individually and as Personal Representative of the Estate of WILLIAM D. FRASURE; NORMAN L. DAY,

Plaintiffs,

v.

GENERAL ELECTRIC, et al.,

Defendants.

Case No. CV-2006-2474-PI

DEFENDANTS INGERSOLL-RAND AND WESTINGHOUSE'S MOTION FOR SUMMARY JUDGMENT AGAINST WRONGFUL DEATH PLAINTIFFS, STOOR, BRANCH AND FRASURE

Defendants 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 ("Westinghouse") and Ingersoll-Rand Corporation ("Ingersoll Rand") (collectively "Moving

S

Defendants”), by and through their counsel of record, Greener Burke Shoemaker P.A., hereby move the Court pursuant to I.R.C.P. Rules 12 and 56, for summary judgment on all of their claims against Plaintiffs Alene Stoor, individually and as spouse and personal representative of the Estate of John Stoor (“Stoor”); Stephanie Branch, individually and as personal representative of the Estate of Robert Branch, Jr. (“Branch”); and Marlene Kisling, individually and as personal representative of the Estate of William D. Frasure (“Frasure”) (collectively “Wrongful Death Plaintiffs”), on grounds that there are no disputes of any facts material to issues raised by this Motion, and therefore that Moving Defendants are entitled to summary judgment as a matter of law on all of the claims raised by Wrongful Death Plaintiffs against them. This Motion is supported by:

1. Affidavit of Christopher C. Burke in Support of Defendants Ingersoll-Rand and Westinghouse’s Motion for Summary Judgment Against Wrongful Death Plaintiffs, Stoor, Branch and Frasure;
 2. Defendants Ingersoll-Rand and Westinghouse’s Statement of Undisputed Facts In Support of Motion for Summary Judgment Against Stoor
 3. Defendants Ingersoll-Rand and Westinghouse’s Statement of Undisputed Facts In Support of Motion for Summary Judgment Against Branch;
 4. Defendants Ingersoll-Rand and Westinghouse’s Statement of Undisputed Facts In Support of Motion for Summary Judgment Against Frasure;
 5. Defendants Ingersoll-Rand and Westinghouse’s Memorandum In Support of Motion for Summary Judgment Against Wrongful Death Plaintiffs, Stoor, Branch and Frasure;
- and

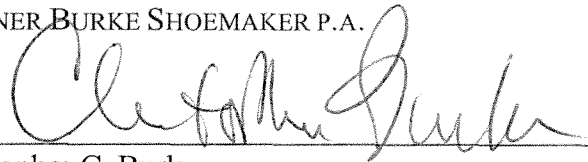
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6. All other records and pleadings on file with Court.

Oral argument is hereby requested.

DATED this 8th day of November, 2007.

GREENER BURKE SHOEMAKER P.A.



Christopher C. Burke

Attorneys for 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 and Ingersoll-Rand Corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of November, 2007, a true and correct copy of the within and foregoing instrument was served upon:

1113 James C. Arnold Petersen Parkinson & Arnold, PLLC 390 N. Capital Avenue P.O. Box 1645 Idaho Falls, ID 83403-1656 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 522-8547 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
G. Patterson Keahey G. Patterson Keahey, P.C. One Independence Plaza, Suite 612 Birmingham, AL 35209 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (205) 871-0801 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Alan C. Goodman Goodman Law Office 717 7 th Street P.O. Box D Rupert, ID 83350 Attorney for Rupert Iron Works, Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 436-4774 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Thomas J. Lyons Merrill & Merrill 109 N. Arthur, 5 th Floor P.O. Box 991 Pocatello, ID 83204-0991 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-2499 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Jackson Schmidt Pepple Johnson Cantu & Schmidt, PLLC 1218 Third Avenue, Suite 1900 Seattle, WA 98101-3051 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (206) 625-1627 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
W. Marcus Nye Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1391 Attorney for Advanced Industrial Supply Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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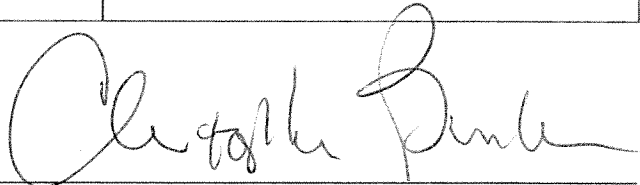
<p>John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1381</p> <p>Attorney for Gould Incorporated and Goulds Pumps Trading Corp.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>David H. Maguire and/or David R. Kress Maguire & Kress 1414 E. Center P.O. Box 4758 Pocatello, ID 83205-4758</p> <p>Attorneys for A.W. Chesterton Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-5181 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Christopher P. Graham Brassey Wetherell Crawford & Garrett, LLP 203 Main Street P.O. Box 1009 Boise, ID 83702</p> <p>Attorneys for Garlock Incorporated, Anchor Packing Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 344-7077 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Murray J. ("Jim") Sorensen Blaser Sorensen & Hansen 285 NW Main P.O. Box 1047 Blackfoot, ID 83221</p> <p>Attorneys for Steel West Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 785-7080 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>L. Charles Johnson III Attorney at Law 419 W. Benton P.O. Box 1725 Pocatello, ID 83204</p> <p>Attorneys for Crown Cork & Seal Company, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-9161 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Howard D. Burnett Hawley Troxell Ennis & Hawley LLP 333 South Main Street P.O. Box 100 Pocatello, ID 83204</p> <p>Attorneys for Eaton Electrical Inc. (f/k/a Cutler-Hammer Inc.).</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 233-1304 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Andrew Grade and/or M. Mattingly Steven V. Rizzo, PC Lincoln Place, Suite 350 1620 SW Taylor Street Portland, OR 97205</p> <p>Attorneys for Defendants Paramount Supply Company and Zurn Industries, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (503) 229-0630 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>E. Scott Savage and/or Casey K. McGarvey Berman & Savage 170 South Main Street, Suite 500 Salt Lake City, UT 84101</p> <p>Attorneys for Defendant Union Pacific Railroad Co.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Donald J. Farley, Dana Herberholz, Kevin Scanlan Hall, Farley, Oberrecht & Blanton, P.A. 702 West Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701</p> <p>Attorneys for Defendants NIBCO Inc. & Parker- Hannifin</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 395-8585 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>C. Timothy Hopkins and/or Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes P.O. Box 51219 428 Park Avenue Idaho Falls, ID 83405-1219</p> <p>Attorneys for Defendants Alaskan Copper Works and Kelly-Moore Paint Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Brian Harper Attorney at Law 161 5th Avenue, Suite 202 P.O. Box 2838 Twin Falls, ID 83303</p> <p>Attorneys for Defendant Guard-Line, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Michael W. Moore and/or Steven R. Kraft Moore & Baskin, LLP 1001 W. Idaho, Suite 400 P.O. Box 6756 Boise, ID 83707</p> <p>Attorneys for Defendant Hill Brothers Chemical Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 336-7031 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>1117</p> <p>Randall L. Schmitz and/or Kelly Cameron And/or Randall L. Schmitz Perkins Coie LLP 251 East Front Street, Suite 400 Boise, ID 83702-7310</p> <p>Attorneys for Defendants Crane Company and Honeywell Corporation</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 343-3232 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Dan Trocchio Kirkpatrick Lockhart Nicholson Graham LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15211-2312</p> <p>Attorney for Defendant Crane Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>



Christopher C. Burke

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BY *[Signature]*
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Christopher C. Burke, ISB No. 2098
Jennifer S. Dempsey, ISB No. 7603
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Attorneys for 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 and Ingersoll-Rand Corporation

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually and as Spouse and Personal Representative of the Estate of TED CASTORENA; ALENE STOOR, Individually and as Spouse and Personal Representative of the Estate of JOHN D. STOOR; STEPHANIE BRANCH, Individually and as Personal Representative of the Estate of ROBERT BRANCH, JR.; ROBERT L. HRONEK; MARLENE KISLING, Individually and as Personal Representative of the Estate of WILLIAM D. FRASURE; NORMAN L. DAY,

Plaintiffs,

v.

GENERAL ELECTRIC, et al.,

Defendants.

Case No. CV-2006-2474-PI

DEFENDANTS INGERSOLL-RAND AND WESTINGHOUSE'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AGAINST *STOOR*

Defendants 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 ("Westinghouse") and Ingersoll-Rand Corporation ("Ingersoll Rand") (collectively referred to as

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“Moving Defendants”) submit the following Statement of Undisputed Facts in support of their Motion for Summary Judgment against Plaintiffs Alene Stoor, individually and as spouse and personal representative of the Estate of John Stoor (“Stoor”).

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1. On 06/02/06, Stoor, through his attorney, the Law Offices of G. Patterson Keahey (“Keahey”), filed this complaint against multiple defendants, including Moving Defendants in *Mildred Castorena, et al. v. General Electric, et al.*, Civil Action No. CV 2006-2474 PI, in the District Court of the Sixth Judicial District of the State of Idaho, In and For the County of Bannock, alleging that he contracted an asbestos disease as a result of alleged exposure to Moving Defendants’ asbestos containing products. (See Plaintiff’s Complaint ¶¶ 65, 66 and 78, Prayer for Relief ¶¶ (b) through (f).)

2. On 06/13/04, Stoor died from acute bronchopneumonia. (Plaintiff Stoor’s Response To Defendants Master Interrogatories and Request for Production of Documents (“Stoor’s Response”), Interrogatory No. 17, attached as Exhibit “A” to the Affidavit of Christopher C. Burke in Support of Motion for Summary Judgment Against Wrongful Death Plaintiffs (“Burke’s W.D. Aff.”).)

3. In August 2001, Stoor, through Keahey,¹ filed a claim for personal injury arising from asbestos exposure against the Manville Personal Injury Settlement Trust (“Manville Trust Claim”). The Manville Trust Claim stated that Stoor was exposed to Manville asbestos from 1958 through 1992 while working at the FMC plant in Pocatello, Idaho. The Manville Trust Claim further stated that, as a result of this asbestos exposure, Stoor had been diagnosed with the following asbestos-related injuries: bilateral pleural disease and nondisabling bilateral interstitial

lung disease. (Plaintiff Stoor's Supplemental Response to Defendants Master Interrogatory ("Stoor's Supplemental Response") No. 9 and Request for Production Nos. 4, 14, and 27, attached as Exhibit "B" to Burke's W.D. Aff.; Manville Trust Claim (produced in response to the foregoing discovery), attached as Exhibit "C" to Burke's W.D. Aff.)

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4. On 10/10/01, Stoor, through Keahey, filed another claim for personal injuries arising from asbestos exposure against H.K. Porter ("H.K. Porter Trust Claim"). The H.K. Porter Trust Claim stated that Stoor had been exposed to asbestos from 1958 through 1992 while working at the FMC plant in Pocatello, Idaho. The H.K. Porter Trust Claim further stated that, as a result of this asbestos exposure, Stoor had been diagnosed with the following asbestos-related disease: Pleural disease and Interstitial Lung Disease. Attached to the H.K. Porter Trust Claim was a report of a chest radiograph taken of Stoor on 08/24/91. The radiograph report was read on 09/28/01 by Dr. Alvin J. Schonfeld, who concluded that Stoor had pleural abnormalities consistent with pneumoconiosis (one form of which is asbestos) and had pleural thickening of the chest wall. (Stoor's Supplemental Response No. 9 and Request for Production Nos. 4, 14, and 27, attached as Exhibit "B" to Burke's W.D. Aff.; H.K. Porter Trust Claim and 10/10/01 radiograph report by Dr. Schonfeld of 08/24/91 x-ray of Stoor (produced in response to the foregoing discovery), attached collectively as Exhibit "D" to Burke's W.D. Aff.)

5. On 09/28/01, Stoor was diagnosed with an asbestos-related disease by Dr. Carl Vance. (Stoor's Response, Interrogatory No. 12, attached as Exhibit "A" to Burke's W.D. Aff.)

6. On 12/11/01, Stoor filed a Notice of Injury And Claim For Benefits with the Industrial Commission of the State of Idaho ("Workers Compensation Claim"), stating that he had

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¹ These are the same attorneys that represent plaintiffs in the instant lawsuit.

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been exposed to asbestos while working in millwright maintenance at the FMC plant in Pocatello, Idaho in November 2001. The Workers Compensation Claim further stated that Stoor had been clinically diagnosed with asbestosis. The Workers Compensation Claim was signed by Stoor. (Stoor's Supplemental Response No. 9 and Request for Production Nos. 4, 14, and 27, attached as Exhibit "B" to Burke's W.D. Aff.; Workers Compensation Claim attached as Exhibit "E" to Burke's W.D. Aff.)

7. On 06/26/03, Stoor, through Keahey, filed a Participating Claimant Claim Form with Combustion Engineering, Inc. ("CE Claim"), seeking to recover compensation from Combustion Engineering for Stoor's asbestos-related disease incurred as a result of Stoor's exposure to Combustion Engineering's asbestos-containing products. The CE Claim stated that Stoor had been diagnosed with asbestosis on 09/28/01. The CE Claim further stated that Stoor had previously filed an asbestos related lawsuit in Mississippi on 04/03/02. (Stoor's Supplemental Response No. 9 and Request for Production Nos. 4, 14, and 27, attached as Exhibit "B" to Burke's W.D. Aff.; CE Claim attached as Exhibit "F" to Burke's W.D. Aff.)

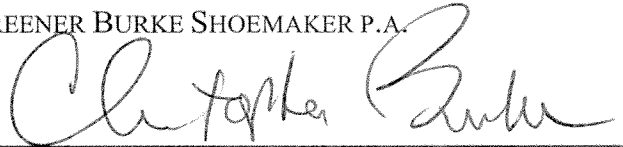
8. On 06/02/07, the deposition of Gerrie K. Trammel was taken. Ms. Trammel is the daughter of John Stoor and the personal representative of his estate. (Deposition of Gerrie K. Trammel ("Trammel Depo") 11:12-25, 12:16-13:4, attached as Exhibit "G" to Burke's W.D. Aff.) She recalled that Dr. Carl Vance was her father's physician in 1991 and that he had done some studies to determine whether her father had asbestosis. (Trammel Depo 15:13-16:9.) She recalled that her father had submitted a workers compensation claim in December 2001 for asbestos-related injuries and confirmed that the signature on the Workers Compensation Claim dated 12/11/01, was that of her father. (Trammel Depo 20:3-9.) She recalled that her father was represented by

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Keahey in 1991. (Trammel Depo 23:20-22.) She recalled that her father was diagnosed no later than 09/28/01 with an asbestos-related disease. (Trammel Depo 24:9-13.)

DATED this 21 day of November, 2007.

GREENER BURKE SHOEMAKER P.A.



Christopher C. Burke
Attorneys for 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 and Ingersoll-Rand Corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of November, 2007, a true and correct copy of the within and foregoing instrument was served upon:

1123 James C. Arnold Petersen Parkinson & Arnold, PLLC 390 N. Capital Avenue P.O. Box 1645 Idaho Falls, ID 83403-1656 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 522-8547 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
G. Patterson Keahey G. Patterson Keahey, P.C. One Independence Plaza, Suite 612 Birmingham, AL 35209 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (205) 871-0801 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Alan C. Goodman Goodman Law Office 717 7 th Street P.O. Box D Rupert, ID 83350 Attorney for Rupert Iron Works, Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 436-4774 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Thomas J. Lyons Merrill & Merrill 109 N. Arthur, 5 th Floor P.O. Box 991 Pocatello, ID 83204-0991 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-2499 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Jackson Schmidt Pepple Johnson Cantu & Schmidt, PLLC 1218 Third Avenue, Suite 1900 Seattle, WA 98101-3051 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (206) 625-1627 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
W. Marcus Nye Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1391 Attorney for Advanced Industrial Supply Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>1124</p> <p>John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1381</p> <p>Attorney for Gould Incorporated and Goulds Pumps Trading Corp.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>David H. Maguire and/or David R. Kress Maguire & Kress 1414 E. Center P.O. Box 4758 Pocatello, ID 83205-4758</p> <p>Attorneys for A.W. Chesterton Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-5181 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Christopher P. Graham Brassey Wetherell Crawford & Garrett, LLP 203 Main Street P.O. Box 1009 Boise, ID 83702</p> <p>Attorneys for Garlock Incorporated, Anchor Packing Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 344-7077 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Murray J. ("Jim") Sorensen Blaser Sorensen & Hansen 285 NW Main P.O. Box 1047 Blackfoot, ID 83221</p> <p>Attorneys for Steel West Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 785-7080 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>L. Charles Johnson III Attorney at Law 419 W. Benton P.O. Box 1725 Pocatello, ID 83204</p> <p>Attorneys for Crown Cork & Seal Company, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-9161 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Howard D. Burnett Hawley Troxell Ennis & Hawley LLP 333 South Main Street P.O. Box 100 Pocatello, ID 83204</p> <p>Attorneys for Eaton Electrical Inc. (f/k/a Cutler-Hammer Inc.).</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 233-1304 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Gary T. Dance and/or Lee Radford and/or Benjamin C. Ritchie Moffatt, Thomas, Barrett, Rock & Fields Chtd. 412 West Center P.O. Box 817 Pocatello, ID 83204</p> <p>Attorneys for Defendants FMC Corporation, Henry Vogt Machine Co., and Warren Pumps, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-0150 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Donald F. Carey and/or Carole I. Wesenberg Robert D. Williams Quane Smith LLP 2325 West Broadway, Suite B Idaho Falls, ID 83402-2913</p> <p>Attorneys for Defendants Reliance Electric Company and Rockwell Automation, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 529-0005 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>A. Bruce Larson 155 S. 2nd P.O. Box 6369 Pocatello, ID 83205-6369</p> <p>Attorneys for P & H Cranes, a/k/a Harnishchfegor Corporation, Cleaver-Brooks, a Division of AQUA Chem, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 478-7602 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Gary L. Cooper and/or M. Anthony Sasser Cooper & Larsen, Chartered 151 North 3rd Avenue, Suite 210 P.O. Box 4229 Pocatello, ID 83205-4229</p> <p>Attorneys for Defendants Paramount Supply Company, Zurn Industries, Inc., and Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 235-1182 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>J. Kevin Murphy and/or Michael F. Skolnick Kipp and Christian, P.C. 10 Exchange Place, 4th Floor SLC, UT 84111</p> <p>Attorneys for Defendant Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (801) 359-9004 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

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<p>Andrew Grade and/or M. Mattingly Steven V. Rizzo, PC Lincoln Place, Suite 350 1620 SW Taylor Street Portland, OR 97205</p> <p>Attorneys for Defendants Paramount Supply Company and Zurn Industries, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (503) 229-0630 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>E. Scott Savage and/or Casey K. McGarvey Berman & Savage 170 South Main Street, Suite 500 Salt Lake City, UT 84101</p> <p>Attorneys for Defendant Union Pacific Railroad Co.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Donald J. Farley, Dana Herberholz, Kevin Scanlan Hall, Farley, Oberrecht & Blanton, P.A. 702 West Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701</p> <p>Attorneys for Defendants NIBCO Inc. & Parker- Hannifin</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 395-8585 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>C. Timothy Hopkins and/or Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes P.O. Box 51219 428 Park Avenue Idaho Falls, ID 83405-1219</p> <p>Attorneys for Defendants Alaskan Copper Works and Kelly-Moore Paint Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Brian Harper Attorney at Law 161 5th Avenue, Suite 202 P.O. Box 2838 Twin Falls, ID 83303</p> <p>Attorneys for Defendant Guard-Line, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Michael W. Moore and/or Steven R. Kraft Moore & Baskin, LLP 1001 W. Idaho, Suite 400 P.O. Box 6756 Boise, ID 83707</p> <p>Attorneys for Defendant Hill Brothers Chemical Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 336-7031 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Randall L. Schmitz and/or Kelly Cameron And/or Randall L. Schmitz Perkins Coie LLP 251 East Front Street, Suite 400 Boise, ID 83702-7310</p> <p>Attorneys for Defendants Crane Company and Honeywell Corporation</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 343-3232 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Dan Trocchio Kirkpatrick Lockhart Nicholson Graham LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15211-2312</p> <p>Attorney for Defendant Crane Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>



Christopher C. Burke

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BY [Signature] DEPUTY CLERK

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Attorneys for 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 and Ingersoll-Rand Corporation

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually and as Spouse and Personal Representative of the Estate of TED CASTORENA; ALENE STOOR, Individually and as Spouse and Personal Representative of the Estate of JOHN D. STOOR; STEPHANIE BRANCH, Individually and as Personal Representative of the Estate of ROBERT BRANCH, JR.; ROBERT L. HRONEK; MARLENE KISLING, Individually and as Personal Representative of the Estate of WILLIAM D. FRASURE; NORMAN L. DAY,

Plaintiffs,

v.

GENERAL ELECTRIC, et al.,

Defendants.

Case No. CV-2006-2474-PI

DEFENDANTS INGERSOLL-RAND AND WESTINGHOUSE'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AGAINST *BRANCH*

Defendants 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 ("Westinghouse") and Ingersoll-Rand Corporation ("Ingersoll Rand") (collectively referred to as

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“Moving Defendants”) submit the following Statement of Undisputed Facts in support of their Motion for Summary Judgment against Plaintiff Stephanie Branch, Individually and as Personal Representative of the Estate of Robert Branch, Jr. (“Branch”).

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1. On 06/02/06, Branch, through his attorney, the Law Offices of G. Patterson Keahey (“Keahey”), filed this complaint against multiple defendants, including Moving Defendants in *Mildred Castorena, et al. v. General Electric, et al.*, Civil Action No. CV 2006-2474 PI, in the District Court of the Sixth Judicial District of the State of Idaho, In and For the County of Bannock, alleging that he contracted an asbestos disease as a result of alleged exposure to Moving Defendants’ asbestos containing products. (Plaintiff’s Complaint ¶¶ 65, 66 and 78, Prayer for Relief ¶¶ (b) through (f).)

2. On 07/11/05, Branch died from pneumonia, respiratory failure and GI bleed. (Plaintiff Branch’s Response To Defendants Master Interrogatories and Request for Production of Documents (“Branch’s Response”), Interrogatory No. 17, attached as Exhibit “H” to Affidavit of Christopher C. Burke in Support of Motion for Summary Judgment Against Wrongful Death Plaintiffs (“Burke’s W.D. Aff.”).)

3. From 1955 through 1989, Branch alleges that he was exposed to asbestos containing products through his employment at the FMC plant in Pocatello, Idaho. (Branch’s Response, Interrogatory No. 4, attached as Exhibit “H” to Burke’s W.D. Aff.)

4. On 05/11/03, Branch was seen in the emergency room at Portneuf Medical Center in Pocatello. At that time, Branch reported a past medical history of, *inter alia*, asbestos exposure from working at the FMC plant. (Plaintiff Branch’s Supplemental Response to Defendants Master Interrogatories (“Branch’s Supplemental Response”), Interrogatory Nos. 16 and 17,

attached as Exhibit "I" to Burke's W.D. Aff.; Portneuf Medical Center record of 05/11/03 (produced in response to the foregoing discovery), attached as Exhibit "J" to Burke's W.D. Aff.; Deposition of Louise Branch dated 06/07/07 ("Branch Depo") 27:8-8-18, attached as Exhibit "K" to Burke's W.D. Aff.)

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5. On 07/01/03, a chest radiograph was taken of Branch at Cottonwood Hospital Medical Center in Murray, Utah. The radiograph was read by Dr. Steven J. Sousa and compared to another radiograph of Branch dated 03/15/03 ("Cottonwood Radiograph Report"). Dr. Sousa's impressions included the following: "mild prominence of the interstitium in the bases, unchanged. Likely represents an element of chronic interstitial disease." (Branch's Supplemental Response, Interrogatory Nos. 16 and 17, attached as Exhibit "I" to Burke's W.D. Aff.; Cottonwood Radiograph Report dated 07/01/03 (produced in response to the foregoing discovery), attached as Exhibit "L" to Burke's W.D. Aff.)

6. On 09/07/06, Dr. Alvin Schonfeld reviewed the same 07/01/03 chest radiograph taken of Branch by Cottonwood Hospital Medical Center, and performed an ILO "B-reading" of that radiograph. In his report of that reading, dated 09/07/06, Dr. Schonfeld confirmed that there were pleural abnormalities consistent with pneumoconiosis (one form of which is asbestos) and that pleural plaques (evidence of asbestos exposure) were present on July 1, 2003. (Branch's Supplemental Response, Interrogatory Nos. 16 and 17, attached as Exhibit "I" to Burke's

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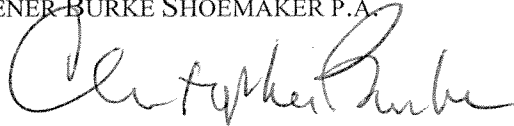
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W.D. Aff.; ILO "B-reading" report of Dr. Schonfeld of the 07/01/03 radiograph (produced in response to the foregoing discovery), attached as Exhibit "M" to Burke's W.D. Aff.)

DATED this 9th day of November, 2007.

GREENER BURKE SHOEMAKER P.A.



Christopher C. Burke

Attorneys for 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 and Ingersoll-Rand Corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of November, 2007, a true and correct copy of the within and foregoing instrument was served upon:

<p>1132</p> <p>James C. Arnold Petersen Parkinson & Arnold, PLLC 390 N. Capital Avenue P.O. Box 1645 Idaho Falls, ID 83403-1656</p> <p>Attorneys for Plaintiff</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 522-8547 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>G. Patterson Keahey G. Patterson Keahey, P.C. One Independence Plaza, Suite 612 Birmingham, AL 35209</p> <p>Attorneys for Plaintiff</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (205) 871-0801 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Alan C. Goodman Goodman Law Office 717 7th Street P.O. Box D Rupert, ID 83350</p> <p>Attorney for Rupert Iron Works, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 436-4774 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Thomas J. Lyons Merrill & Merrill 109 N. Arthur, 5th Floor P.O. Box 991 Pocatello, ID 83204-0991</p> <p>Attorney for Owens-Illinois Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-2499 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Jackson Schmidt Pepple Johnson Cantu & Schmidt, PLLC 1218 Third Avenue, Suite 1900 Seattle, WA 98101-3051</p> <p>Attorney for Owens-Illinois Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (206) 625-1627 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>W. Marcus Nye Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1391</p> <p>Attorney for Advanced Industrial Supply Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

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<p>1132</p> <p>John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1381</p> <p>Attorney for Gould Incorporated and Goulds Pumps Trading Corp.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>David H. Maguire and/or David R. Kress Maguire & Kress 1414 E. Center P.O. Box 4758 Pocatello, ID 83205-4758</p> <p>Attorneys for A.W. Chesterton Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-5181 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Christopher P. Graham Brassey Wetherell Crawford & Garrett, LLP 203 Main Street P.O. Box 1009 Boise, ID 83702</p> <p>Attorneys for Garlock Incorporated, Anchor Packing Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 344-7077 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Murray J. ("Jim") Sorensen Blaser Sorensen & Hansen 285 NW Main P.O. Box 1047 Blackfoot, ID 83221</p> <p>Attorneys for Steel West Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 785-7080 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>L. Charles Johnson III Attorney at Law 419 W. Benton P.O. Box 1725 Pocatello, ID 83204</p> <p>Attorneys for Crown Cork & Seal Company, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-9161 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Howard D. Burnett Hawley Troxell Ennis & Hawley LLP 333 South Main Street P.O. Box 100 Pocatello, ID 83204</p> <p>Attorneys for Eaton Electrical Inc. (f/k/a Cutler-Hammer Inc.).</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 233-1304 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Gary T. Dance and/or Lee Radford and/or Benjamin C. Ritchie Moffatt, Thomas, Barrett, Rock & Fields Chtd. 412 West Center P.O. Box 817 Pocatello, ID 83204</p> <p>Attorneys for Defendants FMC Corporation, Henry Vogt Machine Co., and Warren Pumps, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-0150 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Donald F. Carey and/or Carole I. Wesenberg Robert D. Williams Quane Smith LLP 2325 West Broadway, Suite B Idaho Falls, ID 83402-2913</p> <p>Attorneys for Defendants Reliance Electric Company and Rockwell Automation, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 529-0005 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
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<p>J. Kevin Murphy and/or Michael F. Skolnick Kipp and Christian, P.C. 10 Exchange Place, 4th Floor SLC, UT 84111</p> <p>Attorneys for Defendant Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (801) 359-9004 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

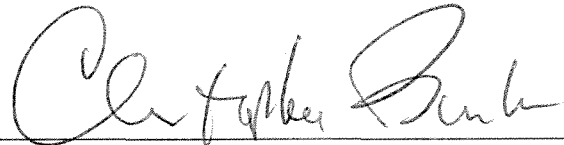
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<p>Andrew Grade and/or M. Mattingly Steven V. Rizzo, PC Lincoln Place, Suite 350 1620 SW Taylor Street Portland, OR 97205</p> <p>Attorneys for Defendants Paramount Supply Company and Zurn Industries, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (503) 229-0630 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>E. Scott Savage and/or Casey K. McGarvey Berman & Savage 170 South Main Street, Suite 500 Salt Lake City, UT 84101</p> <p>Attorneys for Defendant Union Pacific Railroad Co.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Donald J. Farley, Dana Herberholz, Kevin Scanlan Hall, Farley, Oberrecht & Blanton, P.A. 702 West Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701</p> <p>Attorneys for Defendants NIBCO Inc. & Parker- Hannifin</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 395-8585 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>C. Timothy Hopkins and/or Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes P.O. Box 51219 428 Park Avenue Idaho Falls, ID 83405-1219</p> <p>Attorneys for Defendants Alaskan Copper Works and Kelly-Moore Paint Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Brian Harper Attorney at Law 161 5th Avenue, Suite 202 P.O. Box 2838 Twin Falls, ID 83303</p> <p>Attorneys for Defendant Guard-Line, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Michael W. Moore and/or Steven R. Kraft Moore & Baskin, LLP 1001 W. Idaho, Suite 400 P.O. Box 6756 Boise, ID 83707</p> <p>Attorneys for Defendant Hill Brothers Chemical Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 336-7031 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

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<p>Dan Trocchio Kirkpatrick Lockhart Nicholson Graham LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15211-2312</p> <p>Attorney for Defendant Crane Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>



Christopher C. Burke

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Attorneys for 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 and Ingersoll-Rand Corporation

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually and as Spouse and Personal Representative of the Estate of TED CASTORENA; ALENE STOOR, Individually and as Spouse and Personal Representative of the Estate of JOHN D. STOOR; STEPHANIE BRANCH, Individually and as Personal Representative of the Estate of ROBERT BRANCH, JR.; ROBERT L. HRONEK; MARLENE KISLING, Individually and as Personal Representative of the Estate of WILLIAM D. FRASURE; NORMAN L. DAY,

Plaintiffs,

v.

GENERAL ELECTRIC, et al.,

Defendants.

Case No. CV-2006-2474-PI

DEFENDANTS INGERSOLL-RAND AND WESTINGHOUSE'S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AGAINST *FRASURE*

Defendants 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 ("Westinghouse") and Ingersoll-Rand Corporation ("Ingersoll Rand") (collectively referred to as

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“Moving Defendants”) submit the following Statement of Undisputed Facts in support of their Motion for Summary Judgment against Plaintiff Marlene Kisling, Individually and as Personal Representative of the Estate of William D. Frasure (“Frasure”).

1. On 06/02/06, Frasure, through his attorney, the Law Offices of G. Patterson Keahey (“Keahey”), filed this complaint against multiple defendants, including Moving Defendants in *Mildred Castorena, et al. v. General Electric, et al.*, Civil Action No. CV 2006-2474 PI, in the District Court of the Sixth Judicial District of the State of Idaho, In and For the County of Bannock, alleging that he contracted an asbestos disease as a result of alleged exposure to Moving Defendants’ asbestos containing products. (Plaintiff’s Complaint ¶¶ 65, 66 and 78, Prayer for Relief ¶¶ (b) through (f).)

2. On 02/17/06, Frasure died from End Stage Renal Failure. (Plaintiff Frasure’s Response To Defendants Master Interrogatories and Request for Production of Documents (“Frasure’s Response”), Interrogatory No. 17, and Frasure’s Death Certificate attached thereto, attached collectively as Exhibit “N” to the Affidavit of Christopher C. Burke in Support of Motion for Summary Judgment Against Wrongful Death Plaintiffs (“Burke’s W.D. Aff.”).)

3. From 1981 through 1996, Frasure was exposed to asbestos containing products through his employment at the FMC Plant in Pocatello, Idaho. (Fasure’s Response, Interrogatory No. 4, attached as Exhibit “N” to Burke’s W.D. Aff.)

4. On 08/24/00, Frasure was taken to the LDS Hospital for an emergent consultation for cardiac arrest. Dr. James E. Pearl prepared a Consultation Report dated 08/24/00, which stated that, upon review of a chest x-ray taken of Frasure on the same date: “[Frasure] does have pleural plaques suggesting asbestos disease.” (Deposition of Joyce Frasure dated 06/08/07 (“Frasure

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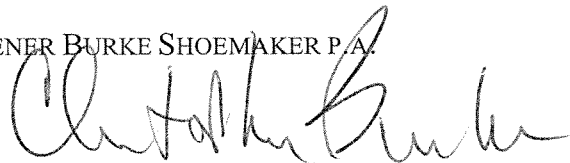
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Depo”) 13:1-7, 30:12-19, and 33:6-12, attached a Exhibit “O” to Burke’s W.D. Aff.; Plaintiff Frasure’s Supplemental Response to Defendants Master Interrogatories (“Frasure’s Supplemental Response”), Interrogatory Nos. 16 and 17, attached as Exhibit “P” to Burke’s W.D. Aff.; Consultation Report of Dr. James Pearl dated 08/24/00 (produced in response to the foregoing discovery), attached as Exhibit “Q” to Burke’s W.D. Aff.)

5. On 08/25/00, a chest x-ray was again taken of Frasure at LDS Hospital. Dr. R. Thomas Bonk read that x-ray and found “bilateral calcified pleural plaque consistent with asbestos exposure is again noted. (Frasure Depo 13:1-7, 34:8-16; Frasure’s Supplemental Response, Interrogatory Nos. 16 and 17, attached as Exhibit “P” to Burke’s W.D. Aff.; X-Ray Report of Dr. Bonk dated 08/25/00 (produced in response to the foregoing discovery), attached as Exhibit “R” to Burke’s W.D. Aff.)

6. Approximately six years before Frasure’s death, Frasure began suffering from kidney problems. (Frasure Depo 22:19-23:16, attached as Exhibit “O” to Burke’s W.D. Aff.) In the year 2000, Frasure was having difficulty breathing. (Frasure Depo 32:8-10.)

DATED this 9th day of November, 2007.

GREENER BURKE SHOEMAKER P.A.



Christopher C. Burke
Attorneys for 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 and Ingersoll-Rand Corporation

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24 day of November, 2007, a true and correct copy of the within and foregoing instrument was served upon:

1140 James C. Arnold Petersen Parkinson & Arnold, PLLC 390 N. Capital Avenue P.O. Box 1645 Idaho Falls, ID 83403-1656 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 522-8547 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
G. Patterson Keahey G. Patterson Keahey, P.C. One Independence Plaza, Suite 612 Birmingham, AL 35209 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (205) 871-0801 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Alan C. Goodman Goodman Law Office 717 7 th Street P.O. Box D Rupert, ID 83350 Attorney for Rupert Iron Works, Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 436-4774 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Thomas J. Lyons Merrill & Merrill 109 N. Arthur, 5 th Floor P.O. Box 991 Pocatello, ID 83204-0991 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-2499 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Jackson Schmidt Pepple Johnson Cantu & Schmidt, PLLC 1218 Third Avenue, Suite 1900 Seattle, WA 98101-3051 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (206) 625-1627 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
W. Marcus Nye Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1391 Attorney for Advanced Industrial Supply Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

<p>1141</p> <p>John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1381</p> <p>Attorney for Gould Incorporated and Goulds Pumps Trading Corp.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>David H. Maguire and/or David R. Kress Maguire & Kress 1414 E. Center P.O. Box 4758 Pocatello, ID 83205-4758</p> <p>Attorneys for A.W. Chesterton Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-5181 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Christopher P. Graham Brassey Wetherell Crawford & Garrett, LLP 203 Main Street P.O. Box 1009 Boise, ID 83702</p> <p>Attorneys for Garlock Incorporated, Anchor Packing Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 344-7077 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Murray J. ("Jim") Sorensen Blaser Sorensen & Hansen 285 NW Main P.O. Box 1047 Blackfoot, ID 83221</p> <p>Attorneys for Steel West Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 785-7080 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>L. Charles Johnson III Attorney at Law 419 W. Benton P.O. Box 1725 Pocatello, ID 83204</p> <p>Attorneys for Crown Cork & Seal Company, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-9161 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Howard D. Burnett Hawley Troxell Ennis & Hawley LLP 333 South Main Street P.O. Box 100 Pocatello, ID 83204</p> <p>Attorneys for Eaton Electrical Inc. (f/k/a Cutler-Hammer Inc.).</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 233-1304 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Gary T. Dance and/or Lee Radford and/or Benjamin C. Ritchie Moffatt, Thomas, Barrett, Rock & Fields Chtd. 412 West Center P.O. Box 817 Pocatello, ID 83204</p> <p>Attorneys for Defendants FMC Corporation, Henry Vogt Machine Co., and Warren Pumps, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-0150 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Donald F. Carey and/or Carole I. Wesenberg Robert D. Williams Quane Smith LLP 2325 West Broadway, Suite B Idaho Falls, ID 83402-2913</p> <p>Attorneys for Defendants Reliance Electric Company and Rockwell Automation, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 529-0005 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>A. Bruce Larson 155 S. 2nd P.O. Box 6369 Pocatello, ID 83205-6369</p> <p>Attorneys for P & H Cranes, a/k/a Harnishochfegor Corporation, Cleaver-Brooks, a Division of AQUA Chem, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 478-7602 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Gary L. Cooper and/or M. Anthony Sasser Cooper & Larsen, Chartered 151 North 3rd Avenue, Suite 210 P.O. Box 4229 Pocatello, ID 83205-4229</p> <p>Attorneys for Defendants Paramount Supply Company, Zurn Industries, Inc., and Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 235-1182 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>J. Kevin Murphy and/or Michael F. Skolnick Kipp and Christian, P.C. 10 Exchange Place, 4th Floor SLC, UT 84111</p> <p>Attorneys for Defendant Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (801) 359-9004 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

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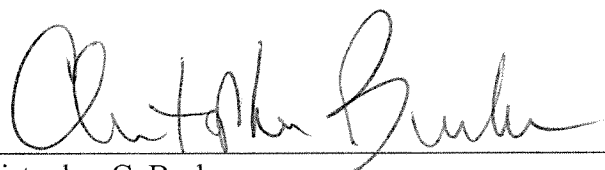
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<p>Andrew Grade and/or M. Mattingly Steven V. Rizzo, PC Lincoln Place, Suite 350 1620 SW Taylor Street Portland, OR 97205</p> <p>Attorneys for Defendants Paramount Supply Company and Zurn Industries, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (503) 229-0630 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>E. Scott Savage and/or Casey K. McGarvey Berman & Savage 170 South Main Street, Suite 500 Salt Lake City, UT 84101</p> <p>Attorneys for Defendant Union Pacific Railroad Co.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Donald J. Farley, Dana Herberholz, Kevin Scanlan Hall, Farley, Oberrecht & Blanton, P.A. 702 West Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701</p> <p>Attorneys for Defendants NIBCO Inc. & Parker- Hannifin</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 395-8585 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>C. Timothy Hopkins and/or Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes P.O. Box 51219 428 Park Avenue Idaho Falls, ID 83405-1219</p> <p>Attorneys for Defendants Alaskan Copper Works and Kelly-Moore Paint Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Brian Harper Attorney at Law 161 5th Avenue, Suite 202 P.O. Box 2838 Twin Falls, ID 83303</p> <p>Attorneys for Defendant Guard-Line, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Michael W. Moore and/or Steven R. Kraft Moore & Baskin, LLP 1001 W. Idaho, Suite 400 P.O. Box 6756 Boise, ID 83707</p> <p>Attorneys for Defendant Hill Brothers Chemical Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 336-7031 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Randall L. Schmitz and/or Kelly Cameron And/or Randall L. Schmitz Perkins Coie LLP 251 East Front Street, Suite 400 Boise, ID 83702-7310</p> <p>Attorneys for Defendants Crane Company and Honeywell Corporation</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 343-3232 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Dan Trocchio Kirkpatrick Lockhart Nicholson Graham LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15211-2312</p> <p>Attorney for Defendant Crane Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>



Christopher C. Burke

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MILDRED CASTORENA, Individually and as Spouse and Personal Representative of the Estate of TED CASTORENA; ALENE STOOR, Individually and as Spouse and Personal Representative of the Estate of JOHN D. STOOR; STEPHANIE BRANCH, Individually and as Personal Representative of the Estate of ROBERT BRANCH, JR.; ROBERT L. HRONEK; MARLENE KISLING, Individually and as Personal Representative of the Estate of WILLIAM D. FRASURE; NORMAN L. DAY,

Plaintiffs,

v.

GENERAL ELECTRIC, et al.,

Defendants.

Case No. CV-2006-2474-PI

DEFENDANTS INGERSOLL-RAND AND WESTINGHOUSE'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AGAINST WRONGFUL DEATH PLAINTIFFS, STOOR, BRANCH AND FRASURE

Defendants 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 ("Westinghouse") and Ingersoll-Rand Corporation ("Ingersoll Rand") (collectively "Moving

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Defendants”), by and through their counsel of record, Greener Burke Shoemaker P.A., submit this Memorandum in Support of Motion for Summary Judgment against Plaintiffs Alene Stoor, individually and as spouse and personal representative of the Estate of John Stoor (“Stoor”); Stephanie Branch, individually and as personal representative of the Estate of Robert Branch, Jr. (“Branch”); and Marlene Kisling, individually and as personal representative of the Estate of William D. Frasure (“Frasure”) (collectively “Wrongful Death Plaintiffs” or “Plaintiffs”). In support of this Memorandum, Moving Defendants rely upon 1) the Statement of Undisputed Facts In Support of Motion for Summary Judgment Against Stoor (“Stoor Undisputed Fact”); 2) the Statement of Undisputed Facts In Support of Motion for Summary Judgment Against Branch (“Branch Undisputed Fact”); 3) the Statement of Undisputed Facts In Support of Motion for Summary Judgment Against Frasure (“Frasure Undisputed Fact”); and 4) the Affidavit of Christopher C. Burke in Support of Motion for Summary Judgment Against Wrongful Death Plaintiffs Stoor, Branch and Frasure, filed concurrently herewith.¹

I. INTRODUCTION

This lawsuit involves six plaintiffs who allege that they were exposed to asbestos over a period of decades, between 1950 and 2001. Plaintiffs allege this exposure caused serious injury and/or death for which they are entitled to recover damages in this lawsuit.

Defendants Westinghouse and Ingersoll-Rand bring this motion for summary judgment on the following grounds:

¹ This motion is not intended to apply to Plaintiff Mildred Castorena, individually and as Spouse and Personal Representative of the Estate of Ted Castorena. Neither does it apply to Plaintiffs Robert L. Hronek or Normal L. Day. Moving Defendants have concurrently filed a separate Motion for Summary Judgment against the Personal Injury Plaintiffs Robert Hronek and Norman L. Day.

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1. Since decedents Stoor, Branch and Frasure had objective medical proof of injury or damage arising from exposure to asbestos more than two years prior to the dates of their deaths,² the statute of limitations and the condition precedent rule bar the negligence, strict products liability and battery claims of the Wrongful Death Plaintiffs;

2. Any claim for misrepresentation based on the theory other than fraud fails as a matter of law as such cause of action is not recognized in Idaho;

3. Any claim for misrepresentation based on fraud fails because Plaintiffs failed to plead fraud and misrepresentation with the requisite particularity; and,

4. Any claim for fraudulent concealment fails as a matter of law because Moving Defendants did not owe Plaintiffs a duty to disclose.

II. STATEMENT OF FACTS

A. Procedural Facts

The complaint in this action was filed on June 2, 2006, and alleges nine counts against various defendants. Four of those nine counts apply to Moving Defendants: (1) Count One – Negligence³; (2) Count Two – Strict Liability; (3) Count Three – Misrepresentation; and (4) Count Four - Battery/Civil Conspiracy/ Fraudulent Concealment.

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² By making this motion, Moving Defendants do not admit that the decedents of the Wrongful Death Plaintiffs had any injury or disease, or that decedents or Wrongful Death Plaintiffs suffered any damage, caused by asbestos exposure. However, for the purposes of this motion and for that purpose only, Moving Defendants will assume, without dispute, that the decedents of the Wrongful Death did in fact have an injury or disease or that defendants or Wrongful Death Plaintiffs suffered damage, caused by asbestos exposure as alleged by Wrongful Death Plaintiffs.

³ Count Nine appears to be a similar count for negligence. As such, the arguments addressed to Count One shall also apply to Count Nine.

B. Material Undisputed Facts Regarding Stoor

Latest Date of Undisputed Objective Medical Proof of Injury 9/28/01⁴
Complaint Should Have Been Filed On Or Before 9/28/03
Date of Death 6/13/04
Complaint Filed On 6/2/06

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Stoor was allegedly exposed to asbestos containing products manufactured by defendants, including Moving Defendants, from 1958 through 1992 through his employment at the FMC plant in Pocatello, Idaho. (Stoor Undisputed Facts Nos. 1, 3 and 4.)

On 08/24/91, Stoor had a radiograph taken of his lungs which, when read by Dr. Alvin Schonfeld on 09/24/01, revealed that Stoor had pleural abnormalities consistent with pneumoconiosis (one form of which is asbestosis) and pleural thickening of the chest wall. (Stoor Undisputed Fact No. 4.) The 09/24/01 reading of Stoor's 08/24/91 chest x-ray was relied upon by Stoor and his present attorney, G. Patterson Keahey ("Keahey"), to support three separate personal injury claims filed by Stoor against various manufacturers of asbestos containing products (other than defendants in this lawsuit) alleging Stoor's injury and damage from exposure to asbestos. In each of those claims, Stoor admitted that he was diagnosed with an asbestos-related disease as of the year 2001. (Stoor Undisputed Fact Nos. 3, 4 and 7.) In deposition testimony and discovery responses given in this case, **Stoor**, through his heirs, **also admitted that his own**

⁴ In order to give Stoor the benefit of the doubt, Moving Defendants rely on this date only to establish that, even using the latest possible date for objective manifestation of injury, Stoor's claims are barred. The correct date to use in this statute of limitations analysis based on case and statutory authority is August 24, 1991. This same precaution is taken with each of the Wrongful Death Plaintiffs, giving each of them the benefit of the doubt.

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doctor, Dr. Carl Vance, diagnosed Stoor with an asbestos-related disease on 09/28/01. (Stoor Undisputed Fact Nos. 5 and 8.)

On 12/11/01, before his death, Stoor filed an Idaho Worker's Compensation Claim, stating that he had been diagnosed with asbestosis as a result of exposure to asbestos-containing products while working as a millwright at the FMC plant in Pocatello, Idaho in November 2001. (Stoor Undisputed Fact No. 6.) Stoor died on 06/13/04. (Stoor Undisputed Fact No. 2.)

This lawsuit against Moving Defendants was not filed until 6/2/06. (Stoor Undisputed Fact No. 1), almost five years after diagnosis of Stoor's asbestos-related disease (09/28/01) and almost fifteen years after first objective medical proof of Stoor's injury caused by asbestos exposure (08/24/91).

C. Undisputed Facts regarding Robert Branch Jr.

Latest Date of Undisputed Objective Medical Proof of Injury	7/1/03
Complaint Should Have Been Filed On Or Before	7/1/05
Date of Death	7/11/05
Complaint Filed On	6/2/06

Branch was allegedly exposed to asbestos containing products manufactured by defendants, including Moving Defendants, from 1955 through 1989 through his employment at the FMC plant in Pocatello, Idaho. (Branch Undisputed Fact Nos. 1 and 3.) On 05/11/03, Branch was seen in the emergency room at Portneuf Medical Center in Pocatello, Idaho, where he reported a past medical history of, *inter alia*, asbestos exposure from working at the FMC plant. (Branch Undisputed Fact No. 4.) **On 07/01/03, a chest radiograph was taken of Branch at Cottonwood Hospital Medical Center in Murray, Utah, which, when read on that date by a medical**

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doctor, Steven Sousa, M.D, revealed that Branch suffered from chronic interstitial disease (one form of which is asbestosis). (Branch Undisputed Fact No. 5.) A later ILO "B-reading" of the same 07/01/03 chest radiograph of Branch by Dr. Alvin Schonfeld established that there were pleural abnormalities consistent with pneumoconiosis (one form of which is asbestosis) and that pleural plaques (evidence of asbestos exposure) were present. (Branch Undisputed Fact No. 6.) Branch died on 07/11/05. (Branch Undisputed Fact No. 2.)

This lawsuit against these Moving Defendants was not filed until 06/02/06 (Branch Undisputed Fact No. 1), almost three years after first objective medical proof of Branch's injury caused by exposure to asbestos (07/01/03).

D. Material Undisputed Facts Regarding Frasure

Latest Date of Undisputed Objective Medical Proof of Injury	8/24/00 or 08/25/00
Complaint Should Have Filed On Or Before	8/24/02 or 08/25/02
Date of Death	2/17/06
Complaint Filed On	6/2/06

Frasure was exposed to asbestos containing products allegedly manufactured by defendants, including Moving Defendants, from 1953 through 1988 through his employment at the FMC Plant in Pocatello, Idaho. (Frasure Undisputed Fact Nos. 1 and 3.) On 08/24/00, Frasure was taken to the LDS Hospital for an emergent consultation for cardiac arrest. **A chest radiograph was taken of Frasure on 08/24/00, which when read by a medical doctor, James Pearl, M.D., revealed that: "[Frasure] does have pleural plaques suggesting asbestos disease."** (Frasure Undisputed Fact No. 4.) **On 08/25/00, another chest radiograph was taken of Frasure at the same LDS Hospital. In reading this chest x-ray, Dr. R. Thomas Bonk**

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confirmed “bilateral calcified pleural plaque consistent with asbestos exposure” (Frasure Undisputed Fact No. 5.) Approximately six years before Frasure’s death, Frasure began suffering from kidney problems. (Frasure Undisputed Fact No. 6.) Frasure died on 02/17/06. (Frasure Undisputed Fact No. 2.)

This lawsuit against Moving Defendants was not filed until 06/02/06 (Frasure Undisputed Fact No. 1), almost six years after first objective medical proof of Frasure’s injury caused by asbestos exposure (08/24/00 and 08/25/00).

III. ARGUMENT

A. Summary Judgment Standard

Under Idaho Rule of Civil Procedure (“IRCP”) 56, summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Sewell v. Neilsen, Monroe, Inc.*, 109 Idaho 192, 706 P.2d 81 (Ct. App. 1985). When a summary judgment motion is supported by depositions or affidavits, the adverse party “may not rest upon the mere allegations or denials of his pleadings, but his response must set forth specific facts showing that there is a genuine issue for trial.” IRCP 56(e); *Arnold v. Diet Center, Inc.*, 113 Idaho 581, 746 P.2d 1040 (Ct. App. 1987). If the adverse party does not so respond, summary judgment shall be entered against him. *See* IRCP 56.

Even if the nonmoving party can establish disputed facts, this alone will not necessarily defeat summary judgment. If the nonmoving party has not established sufficient facts to make a prima facie case, summary judgment must be granted. A complete failure of proof concerning an essential element of the nonmoving party’s case renders all other facts immaterial. *Batell v.*

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Beeks, 115 Idaho 101, 765 P.2d 126 (1988) (citing *Celotex v. Catrett*, 117 U.S. 317, 322, 106 S.Ct. 2548, 2552 (1986)).

B. Wrongful Death Plaintiffs' Negligence and Strict Products Liability Claims Are Barred By The Condition Precedent Rule

Idaho Code § 5-219(4) provides that personal injury and wrongful death actions must be brought within two years of the date the cause of action accrues.⁵ The date by which a cause of action accrues under this statute in a personal injury case is the date objective medical proof establishes injury from exposure to asbestos. The date by which a cause of action accrues under this statute in a wrongful death case is the date of death. In wrongful death actions, however, the decedent's heirs must not only bring their claims within two years from the date of death, they must also satisfy the condition precedent that the decedent was entitled to pursue his claims had his death not occurred. If decedent's claims would have been barred by the statute of limitations prior to death, then decedent's heirs' claims are also barred for failure to satisfy the condition precedent rule, even if their wrongful death claims were filed within two years of the date of death. In other words, decedents' heirs may not "revive" their decedents' claims if the decedents' claims would have been barred at the time of their deaths.

1. Personal Injury Causes Of Action Accrues When Objective Medical Proof Establishes Injury.

The Idaho Supreme Court has determined that, in asbestos personal injury cases, a cause of action accrues "on the date that the injury [first] became 'objectively ascertainable.'" This means that the cause of action accrues when 'objective medical proof would support the existence of an

⁵ Idaho Code §6-1403(3) also bars products liability claims not brought within two years from the time a cause of action accrues under Idaho Code §5-219(4).

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actual injury.” *Brennan v. Owens-Corning Fiberglas Corp.* 134 Idaho 800, 801, 10 P.3d 749 (2000), citing to *Davis v. Moran*, 112 Idaho 703, 735 P.2d 1014 (1987). This rule applies even though the plaintiff may not be aware of the actual injury or its cause. *Id.*

In *Brennan*, plaintiff argued that the cause of action did not accrue, and therefore the two year statute of limitations did not begin to run, until the existence of an asbestos-related injury was confirmed by a doctor. The *Brennan* court rejected this argument. It held that, based on *Davis*, the rule to apply is **not** when a doctor confirms the existence of an injury or when plaintiff discovers the injury. Rather, **the rule is that the cause of action accrues and the statute of limitation commences when objective medical proof would support the existence of an actual injury resulting from asbestos exposure.** *Id.* Or, stated another way, the cause of action accrues when objective medical proof establishes that plaintiff has suffered “some damage,” even though plaintiff may not have been aware of the damage. *See Hawley v. Green* 117 Idaho 498, 788 P.2d 1321; *Griggs v. Nash* 116 Idaho 228, 775 P.2d 120 (1989). If a plaintiff fails to file suit within two years from the date of first objective medical proof of disease or injury, his claims are barred by the statute of limitations, Idaho Code § 5-219(4).

The *Brennan* Court found that the following facts may constitute “objective medical proof that would support the existence of an actual injury resulting from exposure to asbestos,” thereby commencing the running of the statute of limitations: (1) an examination in order to detect asbestos-related diseases; (2) a chest x-ray which showed scarring of the lung of a kind that can be seen after asbestos exposure; (3) changes in the lung consistent with the type of injury and disease that can be seen after asbestos exposure; (4) presence of pleural plaques or scarring in the

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lining of the lung which indicates asbestos exposure; or, (5) a recommendation for follow up evaluation. *Id.* at 801.

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2. The Statute of Limitations Is Not Tolloed By The Discovery Rule .

The statute of limitations in I.C. § 5-219(4) is **not** tolled until the moment when a doctor tells a plaintiff that he may have injury caused by asbestos exposure or until the plaintiff may have discovered the injury himself. Idaho Code § 5-219(4) expressly states that the discovery rule does **not** apply: “the limitation period shall **not** be extended by reason of any continuing consequences or damages resulting therefrom.” See I.C. § 5-219(4). In 1970, the Idaho legislature **explicitly** rejected the discovery rule by passage of an amendment to I.C. § 5-219(4). *Davis v. Moran*, 112 Idaho 703, 735 P.2d 1014 (1987). Since 1970, the Idaho Supreme Court has repeatedly and consistently held that the statute of limitations in I.C. § 5-219(4) is not tolled by the discovery rule. See *Twin Falls Clinic & Hosp. Bldg. Corp. v. Hamill* 103 Idaho 19, 644 P.2d 341 (1982); *Masi v. Seale*, 106 Idaho 561, 682 P.2d 102 (1984); *Streib v. Veigel* 109 Idaho 174, 706 P.2d 63 (1985); *Hawley v. Green* 117 Idaho 498, 503, 788 P.2d 1321 (1990); *Davis v. Moran*, 112 Idaho 703, 735 P.2d 1014 (1987); and *Brennan v. Owens-Corning Fiberglas Corp.* 134 Idaho 800, 801, 10 P.3d 749 (2000).

In *Davis*, the case upon which the *Brennan* court relied, the plaintiff argued that damages must be objectively ascertainable to, or known by, the plaintiff in order to commence the running of the statute of limitations. However, the court disagreed, holding that such a rule “would amount to a discovery rule which our cases have expressly rejected in light of the legislature’s explicit rejection of the discovery rule, I.C. § 5-219(4).” *Id.* at 709. Thus whether or not a

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plaintiff knows or has been informed of his injury is not relevant to a statute of limitations analysis under I.C. § 5-219(4).

3. Wrongful Death Plaintiffs' Claims Do Not Satisfy The Condition Precedent To Maintaining Their Claims And Therefore Their Claims Are Barred.

In wrongful death claims, the two year statute of limitations contained in Idaho Code §5-219(4) commences running on the date of death. However, Idaho law is clear that, if the decedent could not have maintained the cause of action had death not occurred, then the decedent's heirs may not maintain a cause of action for wrongful death. *See Bevan v. Vassar Farms* 117 Idaho 1038, 793 P.2d 711 (1990). Thus, a condition precedent to pursuing a claim for wrongful death is that the decedent must have been able to maintain a cause of action had he lived. In other words, Wrongful Death Plaintiffs may not "revive" decedents' negligence and strict products liability claims if the decedents' claims would have been barred by the statute of limitations, had their deaths not ensued.

The Idaho Supreme Court confirmed this rule in *Bevan v. Vassar Farms* 117 Idaho 1038, 1039, 793 P.2d 711 (1990): "[i]t necessarily follows based on the well established law in this jurisdiction that if a defendant is not liable for injuries to the decedent had death not ensued, then there is no basis for recovery by the decedent's heirs." *Bevan supra* 117 Idaho at 1041, 793 P.2d at 714, citing to *Anderson v. Gailey* 97 Idaho 813, 822, 555 P.2d 144, 153 (1976); *Clark v. Foster* 87 Idaho 134, 391 P.2d 853 (19064); *Hooton v. City of Burley* 70 Idaho 369, 219 P.2d 651 (1950); *Russell v. Cox* 65 Idaho 534, 148 P.2d 221 (1944), *Hegelson v. Powell* 54 Idaho 667, 34 P.2d 957 (1934); and *Sprouse v. Magee* 46 Idaho 622, 269 P. 993 (1928). "[W]hen the negligence of another causes a person's death, the decedent's heirs or personal representative may maintain an action for damages against the wrongdoer. **However, an heir may only**

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recover for wrongful death if the decedent would have been able to recover,” had death not ensued. *Turpen v. Granieri* 133 Idaho 244, 247, 985 P.2d 669, 672 (1999) (emphasis added).

Although the Idaho Supreme Court has unequivocally stated that the condition precedent rule applies to all wrongful death claims, it has not directly addressed the question of whether wrongful death heirs may maintain a wrongful death action when the decedent’s action would have been barred prior to death by the statute of limitations. However, the U.S. District Court for the District of Idaho, applying Idaho law in an asbestos wrongful death case, has held that the condition precedent rule applies in the statute of limitations context. See *Adams v Armstrong World Ind., Inc.*, 596 F.Supp. 1407 (D. Idaho 1984) *aff’d in part, rev’d on other grounds* 773 F.2d 248 (9th Cir. 1985) *on remand to* 664 F.Supp. 463 (D. Idaho 1987) *rev’d on other grounds* 847 F.2d 589 (9th Cir. 1988).

In the first opinion arising from *Adams*, the district court in Idaho stated:

“The Idaho Supreme Court has never specifically addressed the question of whether the heirs may maintain a wrongful death action if the deceased, at the date of his death, would have been barred by the statute of limitations. **This Court finds that, if faced with the question, the Idaho court would apply the condition precedent rule to the statute of limitations situation, as it has done in situations involving contributory or comparative negligence.**”

Adams, supra, 596 F.Supp. at 1414. [Emphasis added]

Following this decision, plaintiffs appealed. In that appeal, the Ninth Circuit attempted to certify two questions to the Idaho Supreme Court: (1) Did the discovery rule apply to asbestos cases?⁶; and (2) Did Idaho’s condition precedent rule apply in the statute of limitations context?

⁶ This issue was resolved in *Brennan v. Owens-Corning Fiberglas Corp* 134 Idaho 800, 10 P.3d 749 (2000), applying *Davis v. Moran* 112 Idaho 703, 735 P.2d 1014 (1987), and as analyzed in Subsection 1 *supra*.

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Waters v. Armstrong World Ind., Inc., 773 F.2d 248, 250 (9th Cir. 1985). The Idaho Supreme Court rejected certification of these questions, stating that its prior decisions “are sufficient to give guidance for the determination of the Idaho law involved in this action” *See, Adams v. Armstrong World Ind., Inc.*, 664 F.Supp. 463, 464 (D. Idaho 1987). In an unpublished opinion, the Ninth Circuit then affirmed the rulings of the district court (including the holding on the issue of condition precedent), but remanded the matter to determine the constitutionality of the statute of limitations. *Id.* Thus, the original decision in these *Adams* cases concerning the applicability of the condition precedent rule in the statute of limitation context stands. The rule in Idaho remains: a decedent must have had a valid cause of action on the date of death (not barred by any applicable statute of limitations) in order for the decedent’s heirs to recover on their wrongful death claims.⁷

Other jurisdictions which have addressed this issue in the statute of limitations context have applied the condition precedent rule to bar wrongful death claims where the deceased was himself barred from bringing an action prior to death by the statute of limitations. *See McDaniel v. Johns-Manville Sales Corp.* 542 F.Supp. 716 (N.D. Ill. 1982); *Brubaker v.*

⁷ The court in *Adams* was persuaded in part by the long history of Idaho cases holding that Idaho’s wrongful death statute, I.C. § 5-311, is based on Lord Campbell’s Act, 9 and 10 Vict., ch. 93 (1846) (“Lord Campbell’s Act”). Lord Campbell’s Act provided, in pertinent part:

“[t]hat **whenever the death of a person shall be caused by the wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof.** . . .” *Adams, supra*, 596 F.Supp at 1413, n. 2. [Emphasis added]. *See, also, Russell v. Cox*, 65 Idaho 534, 148 P.2d 221 (1944); *Hegelson v. Powell*, 54 Idaho 667, 34 P.2d 957 (1934); *Sprouse v. Magee* 46 Idaho 622, 269 P. 993 (1928) (cases which confirm that the wrongful death statute is based upon Lord Campbell’s Act).

Cavanaugh 542 F.Supp. 944 (D.Kan. 1982); *Crownover v. Gleichman* 194 Colo. 48, 574 P.2d 497 (1977); and *Mason v. Gerin Corp.* 231 Kan. 718, 647 P.2d 1340 (1982).

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It is anticipated that Plaintiffs will argue that *Chapman v. Cardiac Pacemakers, Inc.* 105 Idaho 785, 673 P.2d 385 (1983) controls. That case held that the statute of limitations for a wrongful death action commences upon the date of death. However, as discussed by the court in *Adams, Chapman* did not address the condition precedent rule because there was no objective ascertainable injury until decedent's pacemaker failed, just one month prior to the date of death. *Adams, supra*, 596 F.Supp. at 1414. In other words, there was no need for the court in *Chapman* to consider the applicability of the condition precedent rule because in that case the decedent died only one month after his personal injury cause of action accrued, well within the two year statute of limitations. In short, *Chapman* was a statute of limitations case and not a condition precedent case. Here, objective ascertainable injury occurred more than two years prior to the dates of deaths of Stoor, Branch and Frasure. As such, the statute of limitations had run on decedents' personal injury claims prior to their dates of death (and well before the filing of the complaint in this case) and, therefore, the Wrongful Death Plaintiffs' claims are barred for failure to satisfy the condition precedent rule.

4. Objective Medical Proof Establishes that the Decedents Suffered Injury More Than Two Years from The Dates of Death and Therefore Wrongful Death Plaintiffs' Claims are Barred by the Condition Precedent Rule.

The undisputed facts establish without question that objective medical proof existed that the decedents of each of the Wrongful Death Plaintiffs suffered from asbestos-related injuries

In adopting the condition precedent rule in Idaho, Idaho courts have construed I.C. § 5-311 as if the quoted language of Lord Campbell's Act was written directly into the statute. *Id.*

more than two years prior to the dates of their deaths. Since none of the decedents filed personal injury suits against Moving Defendants prior to their deaths, their negligence and strict products liability causes of action were time-barred before they died.

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a. Stoor

Stoor admits, and the medical and claim records establish, that Stoor was diagnosed with an asbestos-related disease on or before 09/28/01. (Stoor Undisputed Fact Nos. 3-8 and 10.) However, even before that date, **an 08/24/91 chest radiograph taken of Stoor contained objective medical proof of changes in Stoor's lungs consistent with the type of injury and disease that can be seen after asbestos exposure.** The fact that, in 1991, a doctor or other health care professional did not conclude from the radiograph that there was asbestos-related injury does not change the fact that objective medical proof existed in 1991 that Stoor had suffered "some damage" as a result of his exposure to asbestos. As a matter of law, therefore, the statute of limitations on Stoor's personal injury claim commenced on 08/24/91. Since Stoor did not file his personal injury complaint by 08/24/93, his negligence and strict liability claims were barred long before his death (06/13/04), and since Wrongful Death Plaintiffs did not file their complaint until 06/02/06, more than eleven years after Stoor's personal injury claims were time barred, the Wrongful Death Plaintiffs' negligence and strict products liability claims are barred by the condition precedent rule.⁸

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⁸ Even if, for argument's sake, Moving Defendants give Stoor the benefit of the doubt and assume for the sake of this motion only, that the statute of limitations did not commence until Stoor was "diagnosed" with an asbestos related disease on 09/28/01 – which is contrary to statutory and case law,

b. Branch

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Similar to Stoor, Branch also had a chest radiograph taken which revealed changes in his lungs consistent with the type of injury and disease that can be seen after asbestos exposure. (Branch Undisputed Fact Nos. 4, 5 and 6.) This radiograph was taken on 07/01/03. Id. Since Branch did not file a personal injury complaint relating to an asbestos-related injury on or before 07/01/05, within two years from the date of objective medical proof of injury, his personal injury claims were barred by the statute of limitations before his death on 07/11/05. (Branch Undisputed Fact No. 2.) For that same reason, the negligence and strict products liability claims of the Wrongful Death Plaintiffs are barred for failure to satisfy the condition precedent rule.

c. Frasure

As early as 8/24/00, Frasure's medical records established that there were pleural plaques present suggesting asbestos disease. (Frasure Undisputed Fact No. 4.) Thus, to have any actionable claim before his death, Frasure must have filed suit no later than 08/24/02. Frasure died on 02/17/06 without having filed any suit. (Frasure Undisputed Fact No. 2.) At that time, his negligence and strict products liability claims were barred by the applicable statute of limitations. Because neither Frasure nor his heirs filed the complaint in this suit on or before Frasure's death, the negligence and strict products liability claims of the Wrongful Death Plaintiffs are also barred by the condition precedent rule.

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Stoor's personal injury claims would still have been time barred, and Wrongful Death Plaintiffs' claims would still be barred for failure to satisfy a condition precedent to recovery.

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C. Plaintiffs' Count Three Concerning Misrepresentation Fails As A Matter Of Law.

Count Three of Plaintiffs' Complaint appears to allege some form of misrepresentation but the allegations are not specific as to the legal basis for the claims. Three different legal causes of action may potentially arise from the allegations contained in this count: (1) negligent misrepresentation; (2) misrepresentation which supports a claim for strict products liability based on Restatement Torts (Second) § 402B; and, (3) fraudulent misrepresentation.

1. Idaho Does Not Recognize A Cause Of Action For Negligent Misrepresentation Outside The Context of Claims Against Accountants.

Idaho does not recognize a claim for negligent misrepresentation outside the context of claims against accountants. *Duffin v. Idaho Crop Improvement Ass'n*, 126 Idaho 1002, 895 P.2d 1195, 1203 (1995). In *Duffin*, the Idaho Supreme Court stated as follows: "we expressly hold that, except in the narrow confines of a professional relationship involving an accountant, the tort of negligent misrepresentation is not recognized in Idaho." *Duffin, supra*, 895 P.2d at 1203. See also *Intermountain Const, Inc. v. City of Ammon*, 841 P.2d 1082, 1084 (Idaho 1992); *Graefe v. Vaughn*, 132 Idaho 349, 972 P.2d 317, 319 (Idaho App. 1999); *Gerstein v. Micron Technology*, Civ. No. 89-1262, 1993 WL 735031, *2 (D. Idaho Jan. 9, 1993). Because Moving Defendants never acted as an accountant for any of the Wrongful Death Plaintiffs or their decedents, the Wrongful Death Plaintiffs' claims for negligent misrepresentation fail as a matter of law.

2. In Idaho, There is No Claim for Strict Liability Based on Misrepresentation Pursuant To Section 402B of the Restatement (Second) of Torts

Section 402 of the Restatement (Second) of Torts addresses the law surrounding strict liability based on misrepresentation. However, Idaho has never adopted § 402B. While Idaho has recognized a strict products liability claim based on Restatement § 402A, the adoption of §

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402A does not equate to the other Restatement sections. *See, Shields v. Morton Chemical Co.* 95 Idaho 674, 518 P.2d 857 (1974) (adopting § 402A without adopting all of the comments thereto); *Toner v. Lederle Laboratories* 112 Idaho 328, 732 P.2d 297 (1987) (adopting comment k to § 402A and noting that each court must decide the applicability of comment k on a case by case basis and only after taking evidence related to the various factors.)

Idaho case law has clearly held that the Restatement does not become Idaho law unless or until it has been formally adopted by the Idaho Supreme Court. *See Ambrose v. Buhl Joint School Dist. No 412*, 126 Idaho 581, 586, 887 P. 2d 1088, 1093 (Ct. App. 1994); *Boise Car & Truck Rental Co. v. Waco, Inc.*, 108 Idaho 780, 785, 702 P. 2d 818, 821 (1985). “Rather than categorically adopting an entire chapter of the Restatement, this Court has consistently displayed its preference for selectively examining various sections and comments from the Restatement, and thereafter adopting, citing favorably, or rejecting the provision, as the occasion warrants.” *Diamond v. Farmers Group, Inc.*, 119 Idaho 146, 149, 804 P.2d 319, 322 (1990). *See also, Doe v. Cutter Biological, a Div. of Miles, Inc.*, 852 F.Supp. 909, 911 p. n. 3 (D.Idaho 1994), *Peterson v. Idaho First Nat. Bank* 117 Idaho 724, 791 P.2d 1303 (Idaho 1990), and *Idaho Bank & Trust v. First Bancorp*, 115 Idaho 1082, 1084, 772 P.2d 720, 722 (1989) (The court refused to adopt the Restatement standard regarding liability of a professional for negligent misrepresentation.)

Since the Idaho Supreme Court has never examined or adopted § 402B, § 402B is not the law of Idaho. To date, Idaho has only adopted as law one products liability Restatement § 402A. The Court’s adoption of § 402A, together with its explicit repudiation of the Restatement misrepresentation standard regarding liability of a professional for negligent misrepresentation (*Idaho Bank & Trust v. First Bancorp* 1125 Idaho 1082, 772 P.2d 720 (1989) and its explicit

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rejection of negligent misrepresentation as a viable claim except in the public accountant context, strongly suggest that the Idaho Supreme Court would similarly reject a misrepresentation claim based on Restatement § 402B in the product liability context. As such, to the extent Plaintiffs have intended to allege a claim of strict products liability based on misrepresentation under Restatement of Torts (Second) § 402B, such claim fails as a matter of law.

However, even if the Idaho Supreme Court were to recognize a claim of strict liability based on misrepresentation under Restatement of Torts (Second) § 402B, such a claim would still be nothing more than a products liability claim under Idaho's Products Liability Act, and would still be barred by the two year statute of limitations set forth in Idaho Code §§ 5-219(4) and 6-1403(3). See Section B *supra*.

3. Plaintiffs Have Not And Cannot Plead Fraudulent Misrepresentation With Any Particularity.

Pursuant to Idaho Rule of Civil Procedure 9(b), Plaintiffs are required to plead fraud and misrepresentation with particularity. “[T]he circumstances constituting fraud ... shall be stated with particularity.” IRCP 9(b).

The prima facie case of fraud consists of: (1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on the truth; (8) his right to rely thereon; and (9) his consequent and proximate injury. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 89, 996 P.2d 303, 308 (2000). Idaho law requires specific factual allegations that correspond to each element of the cause of action. *Dengler v. Hazel Blessinger Family Trust*, 141 Idaho 123, 106 P.3d 449 (2005). In *Dengler*, the Idaho Supreme Court held that “general averments

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directed at fraud” were insufficient to fulfill the specificity requirements of Rule 9(b). On that ground alone, the court granted defendant’s motion for summary judgment as to plaintiff’s claim for fraud. *Dengler, supra*, 141 Idaho at 127, 106 P.3d at 453.

The facts in the instant case are similar to those in *Dengler*. Here, the Wrongful Death Plaintiffs made the same conclusory misrepresentation allegations against each of the 65 defendants, including Moving Defendants. There are no allegations which state that any specific representation was made by Moving Defendants to any of the Wrongful Death Plaintiffs or their decedents Stoor, Branch and Frasure, much less that such representations were false. Plaintiffs simply refer to an endless field of “medical and scientific data, literature and test reports containing information and statements regarding the risks of asbestosis” (Complaint, ¶ 98(a) and (b)); that moving defendants “affirmatively misrepresented ... in advertising, labels and otherwise, that the asbestos containing products ... were safe in their ordinary and foreseeable use.” (Complaint, ¶ 74(e)); and that Defendants “by placing [asbestos-containing products] on the market, represented that they would safely do the job for which they were intended ...” (Complaint, ¶ 82). These allegations are nothing more than general averments which fail to articulate any particular representations made by Moving Defendants to the Wrongful Death Plaintiffs or their decedents; or that such particular representations were false or material; or, that the Wrongful Death Plaintiffs or their decedents relied on any particular representations made to them by Moving Defendants. Such general averments are insufficient and therefore fail to state a claim for fraud against Moving Defendants. To the extent Plaintiffs intended to allege fraudulent misrepresentation claims in Count Three, those claims fail as a matter of law.

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D. Plaintiffs' Count Four Claims Fail As A Matter Of Law.

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Several of the allegations in this count do not apply to the moving defendants based on the allegations in the complaint.⁹ Here, as with Count Three, it is almost impossible to determine precisely what claims Plaintiffs are pursuing. However, to the extent Plaintiffs are alleging claims of battery and/or fraudulent concealment against Moving Defendants, such claims fail as a matter of law.

1. Plaintiffs' Battery Claim Is Barred By the Statute of Limitations

The statute of limitations for a cause of action for battery is two years. See Section 5-219(5). The statute commences when, as under a negligence claim, plaintiff suffers "some damage." *Banner v. Roman Catholic Diocese of Boise* 128 Idaho 351, 913 P.2d 567 (1996). Here, as stated in Section B *supra*, the decedents of the Wrongful Death Plaintiffs (Stoor, Branch and Frasure) suffered "some damage" more than two years before they filed suit or died. As such, their battery claims are barred as a matter of law by the statute of limitations and the condition precedent rule for the same reasons their negligence and strict product liability claims are barred.

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⁹ Plaintiffs do not include Moving Defendants in their list of "Conspiracy Defendants." (See Complaint, ¶ 102) Thus, it appears that such a claim has not been brought against Moving Defendants. However, even if such a claim has been brought against Moving Defendants, such a claim fails as a matter of law. Civil conspiracy is not a claim for relief by itself. A civil wrong must have been committed as an objective of the conspiracy. *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.2d 317, 321 (2003); *Argonaut Ins. Co. v. White*, 86 Idaho 374, 379, 386 P.2d 964, 966 (1963); and *Dahlquist v. Mattson*, 40 Idaho 378, 386-87, 233 P. 883, 887 (1925). Because the statute of limitations and/or substantive law bars each of Plaintiffs' claim, their claim for civil conspiracy against Moving Defendants fails as well.

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2. Plaintiffs' Claim For Fraudulent Concealment Fails As A Matter of Law.

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In order to maintain a cause of action for fraudulent concealment, Plaintiffs must establish that Moving Defendants were under a duty to disclose. Such a duty to disclose exists only when parties stand in a fiduciary or special relationship with one another. *St. Alphonsus Regional Medical Center v. Krueger*, 124 Idaho 501, 861 P.2d 71 (1992). Thus, Plaintiffs may only recover for fraudulent concealment if they can establish that the Moving Defendants stood in a fiduciary or special relationship with Plaintiffs or Plaintiffs' decedents. Under the undisputed facts in the record of this case, no such relationship existed.

In the instant case, Moving Defendants are remote manufacturers of products which were allegedly supplied to Plaintiffs' decedents' employer, FMC, and installed or used at the decedents' worksite at the FMC plant in Pocatello, Idaho. The only connection between Plaintiffs, Plaintiffs' decedents, and Moving Defendants is that Plaintiffs' decedents worked in an area that contained asbestos-containing products allegedly supplied by Moving Defendants and others. The Moving Defendants and Plaintiffs and/or Plaintiffs' decedents had no direct relationship at all, much less one that was special or fiduciary in nature. This remote connection that did exist is insufficient to trigger a duty to disclose.

Although the Idaho courts have not specifically addressed whether a "manufacturer-consumer connection," such as the one alleged in this case, may constitute a "relationship" sufficient to trigger a duty to disclose, the cases in Idaho which have recognized a duty to disclose are based on close and personal fiduciary relationships in which there is a greater duty of disclosure in a person who holds a position of trust. *See, Jones v. Maestas* 108 Idaho 69, 696 P.2d 920 (1985) (duty to disclose arises out of fiduciary relationship between real estate broker

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and client); *Zumwalt v. Stephan, Balleisan & Slavin* 113 Idaho 822, 748 P.2d 406 (1988) (duty to disclose arises out of fiduciary relationship between attorney and client); *Bethlahmy v. Bechtel* 91 Idaho 55, 415 P.2d 698 (1966) (duty to disclose defects in newly constructed home arises out of special relationship between builder and purchaser of home).

Other jurisdictions have addressed whether a special or fiduciary relationship exists in the manufacturer-consumer context for claims of fraudulent concealment. These jurisdictions have held that no such relationship exists. In *Burnette v. Nicolet, Inc.* 818 F.2d 1098 (4th Cir. 1986), plaintiff Burnette's fraudulent concealment claim was based on the argument that the defendant manufacturer failed to disclose to, or warn, consumers and users of the hazards of exposure to its asbestos-containing products. In affirming the dismissal of Plaintiffs' fraudulent concealment cause of action, the Fourth Circuit stated:

North Carolina has never recognized a cause of action for fraudulent concealment in the absence of a relationship of trust or confidence created by a fiduciary, contractual or other similar relationship which imposes upon the defendant a "duty to speak" to the plaintiff. We see no error in the court's conclusion that North Carolina would not recognize a relationship of trust or confidence in the context advocated by Burnette. *Id.* at 1101.

Likewise, in *Waterhouse v. R.J. Reynolds Tobacco Co.* 270 F.Supp.2d 278 (Dist. Md 2003), plaintiffs argued that defendant cigarette manufacturers owed them, as consumers of defendants' cigarette products, a duty to disclose. The court rejected plaintiff's argument and held that the relationship between the manufacturer and consumer did not create a special relationship that gave rise to a duty to speak: "[t]he fact that these manufacturers made cigarettes, as opposed to some other product, does not show that they played a fiduciary role in [plaintiff's] life and thus entered into a special and confidential relationship with him." *Id.* at

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685. Based on this conclusion, the court in *Waterhouse* granted defendant's motion for summary judgment on the fraudulent concealment claim.

Similarly, here, the fact that Moving Defendants manufactured a product with which Plaintiffs' decedents may have come into contact does not give rise to a special or fiduciary relationship with Plaintiffs. Because Idaho has never recognized a claim for fraudulent concealment where a special and fiduciary relationship did not exist, and because the cases from other jurisdictions hold that no such relationship exists in the manufacturer-consumer context, any claims by Wrongful Death Plaintiffs against Moving Defendants based on fraudulent concealment fail as a matter of law.¹⁰

IV. CONCLUSION

For the reasons set forth herein:

1. The claims of the Wrongful Death Plaintiffs set forth in Counts One, Two and Nine for negligence and strict products liability against Moving Defendants are barred by failure to satisfy the condition precedent rule, since the claims of Stoor, Branch and Frasure were time barred by the two-year statute of limitations in Idaho Code §§ 5-219(4) and 6-1403(3) before their deaths occurred;

2. Any claims of the Wrongful Death Plaintiffs in Counts Three and Four for fraud or fraudulent concealment against Moving Defendants are barred for failure to plead fraud with particularity pursuant to Idaho Rule of Civil Procedure 9(b);

¹⁰ To the extent the claims alleged by Plaintiffs in Count Four are intended to allege fraud, they are non-specific and only general averments as to Moving Defendants and fail for the same reasons Plaintiffs' Count Three Misrepresentation claims fail. (See Section C(3), *supra*.)

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3. Any claims of Wrongful Death Plaintiffs in Count Three for misrepresentation against Moving Defendants are barred because Idaho law does not recognize such claims and therefore they fail to state a claim on which relief may be granted;

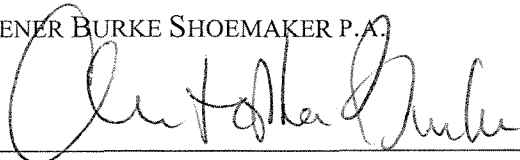
4. Any claims of the Wrongful Death Plaintiffs in Count Four for battery against Moving Defendants are barred by the two-year statute of limitations in Idaho Code § 5-219(5), and failure to satisfy the condition precedent rule; and

5. Any claims of Wrongful Death Plaintiffs in Count Four for fraudulent concealment against Moving Defendants are barred for failure to state a claim upon which relief may be granted due to lack of any fiduciary or special relationship.

There being no dispute of any facts material to the issues raised by this motion, Moving Defendants are entitled to entry of summary judgment on all of Wrongful Death Plaintiffs' claims against them as a matter of law.

DATED this 9th day of November, 2007.

GREENER BURKE SHOEMAKER P.A.



Christopher C. Burke
Attorneys for 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 and Ingersoll-Rand Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of November, 2007, a true and correct copy of the within and foregoing instrument was served upon:

1170 James C. Arnold Petersen Parkinson & Arnold, PLLC 390 N. Capital Avenue P.O. Box 1645 Idaho Falls, ID 83403-1656 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 522-8547 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
G. Patterson Keahey G. Patterson Keahey, P.C. One Independence Plaza, Suite 612 Birmingham, AL 35209 Attorneys for Plaintiff	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (205) 871-0801 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Alan C. Goodman Goodman Law Office 717 7 th Street P.O. Box D Rupert, ID 83350 Attorney for Rupert Iron Works, Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 436-4774 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Thomas J. Lyons Merrill & Merrill 109 N. Arthur, 5 th Floor P.O. Box 991 Pocatello, ID 83204-0991 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-2499 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
Jackson Schmidt Pepple Johnson Cantu & Schmidt, PLLC 1218 Third Avenue, Suite 1900 Seattle, WA 98101-3051 Attorney for Owens-Illinois Inc.	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (206) 625-1627 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
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<p>1171</p> <p>John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1381</p> <p>Attorney for Gould Incorporated and Goulds Pumps Trading Corp.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
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<p>Christopher P. Graham Brassey Wetherell Crawford & Garrett, LLP 203 Main Street P.O. Box 1009 Boise, ID 83702</p> <p>Attorneys for Garlock Incorporated, Anchor Packing Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 344-7077 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Murray J. ("Jim") Sorensen Blaser Sorensen & Hansen 285 NW Main P.O. Box 1047 Blackfoot, ID 83221</p> <p>Attorneys for Steel West Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 785-7080 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>L. Charles Johnson III Attorney at Law 419 W. Benton P.O. Box 1725 Pocatello, ID 83204</p> <p>Attorneys for Crown Cork & Seal Company, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-9161 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Howard D. Burnett Hawley Troxell Ennis & Hawley LLP 333 South Main Street P.O. Box 100 Pocatello, ID 83204</p> <p>Attorneys for Eaton Electrical Inc. (f/k/a Cutler-Hammer Inc.).</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 233-1304 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>1172</p> <p>Gary T. Dance and/or Lee Radford and/or Benjamin C. Ritchie Moffatt, Thomas, Barrett, Rock & Fields Chtd. 412 West Center P.O. Box 817 Pocatello, ID 83204</p> <p>Attorneys for Defendants FMC Corporation, Henry Vogt Machine Co., and Warren Pumps, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-0150 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Donald F. Carey and/or Carole I. Wesenberg Robert D. Williams Quane Smith LLP 2325 West Broadway, Suite B Idaho Falls, ID 83402-2913</p> <p>Attorneys for Defendants Reliance Electric Company and Rockwell Automation, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 529-0005 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>A. Bruce Larson 155 S. 2nd P.O. Box 6369 Pocatello, ID 83205-6369</p> <p>Attorneys for P & H Cranes, a/k/a Harnishchfegor Corporation, Cleaver-Brooks, a Division of AQUA Chem, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 478-7602 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Gary L. Cooper and/or M. Anthony Sasser Cooper & Larsen, Chartered 151 North 3rd Avenue, Suite 210 P.O. Box 4229 Pocatello, ID 83205-4229</p> <p>Attorneys for Defendants Paramount Supply Company, Zurn Industries, Inc., and Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 235-1182 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>J. Kevin Murphy and/or Michael F. Skolnick Kipp and Christian, P.C. 10 Exchange Place, 4th Floor SLC, UT 84111</p> <p>Attorneys for Defendant Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (801) 359-9004 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

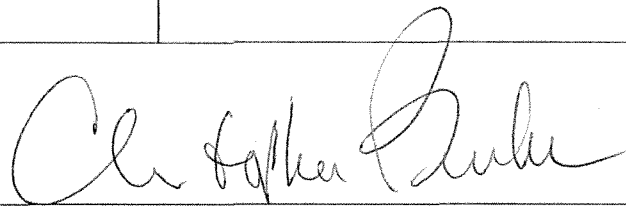
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<p>1173</p> <p>Andrew Grade and/or M. Mattingly Steven V. Rizzo, PC Lincoln Place, Suite 350 1620 SW Taylor Street Portland, OR 97205</p> <p>Attorneys for Defendants Paramount Supply Company and Zurn Industries, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (503) 229-0630 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>E. Scott Savage and/or Casey K. McGarvey Berman & Savage 170 South Main Street, Suite 500 Salt Lake City, UT 84101</p> <p>Attorneys for Defendant Union Pacific Railroad Co.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Donald J. Farley, Dana Herberholz, Kevin Scanlan Hall, Farley, Oberrecht & Blanton, P.A. 702 West Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701</p> <p>Attorneys for Defendants NIBCO Inc. & Parker- Hannifin</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 395-8585 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>C. Timothy Hopkins and/or Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes P.O. Box 51219 428 Park Avenue Idaho Falls, ID 83405-1219</p> <p>Attorneys for Defendants Alaskan Copper Works and Kelly-Moore Paint Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Brian Harper Attorney at Law 161 5th Avenue, Suite 202 P.O. Box 2838 Twin Falls, ID 83303</p> <p>Attorneys for Defendant Guard-Line, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Michael W. Moore and/or Steven R. Kraft Moore & Baskin, LLP 1001 W. Idaho, Suite 400 P.O. Box 6756 Boise, ID 83707</p> <p>Attorneys for Defendant Hill Brothers Chemical Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 336-7031 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Randall L. Schmitz and/or Kelly Cameron And/or Randall L. Schmitz Perkins Coie LLP 251 East Front Street, Suite 400 Boise, ID 83702-7310</p> <p>Attorneys for Defendants Crane Company and Honeywell Corporation</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 343-3232 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Dan Trocchio Kirkpatrick Lockhart Nicholson Graham LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15211-2312</p> <p>Attorney for Defendant Crane Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>



Christopher C. Burke

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1. I am one of the attorneys for 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 (collectively "Westinghouse") and Ingersoll-Rand Corporation ("Ingersoll-Rand") (collectively referred to as "Moving Defendants"). I make this Affidavit based upon personal knowledge in support of Moving Defendants' Motion for Summary Judgment against Elaine Stoor, individually and as spouse and personal representative of the estate of John D. Stoor ("Stoor"), Stephanie Branch, individually and as personal representative of the estate of Robert Branch, Jr. ("Branch"), and Marlene Kisling, individually and as personal representative of the estate of William D. Frasure ("Frasure") (collectively referred to as "Wrongful Death Plaintiffs").

2. Attached hereto as Exhibit "A" is a true and correct copy of excerpts from Plaintiff Stoor's Response to Defendants' Master Interrogatories and Request for Production of Documents ("Defendants' Master Discovery"), served by Plaintiffs upon defendants in this case.

3. Attached hereto as Exhibit "B" is a true and correct copy of excerpts from Plaintiff Stoor's Supplemental Response to Defendants' Master Discovery ("Stoor's Supplemental Response"), served by Plaintiffs upon defendants in this case.

4. Attached hereto as Exhibit "C" is a true and correct copy of a personal injury asbestos exposure claim filed by Plaintiff Stoor's attorney, G. Patterson Keahey ("Keahey"), on behalf of Stoor against the Manville Personal Injury Settlement Trust ("Manville Trust Claim"). The Manville Trust Claim was produced by Stoor in Plaintiff Stoor's Supplemental Response.

5. Attached hereto as Exhibit "D" is a true and correct copy of an asbestos exposure personal injury claim filed by Plaintiff Stoor's attorney, Keahey, on behalf of Stoor on 10/10/01,

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against the H. K. Porter Trust (“H. K. Porter Trust Claim”), together with an attached 09/28/01 report of Dr. Alvin J. Schonfeld of a chest radiograph taken of Stoor on 08/24/91. The H. K. Porter Trust Claim, together with the attached 09/28/01 radiograph report of Dr. Schonfeld were produced by Stoor in Plaintiff Stoor’s Supplemental Response.

6. Attached hereto as Exhibit “E” is a true and correct copy of a 12/11/01 Notice of Injury and Claim for Benefits filed by or on behalf of Stoor with the Idaho Industrial Commission (“Worker’s Compensation Claim”). The Worker’s Compensation Claim was produced by Stoor in Plaintiff Stoor’s Supplemental Response.

7. Attached hereto as Exhibit “F” is a true and correct copy of a 06/26/03 asbestos personal injury claim filed by Plaintiff Stoor’s attorney, Keahey, on behalf of Stoor against Combustion Engineering, Inc. (“C. E. Claim”). The C. E. Claim was produced by Plaintiff with Plaintiff Stoor’s Supplemental Response.

8. Attached hereto as Exhibit “G” is a true and correct copy of excerpts of the transcript of the deposition of Gerri K. Trammel, taken in this case on June 2, 2007.

9. Attached hereto as Exhibit “H” is a true and correct copy of excerpts of Plaintiff Branch’s Response to Defendants’ Master Discovery, served by Plaintiffs upon defendants in this case.

10. Attached hereto as Exhibit “I” is a true and correct copy of excerpts from Plaintiff Branch’s Supplemental Response to Defendants’ Master Discovery (“Branch’s Supplemental Response”), served by Plaintiffs upon defendants in this case.

11. Attached hereto as Exhibit “J” is a true and correct copy of a Plaintiff Branch’s medical record issued by Portneuf Medical Center on 05/11/03 (“Portneuf Medical Record”).

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The Portneuf Medical Record was produced by Branch in Plaintiff Branch's Supplemental Response.

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12. Attached hereto as Exhibit "K" is a true and correct copy of excerpts of the transcript of the deposition of Louise Branch, taken in this case on 06/07/07.

13. Attached hereto as Exhibit "L" is a true and correct copy of Plaintiff Branch's Cottonwood Hospital Medical Center's radiograph record of 07/01/03 ("Cottonwood Radiograph"). The Cottonwood Radiograph was produced by Branch in Plaintiff Branch's Supplemental Response.

14. Attached hereto as Exhibit "M" is a true and correct copy of Dr. Schonfeld's ILO "B-reading" dated 09/07/06 regarding Plaintiff Branch's Cottonwood Radiograph. Said ILO "B-reading" was produced by Branch in Plaintiff Branch's Supplemental Response.

15. Attached hereto as Exhibit "N" is a true and correct copy of excerpts of Plaintiff Frasure's Response to Defendants' Master Discovery and attached death certificate, served by Plaintiffs upon defendants in this case.

16. Attached hereto as Exhibit "O" is a true and correct copy of excerpts of the transcript of the deposition of Joyce Frasure, taken in this case on 06/08/07.

17. Attached hereto as Exhibit "P" is a true and correct copy of excerpts from Plaintiff Frasure's Supplemental Response to Defendants' Master Discovery ("Frasure's Supplemental Response"), served by Plaintiffs upon defendants in this case.

18. Attached hereto as Exhibit "Q" is a true and correct copy of an 08/24/00 consultation report issued by Dr. Pearl regarding Plaintiff Frasure ("Pearl Consultation

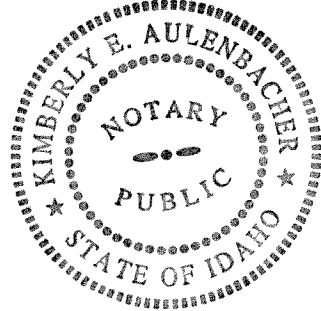
Report"). The Pearl Consultation Report was produced by Frasure in Plaintiff Frasure's Supplemental Response.

19. Attached hereto as Exhibit "R" is a true and correct copy of an 08/25/00 x-ray report issued by Dr. Bonk's ("Dr. Bonk's x-ray report") regarding Plaintiff Frasure. Dr. Bonk's x-ray report was produced by Frasure in Plaintiff Frasure's Supplemental Response.

Christopher C. Burke

Christopher C. Burke

SUBSCRIBED AND SWORN TO before me this 8th day of November, 2007.



Kimberly E. Aulenbacher
Notary Public for Idaho
Residing at Boise, ID
Commission Expires 6-22-2012

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of November, 2007, a true and correct copy of the within and foregoing instrument was served upon:

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<p>James C. Arnold Petersen Parkinson & Arnold, PLLC 390 N. Capital Avenue P.O. Box 1645 Idaho Falls, ID 83403-1656</p> <p>Attorneys for Plaintiff</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 522-8547 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>G. Patterson Keahey G. Patterson Keahey, P.C. One Independence Plaza, Suite 612 Birmingham, AL 35209</p> <p>Attorneys for Plaintiff</p>	<p><input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (205) 871-0801 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Alan C. Goodman Goodman Law Office 717 7th Street P.O. Box D Rupert, ID 83350</p> <p>Attorney for Rupert Iron Works, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 436-4774 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Thomas J. Lyons Merrill & Merrill 109 N. Arthur, 5th Floor P.O. Box 991 Pocatello, ID 83204-0991</p> <p>Attorney for Owens-Illinois Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-2499 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Jackson Schmidt Pepple Johnson Cantu & Schmidt, PLLC 1218 Third Avenue, Suite 1900 Seattle, WA 98101-3051</p> <p>Attorney for Owens-Illinois Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (206) 625-1627 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>W. Marcus Nye Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1391</p> <p>Attorney for Advanced Industrial Supply Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

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<p>John A. Bailey, Jr. Racine Olson Nye Budge & Bailey, Chtd. 201 E. Center P.O. Box 1391 Pocatello, ID 83204-1381</p> <p>Attorney for Gould Incorporated and Goulds Pumps Trading Corp.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-6109 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>David H. Maguire and/or David R. Kress Maguire & Kress 1414 E. Center P.O. Box 4758 Pocatello, ID 83205-4758</p> <p>Attorneys for A.W. Chesterton Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-5181 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Christopher P. Graham Brassey Wetherell Crawford & Garrett, LLP 203 Main Street P.O. Box 1009 Boise, ID 83702</p> <p>Attorneys for Garlock Incorporated, Anchor Packing Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 344-7077 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Murray J. ("Jim") Sorensen Blaser Sorensen & Hansen 285 NW Main P.O. Box 1047 Blackfoot, ID 83221</p> <p>Attorneys for Steel West Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 785-7080 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>L. Charles Johnson III Attorney at Law 419 W. Benton P.O. Box 1725 Pocatello, ID 83204</p> <p>Attorneys for Crown Cork & Seal Company, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-9161 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Howard D. Burnett Hawley Troxell Ennis & Hawley LLP 333 South Main Street P.O. Box 100 Pocatello, ID 83204</p> <p>Attorneys for Eaton Electrical Inc. (f/k/a Cutler-Hammer Inc.).</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 233-1304 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Gary T. Dance and/or Lee Radford and/or Benjamin C. Ritchie Moffatt, Thomas, Barrett, Rock & Fields Chtd. 412 West Center P.O. Box 817 Pocatello, ID 83204</p> <p>Attorneys for Defendants FMC Corporation, Henry Vogt Machine Co., and Warren Pumps, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 232-0150 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Donald F. Carey and/or Carole I. Wesenberg Robert D. Williams Quane Smith LLP 2325 West Broadway, Suite B Idaho Falls, ID 83402-2913</p> <p>Attorneys for Defendants Reliance Electric Company and Rockwell Automation, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 529-0005 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>A. Bruce Larson 155 S. 2nd P.O. Box 6369 Pocatello, ID 83205-6369</p> <p>Attorneys for P & H Cranes, a/k/a Harnishchfegor Corporation, Cleaver-Brooks, a Division of AQUA Chem, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 478-7602 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Gary L. Cooper and/or M. Anthony Sasser Cooper & Larsen, Chartered 151 North 3rd Avenue, Suite 210 P.O. Box 4229 Pocatello, ID 83205-4229</p> <p>Attorneys for Defendants Paramount Supply Company, Zurn Industries, Inc., and Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 235-1182 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>J. Kevin Murphy and/or Michael F. Skolnick Kipp and Christian, P.C. 10 Exchange Place, 4th Floor SLC, UT 84111</p> <p>Attorneys for Defendant Bullough Abatement, Inc.</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (801) 359-9004 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

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<p>Andrew Grade and/or M. Mattingly Steven V. Rizzo, PC Lincoln Place, Suite 350 1620 SW Taylor Street Portland, OR 97205</p> <p>Attorneys for Defendants Paramount Supply Company and Zurn Industries, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (503) 229-0630 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>E. Scott Savage and/or Casey K. McGarvey Berman & Savage 170 South Main Street, Suite 500 Salt Lake City, UT 84101</p> <p>Attorneys for Defendant Union Pacific Railroad Co.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Donald J. Farley, Dana Herberholz, Kevin Scanlan Hall, Farley, Oberrecht & Blanton, P.A. 702 West Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701</p> <p>Attorneys for Defendants NIBCO Inc. & Parker- Hannifin</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 395-8585 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>C. Timothy Hopkins and/or Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes P.O. Box 51219 428 Park Avenue Idaho Falls, ID 83405-1219</p> <p>Attorneys for Defendants Alaskan Copper Works and Kelly-Moore Paint Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Brian Harper Attorney at Law 161 5th Avenue, Suite 202 P.O. Box 2838 Twin Falls, ID 83303</p> <p>Attorneys for Defendant Guard-Line, Inc.</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email
<p>Michael W. Moore and/or Steven R. Kraft Moore & Baskin, LLP 1001 W. Idaho, Suite 400 P.O. Box 6756 Boise, ID 83707</p> <p>Attorneys for Defendant Hill Brothers Chemical Company</p>	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 336-7031 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email

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<p>Randall L. Schmitz and/or Kelly Cameron And/or Randall L. Schmitz Perkins Coie LLP 251 East Front Street, Suite 400 Boise, ID 83702-7310</p> <p>Attorneys for Defendants Crane Company and Honeywell Corporation</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile (208) 343-3232 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>
<p>Dan Trocchio Kirkpatrick Lockhart Nicholson Graham LLP Henry W. Oliver Building 535 Smithfield Street Pittsburgh, PA 15211-2312</p> <p>Attorney for Defendant Crane Company</p>	<p><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email</p>

Christopher C. Burke

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EXHIBIT A

1185

James C. Arnold - ISB No. 3688
PETERSEN, PARKINSON
& ARNOLD, PLLC
390 N. Capital Avenue
P.O. Box 1645
Idaho Falls, ID 83403-1645
Telephone (208) 522-5200
Facsimile (208) 522-8547

RECEIVED
MAR 05 2007
GREENER BANDUCCI
SHOEMAKER P.A.

G. Patterson Keahey
G. Patterson Keahey, P.C.
One Independence Plaza, Suite 612
Birmingham, Alabama 35209
Telephone: 205-871-0707
Facsimile: 205-871-0801

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Mildred Castorena, Individually and as)
Spouse and Personal Representative of the)
Estate of Ted Castorena;)
Alene Stoor, Individually and as Spouse)
and Personal Representative of the Estate)
of John D. Stoor;)
Stephanie Branch, Individually and as)
Personal Representative of the Estate of)
Robert Branch, Jr.;)
Robert L. Hronek;)
Marlene Kisling, Individually and as)
Personal Representative of the Estate of)
William D. Frasure;)
Norman L. Day.)

Case No.: CV-2006-2474-PI

PLAINTIFF STOOR'S
RESPONSE TO DEFENDANTS
MASTER INTERROGATORIES
AND REQUEST FOR
PRODUCTION OF DOCUMENTS
TO PLAINTIFFS

Plaintiffs,)
vs.)
GENERAL ELECTRIC, et.al;)
Defendants.)

Plaintiff, Stoor's Responses to Defendants' Master Interrogatories and Request for
Production of Documents to Plaintiffs

- 1187
- b. The inclusive date(s) during which Exposed Person was a member of such union or collective bargaining unit;
 - c. Each position held by Exposed Person in such union or collective bargaining unit and the dates such position was held; and
 - d. The name of each publication Exposed Person received from such union or collective bargaining unit.

RESPONSE: Plaintiff objects as this discovery request is not relevant and is not designed to lead to the discovery of admissible evidence. Subject to and without waiving said objection, Plaintiff responds as follows: Machinest, 456 N. Author, Pocatello, Idaho.

INTERROGATORY NO: 11: If Exposed Person ever smoked, state when Exposed Person started smoking, what type of tobacco product Exposed Person smoked, when Exposed Person smoked it and for how long, how much Exposed Person has smoked of each type of tobacco product, whether a physician ever advised Exposed person to stop smoking, and if so, who and when, and state if applicable, the reason(s) Exposed Person stopped smoking.

RESPONSE: Plaintiff objects as this discovery request is overly broad, onerous and unduly burdensome. Plaintiff also objects as not relevant to lead to the discovery of admissible evidence because mesothelioma is not caused by tobacco products. Subject to and without waiving said objection, Plaintiff states John Stoor smoked from approximately 1957 or 1960 until 1992; 2 packs per day; he quit in 1992. Plaintiff does not know what brand of cigarettes John Stoor smoked.

INTERROGATORY NO: 12: When was Exposed person diagnosed with any asbestos related disease? For each such diagnosis, please state the month and year of such diagnosis and the name and address of the physician making such diagnosis.

Plaintiff, Stoor's Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

RESPONSE:

September 28, 2001
Dr. Carl Vance
2220 East 25th Street
Idaho Falls, Idaho 83404

INTERROGATORY NO: 13: Identify all of medical providers and doctors who have treated Exposed Person's for any asbestos related disease, including their name and address and when and for what condition they treated Exposed Person.

RESPONSE:

Carey Jackson, M.D.
500 South 11th Avenue
Suite 305
Pocatello, Idaho 83201

Bannock County Memorial Hospital
651 Memorial Drive
Pocatello, Idaho 83201
208-239-1000
X-rays; heart and pneumonia

Portneuf Medical Center
777 Hospital Way
Pocatello, Idaho 83201
208-239-2020

ER
Eastern Idaho Regional Medical Hospital
3100 Channing Way
Idaho Falls, Idaho 83404
208-529-6111

Dr. Carl Vance
2220 East 25th Street
Idaho Falls, Idaho 83404
208-523-1122

Dr. John E. Liljenquist
2220 East 25th Street
Idaho Falls, Idaho 83404
208-523-1122

1189
INTERROGATORY NO: 17: If the Exposed Person is deceased, please state the date Exposed Person died, cause of death, whether an autopsy was performed, and identify the names, addresses, telephone numbers, and dates of birth of all wrongful death "heirs" as that term is defined in Idaho Code § 5-311.

RESPONSE:

June 13, 2004

Cause of Death: acute bronchopneumonia.

An autopsy was performed.

Allene Stoor, wife
227 Stuart
Chubbuck, Idaho 83202
208-237-3688
[REDACTED]

Gerrie Kae Trammell
5916 Eden
Chubbuck, Idaho 83202
208-237-5545
[REDACTED]

Matt Leon Stoor, son
St. Anthony, Idaho
208-624-3518
[REDACTED]

Deceased.

Caroline E. Binggeli, daughter
580 Linda
Pocatello, Idaho
208-233-7434
[REDACTED]

John Darren Stoor, son
227 Stuart
Chubbuck, Idaho 83202
208-237-3688
[REDACTED]

Plaintiff, Stoor's Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

William Kyle Stoor, son
Date of Birth: [REDACTED]

Kelcie Hall, daughter
Date of Birth: [REDACTED]

1190
INTERROGATORY NO: 18: Identify each exhibit which Plaintiff or his/her counsel intends to use at trial.

RESPONSE:

Plaintiff objects that this request is premature as additional discovery is required regarding Defendant's products to give complete and accurate answers. Subject to and without waiving said objection, an exhibit list and exhibits will be produced according to the CMO. Plaintiff reserves the right to supplement at a later date if necessary.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO:1: Please produce all documents, samples, exhibits or other things which Plaintiff contends support and/or prove the claims made in Plaintiff's complaint.

RESPONSE:

Plaintiff objects to this request on the ground that it is vague, ambiguous, unduly burdensome and overly broad. Subject to and without waiving said objection, Plaintiff will produce all documents in the form of exhibits in accordance with a case management order.

REQUEST FOR PRODUCTION NO: 2: Produce all documents which supports your claim that Exposed Person was exposed to asbestos from any asbestos containing produce manufactured, sold or distributed by any defendant or its predecessors or successors.

RESPONSE:

Plaintiff, Stoor's Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

1191

EXHIBIT B

1191

RECEIVED

APR - 9 2007

Greener Banducci Shoemaker P.A.

James C. Arnold - ISB No. 3688
PETERSEN, PARKINSON
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390 N. Capital Avenue
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Facsimile (208) 522-8547

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G. Patterson Keahey
G. Patterson Keahey, P.C.
One Independence Plaza, Suite 612
Birmingham, Alabama 35209
Telephone: 205-871-0707
Facsimile: 205-871-0801

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Mildred Castorena, Individually and as)
Spouse and Personal Representative of the)
Estate of Ted Castorena;)
Alene Stoor, Individually and as Spouse)
and Personal Representative of the Estate)
of John D. Stoor;)
Stephanie Branch, Individually and as)
Personal Representative of the Estate of)
Robert Branch, Jr.;)
Robert L. Hronek;)
Marlene Kisling, Individually and as)
Personal Representative of the Estate of)
William D. Frasure;)
Norman L. Day.)

Case No.: CV-2006-2474-PI

PLAINTIFF STOOR'S
SUPPLEMENTAL RESPONSE
TO DEFENDANTS MASTER
INTERROGATORIES

Plaintiffs,

vs.

GENERAL ELECTRIC, et.al;

Defendants.

Plaintiff, Stoor's Supplemental Responses to Defendants' Master Interrogatories and
Request for Production of Documents to Plaintiffs

g. If Exposed Person was exposed to asbestos at this worksite, identify the manufacturer, brand name, model and serial numbers, and type of the asbestos-containing product(s) and/or equipment to which Exposed Person was exposed.

RESPONSE:

1193
Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

g. Hill Brothers Chemical supplied the following products that the Plaintiff, John Stoor was exposed to at the FMC plant: Diato; Hiola; Desert Brand; Hill Brothers Asbestos No. 20; Hill Brothers Asbestos No. 35; Hill Brothers Asbestos No. 50; Hill Brothers Asbestos No. 900; Hill Brothers Asbestos No. 961; Hill Brothers Asbestos No. 954; and Hill Brothers Asbestos No. 963.

Plaintiff's exposure was both direct and indirect.

INTERROGATORY NO: 9: Please identify all claims and/or notices filed by or on behalf of Exposed Person or Plaintiff in any bankruptcy proceeding filed by an manufacturer, distributor, supplier or user of any asbestos-containing product, including the identity of the manufacturer, distributor, supplier, or user, the date on which the notice or claim was filed, and all documents filed in such proceeding.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached copies of all claims filed at this time on behalf of John Stoor. Plaintiff reserves the right to supplement this Interrogatory.

INTERROGATORY NO: 11: If Exposed Person ever smoked, state when Exposed Person started smoking, what type of tobacco product Exposed Person smoked, when Exposed Person smoked it and for how long, how much Exposed Person has smoked of each type of

Plaintiff, Stoor's Supplemental Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

records) produced, taken or signed in any and all other lawsuits filed by or on behalf of Exposed Person or Plaintiff.

RESPONSE:

1194
Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached copy of prior complaint filed on behalf of John Stoor.

REQUEST FOR PRODUCTION NO: 4: Please produce all claims and/or notices filed by Plaintiff or Exposed Person or on Plaintiff or Exposed Person's behalf in any bankruptcy proceeding filed by any manufacturer, distributor, supplier or user of any asbestos-containing product.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached claims filed on behalf of John Stoor at this time. Plaintiff reserves the right to supplement this Request.

REQUEST FOR PRODUCTION NO:5: Please produce all documents, records and photographs relating to the Exposed Person's employment and/or exposure to asbestos.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

Please see attached Notice of Injury and Claim for Benefits. Also see attached Releases.

REQUEST FOR PRODUCTION NO: 7: Please produce all documents identified or described in your answers to Interrogatories Nos. 1-18.

Plaintiff, Stoor's Supplemental Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached Releases.

REQUEST FOR PRODUCTION NO: 10: Please produce Exposed Person's Federal and State income tax returns, including W-2 forms, for each of the years during which exposure to asbestos or asbestos containing products is claimed and Federal and State income tax returns for the last ten years. Also, please sign the attached release.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

Plaintiff has no documents at this time responsive to this Request. Plaintiff reserves the right to supplement this Request. See attached Releases.

REQUEST FOR PRODUCTION NO: 13: Please provide all documents relating to any Social Security disability claim or claims ever filed by Exposed Person seeking benefits for any health problem suffered by Exposed Person. Also, please sign the attached release.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

Plaintiff has no documents at this time responsive to this Request. Plaintiff reserves the right to supplement this Request. See attached Releases.

REQUEST FOR PRODUCTION NO: 14: Please provide all documents relating to any workers' compensation claim or claims ever filed by Exposed Person. Also, please sign the attached release.

Plaintiff, Stoor's Supplemental Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached copy of Notice of Injury and Claim for Benefits. Also see attached Release.

REQUEST FOR PRODUCTION NO: 15: Please provide all documents relating to any Veteran's Administration disability claim or claims ever filed by Exposed Person. Also, please sign the attached release.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

John Stoor did not have a Veteran's disability claim that Plaintiff knows of at this time. Please see attached Release. Plaintiff reserves the right to supplement this Request.

REQUEST FOR PRODUCTION NO: 16: Please produce all Exposed Person's medical records, radiographs, x-rays and x-ray reports, CT scans, all laboratory tests and laboratory test reports, pulmonary function tests and test records, respiratory tests and tests records and pathology. Also, please sign the attached authorization to release medical records.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

Plaintiff has no documents responsive to this Request at this time. Plaintiff reserves the right to supplement this Request. See attached Releases.

REQUEST FOR PRODUCTION NO: 17: Please produce copies of all medical reports, diagnoses, summaries or other medical records of any medical and hospital treatment relating to

Plaintiff, Stoor's Supplemental Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

1196

See attached Releases.

REQUEST FOR PRODUCTION NO: 25: Please produce copies of all bills, invoices, statements, insurance claims, and any other documents relating to the expenses, including medical expenses, which Plaintiff claims to have incurred as a result of the disease or illness described in the Complaint in this action. Also, please sign the attached release.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

Plaintiff has no documents at this time responsive to this Request. Plaintiff reserves the right to supplement this Request. See attached Releases.

REQUEST FOR PRODUCTION NO: 26: Please produce all releases, settlement agreements, or other documents memorializing or consummating any settlements reached by or on behalf of Exposed Person or Plaintiff with any entity concerning claims for asbestos-related disease or injury, whether in this case or another case.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

No settlements have been reached on behalf of John Stoor at this time. Plaintiff reserves the right to supplement this Request.

REQUEST FOR PRODUCTION NO: 27: Please produce a copy of all claims, other than the Complaint filed in this matter, that contain allegations of exposures to asbestos filed by or on behalf of Exposed Person or Plaintiff.

RESPONSE:

Plaintiff, Stoor's Supplemental Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

1198
Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached copies of claims filed on behalf of John Stoor.

REQUEST FOR PRODUCTION NO: 28: Please produce a copy of any other Complaints filed by or on behalf of Exposed Person or Plaintiff alleging personal injury of any kind.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached copy of prior filed Complaint on behalf of John Stoor.

REQUEST FOR PRODUCTION NO: 29: Please produce all documents relating to each product or component which Plaintiff is claiming exposed the Exposed Person to asbestos.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached disk.

REQUEST FOR PRODUCTION NO: 30: For each product or component which Plaintiff has identified as asbestos-containing, please produce all documents which support Plaintiff's contention that such product or component contained asbestos.

RESPONSE:

Plaintiff incorporates herein by reference as if fully asserted all prior objections and responses to this discovery request:

See attached disk.

RESPONSE:

d. See attached autopsy report of John D. Stoor.

This the 6th day of April, 2007.

LAW OFFICES OF G. PATTERSON KEAHEY, P.C.

G. PATTERSON KEAHEY

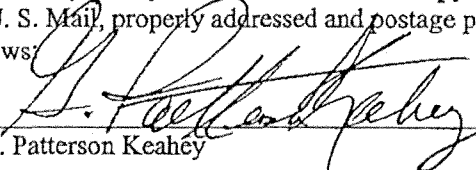
G. Patterson Keahey

1199

1199

CERTIFICATE OF SERVICE

I, G. Patterson Keahey, do hereby certify that a true and correct copy of the above and foregoing has been placed in the U. S. Mail, properly addressed and postage prepaid on this the 12th day of April, 2007 as follows:


G. Patterson Keahey

1200

<p>David H. Maguire Maguire & Kress 1414 E. Center P.O. Box 4758 Pocatello, ID 83205-4758 A.W. Chesterton; Shepard Niles; Guard-Line, Inc.</p>	<p>A. Bruce Larson North 7th Avenue P.O. Box 6369 Pocatello, ID 83201 Cleaver Brooks, a Division of Aqua Chem, Inc.; ITT Industries, Inc.; P&H Cranes aka Haralischfeger Corporation</p>	<p>707 Thomas J. Lyons Merrill & Merrill, Chartered 109 North Arthur - 5th Floor P.O. Box 991 Pocatello, ID 83204-0991 & Jackson Schmidt Pepple, Johnson, Cantu & Schmidt 1900 Seattle Tower Bldg. 1218 Third Avenue Seattle, WA 98101 Owens-Illinois, Inc.</p>
<p>Christopher P. Graham Brassey, Wetherell, Crawford & Garrett 203 W. Main Street P.O. Box 1009 Boise, ID 83701-7300 Anchor Packing Co. ; Garlock, Incorporated Fairbanks Morse Pump Corporation</p>	<p>C. Timothy Hopkins Steven K. Brown Hopkins Roden Crockett Hansen & Hoopes P.O. Box 51219 Idaho Falls, ID 83405-1219 & Kay Andrews Brown McCarroll, LLP 111 Congress Avenue, Suite 1400 Austin, TX 78701-4043 Kelly-Moore Paint Company, Inc. Alaskan Copper Works</p>	<p>Marcus W. Nye Racine, Olson, Nye, Budge & Bailey, Chartered P.O. Box 1391/ Center Plaza Pocatello, ID 83204-1391 Advanced Industrial Supply, Inc. f/k/a Pocatello Supply, Inc.</p>
<p>Charles Johnson Johnson Olson, Chartered 419 West Benton P.O. Box 1725 Pocatello, ID 83204-1725 Crown, Cork, & Seal Company, Inc.</p>	<p>Howard D. Burnett Hawley Troxell Ennis & Hawley, LLP P.O. Box 100 Pocatello, ID 83204 Eaton Electrical Inc. Cutler Hammer</p>	<p>Murray Jim Sorensen Blaser, Sorensen, & Oleson 285 N.W. Main P.O. Box 1047 Blackfoot, ID 83221 Steel West, Inc.</p>
<p>Christopher C. Burke Greener Banducci Shoemaker, PA The Carnegie Building 815 West Washington Street Boise, ID 83702 Ingersoll-Rand Company; Viacom, Inc.; Westinghouse Electric Corporation; Pilkington North America, Inc. f/k/a Libby Owens Ford Viacom, Inc.</p>	<p>John A. Bailey, Jr. Racine, Olson, Nye, Budge & Bailey, Chartered P.O. Box 1391 Pocatello, ID 83204-1391 Gould Incorporated; Goulds Pumps Trading Corporation</p>	<p>Gary L. Cooper Cooper & Larsen, Chartered 151 North Third Avenue, Suite 210 P.O. Box 4229 Pocatello, ID 83205-4229 & Steven Rizzo Steven V. Rizzo, PC 1620 SE Taylor St., Suite 350 Portland, OR 97205 Paramount Supply Company; Zurn Industries, Inc.</p>
<p>Gary T. Dance Lee Radford Benjamin C. Ritchie Moffatt, Thomas, Barrett, Rock & Fields P.O. Box 817 Pocatello, ID 83204 FMC Corporation; Warren Pumps, Inc.; Henry Vogt Machine Co.</p>	<p>Kelly A. Cameron Randall L. Schmitz Perkins Cole, LLP 251 East Front Street, Suite 400 Boise, ID 83702-7310 Crane Co.</p>	<p>Michael W. Moore Steven R. Kraft Moore & Baskin, LLP 1001 W. Idaho, Suite 400 P.O. Box 6756 Boise, ID 83707 Hill Brothers</p>
<p>Donald Carey Robert Williams Quane Smith LLP 2325 West Broadway, Suite B Idaho Falls, ID 83402-2913 Babbitt Steam Specialty's Co.; Reliance Electric Motors; Rockwell Automation, Inc.</p>	<p>Alan C. Goodman Goodman Law Office P.O. Box D 717 7th Street Rupert, ID 83350 Rupert Iron Works, Inc.</p>	<p>Brian D. Harper P.O. Box 2838 161 5th Avenue South, Suite 202 Twin Falls, ID 83303 Guard-Line, Inc.</p>
<p>Donald C. Farley Hall, Farley, Oberrecht & Blanton, P.A. 702 West Idaho, Suite 700 P.O. Box 1271 Boise, ID 83701</p>	<p>Kent Hansen Cheri K. Gochberg 280 South 400 West, #250 Salt Lake City, UT 84101 & E. Scott Savage Casey K. McGarvey 170 South Main Street, Suite 500 Salt Lake City, UT 84101 Union Pacific Railroad Company</p>	<p>Michael Skolnick Kevin Murphy Kipp and Christian PC 10 Exchange Place 4th Floor Salt Lake City, Utah 84111</p>

Plaintiff, Stoor's Supplemental Responses to Defendants' Master Interrogatories and Request for Production of Documents to Plaintiffs

1200

Verification

1201
I hereby state that I have read the foregoing Plaintiff Stoor's Supplemental Responses To Defendants Master Interrogatories and Request for Production of Documents to Plaintiffs and know that contents thereof are true and correct to the best of my knowledge.

This the 3rd day of April, 2007.

Gerrie Trammell
Gerrie Trammell

State of Idaho
INDUSTRIAL COMMISSION
317 Main Street Boise, Idaho 83720
NOTICE OF INJURY AND CLAIM FOR BENEFITS

Every work injury to an employee (including disease or infection in respect of such injury) which requires medical services other than first-aid treatment, must be reported within TEN days after the employer has knowledge of the injury.

EMPLOYER

1. Name ASTARIS F.M.C. 2. Phone No. 208-286-8200
(GIVE NAME UNDER WHICH CONCERN DOES BUSINESS)
3. Type of Business (State major activity, goods handled, work done, type of mine & ore extracted, products manufactured, etc.) phosphorous producer

4. Address P.O. Box 4111 Pocatello Ida 83205
(BOX OR STREET NO.) (CITY OR TOWN) (STATE) (ZIP)

5. Location if different from mail address Highway 30 West

6. Name of Insurance Carrier _____

INJURED OR ILL EMPLOYEE

7. Name John Stark 8. Soc. Sec. No. _____
(FIRST) (MIDDLE NAME) (LAST)

9. Address 227 Stewart Chubbuck Ida 83302 20. Phone No. 208-237-3688
(BOX OR STREET NO.) (CITY OR TOWN) (STATE) (ZIP)

11. Age 22 12. Sex (check) Male Female 13. (Check) Married Single Divorced 14. No. Children under 18 0

15. Hours worked per day Refused 16. Number of days worked per week _____ 17. Wages \$ _____ per _____
(Hour, Day, Week, Month)

18. If board, lodging, or other advantages furnished in addition to wages, give estimated value: \$ _____ per week

19. If gratuities (tips, etc.) were received in the course of employment, give estimated value: \$ _____ per week

20. Occupation Millwright Maintenance 21. How long employed by you in this occupation? DOB 02-03-30
(YEARS and/or MONTHS)

22. Department regularly employed in Maintenance

ACCIDENT OR EXPOSURE TO OCCUPATIONAL ILLNESS

23. Place of Accident or Exposure P.O. Box 4111 Pocatello Ida POWER
(BOX OR STREET NO.) (CITY OR TOWN) (STATE) (COUNTY)

24. Was place of accident or exposure on employer's premises? Yes No a.m.

25. Date of accident, exposure, or initial diagnosis 11-01 26. If accident, give time _____ p.m.

27. Date employer learned of accident 12-11-01

28. Did injury result in disability beyond date of accident? Yes No 29. If yes, give date last worked _____

30. Was injured paid in full for this day? Yes No 31. Has employee returned to work? Yes No

32. If yes, give date _____ 33. At what wage? \$ _____ per _____

CAUSE OF ACCIDENT

34. What was employee doing when accident occurred? (Describe briefly, such as loading truck; shoveling dirt, walking down stairs, etc.)

During normal course of daily work activities

35. How did the accident happen? (Describe fully, stating whether the injured person fell, was struck, etc.; give all factors contributing to accident. Use other side for additional space.)

As millwright, employee was exposed to asbestos while mixing up the substance as well as when sanding off old asbestos for replacement.

36. What machine, tool, substance, or object was most closely connected with the accident? (Name the specific tool, machine, appliance, gas, liquid, etc., involved.)

Asbestos

37. If mechanical apparatus or vehicle, what part of it? (Gears, pulley, blade, motor, etc.)

NA

38. Were mechanical guards, or other safeguards provided? Yes No. 39. Was injured using them? Yes No.

INJURY OR OCCUPATIONAL ILLNESS

40. Describe the injury or illness in detail and indicate the part of body affected. (For example: amputation of right index finger at second joint, fracture of ribs, lead poisoning, dermatitis of left hand, etc.)

Employee has been clinically diagnosed with asbestosis, showing signs & symptoms of active asbestosis.

41. Name and address of physician _____

42. Name and address of hospital _____

43. In Patient Out Patient 44. Did employee die? Yes No. 45. If yes, give date _____

46. In case of death, give name and address of nearest relative _____

Signature of Employer _____ Signature of Employee John H Stark

Prepared by Jan E. Keesley, R.N. Official Position Plant Nurse Date of Report 12-11-01

Filing of this report is not an admission of liability. This report shall not be evidence of any fact stated herein in any proceeding in respect of the injury or death on account of which this report is made.

1203

MANVILLE PERSONAL INJURY
SETTLEMENT TRUST

Proof of Claim Form

Submit Completed Claims to:

Claims Resolution Management Corporation

P.O. Box 10411
Fairfax, VA 22031
(703) 204-9300
(800) 536-2722

Law Firm Administrative Contact
Regarding this Claim:

Name: Louy Jones Telephone Number: (205) 871-0707
Title: Legal Assistant E-mail address: keahoy@rx.netcom.com
Law Firm: Law Office of A. Patterson Keahoy

PART 1: INJURED PARTY INFORMATION

NAME: John D. Stor _____
First Middle Last Jr/Sr

SOCIAL SECURITY NUMBER: [REDACTED] - [REDACTED] - [REDACTED]

GENDER: (check box) MALE
 FEMALE

DATE OF BIRTH: [REDACTED]
(MM/DD/YYYY)

If injured party is LIVING

Mailing Address: 227 Stuart _____
Street Address
Chubbuck, ID 83202 USA
City, State (Province), Zip Code (Postal Code) Country

Daytime Telephone: (208) 237 - 3688 E-mail Address: _____
Area Code

If injured party is DECEASED

Date of Death: _____
(MM/DD/YYYY)

Personal Representative Name (If injured party is deceased or is living and has a person, other than filing attorney, filing on his/her behalf):

Name: _____
First Middle Last Jr/Sr

Mailing Address: _____
Street Address

City, State (Province), Zip Code (Postal Code) Country

Daytime Telephone: _____ - _____ E-mail Address: _____
Area Code

PART 2: LAW FIRM/ATTORNEY INFORMATION

IF AN ATTORNEY IS REPRESENTING THIS INJURED PARTY, COMPLETE THIS SECTION:

If previously supplied by CRMC, Law Firm Code: _____ Atty Code: _____

OR

Tax ID #: 63-1216495 Internet Address: Keahey@ix.netcom.com

Law Firm Name: Law Office of G. Patterson Keahey

Attorney Assigned: G. Patterson Keahey

Telephone: (205) 871-0707 Facsimile: (205) 871-0881
Area Code Area Code

Mailing Address For Claim-Related Correspondence:	<u>One Independence Plaza Ste 514</u>	
	<u>B'ham, AL 35209</u>	<u>USA</u>
	City, State (Province), Zip Code (Postal Code)	Country

IF THERE IS CO-COUNSEL, COMPLETE THIS SECTION:

If previously supplied by CRMC, Law Firm Code: _____ Atty Code: _____

OR

Tax ID #: _____ Internet Address: _____

Law Firm Name: _____

Attorney Assigned: _____

Telephone: _____ Facsimile: _____
Area Code Area Code

Mailing Address For Claim-Related Correspondence:	_____	
	_____	_____
	City, State (Province), Zip Code (Postal Code)	Country

Occupation Codes

- 1207
- | | |
|--|---|
| 01. Air conditioning and heating installer/maintenance | 02. Insulator/asbestos |
| 03. Asbestos miner/plant worker | 25. Laborer (construction/demolition/shipyard) |
| 04. Asbestos removal/abatement | 53. Longshoreman/dock-worker |
| 06. Auto mechanic/bodywork | 26. Machinist |
| 09. Boiler worker/cleaner/inspector/engineer/repair | 27. Millwright |
| 12. Brake manufacturing/installer/repair | 28. Painter |
| 13. Brick mason/layer/hod carrier | 29. Pipecoverer - asbestos |
| 10. Building maintenance/building engineer | 30. Pipefitter/steamfitter |
| 50. Building occupant/office worker (clerical, professional, e.g. accountant, physician) | 31. Plasterer/sheetrock/drywall/joiner |
| 15. Carpenter/woodworker/cabinetmaker | 32. Plumber |
| 16. Chipper/grinder | 11. Railroad engineer/brakeman/carman/conductor/fireman |
| 18. Custodian/janitor | 34. Rigger |
| 19. Electrician/electrical worker | 35. Sandblaster |
| 20. Engineer (chemical, mechanical etc.) | 33. Seaman - engine room only |
| 05. Factory worker (assembly line) non asbestos | 36. Seaman - other than engine room |
| 51. Family member/bystander | 37. Sheet-metal worker |
| 21. Firefighter | 39. Shipfitter |
| 22. Furnace worker/ repair installer | 38. Shipwright |
| 52. Glass worker | 54. Steelworker/foundry/aluminum |
| 23. Heavy equipment operator (incl. truck, forklift and crane) | 40. Warehouse Worker |
| | 08. Welder/blacksmith |

Industry Codes

- | | |
|--|--|
| 101. Aerospace/aviation | 110. Maritime |
| 102. Asbestos abatement | 111. Military |
| 103. Auto manufacturing | 116. Munitions plant |
| 104. Automobile repair | 113. Non-asbestos products manufacturing |
| 002. Building occupant/environmental bystander | 125. Non-Manville asbestos products manufacturing/mining |
| 106. Chemical | 118. Paper/pulp manufacturing |
| 107. Construction trades | 114. Petrochemical |
| 112. Glass manufacturing | 117. Railroad |
| 115. Insulation | 120. Shipyard construction/repair |
| 108. Iron/steel/aluminum/foundry (manufacturing) | 121. Textile |
| 109. Longshore | 122. Tire/rubber manufacturing |
| 124. Manville asbestos products manufacturing/mining | 123. Utilities |

PART 5: ASBESTOS-RELATED INJURY

DIAGNOSED INJURIES:

Place a check next to all injuries below that have been, or were, diagnosed for this injured Party AND for which medical documentation is attached.

- Bilateral Pleural Disease (Category 1)
- Nondisabling Bilateral Interstitial Lung Disease (Category 2)
- Disabling Bilateral Interstitial Lung Disease (Category 3)
- Other Cancer (Category 4)
Select below:
 - Colorectal
 - Laryngeal
 - Esophageal
 - Pharyngeal
- Lung Cancer - One (Category 5)
- Lung Cancer - Two (Category 6)
- Malignant Mesothelioma (Category 6)
- Other Asbestos-Related Injury:

PART 6: SMOKING HISTORY

This section is to be completed ONLY when you have alleged a Category 6.

- Has the injured party ever smoked cigarettes? (circle one) YES NO UNKNOWN
- If Yes, is the injured party a current smoker? YES NO
- If No, what year did the injured party quit smoking? _____
Year

PART 7: SIGNATURE

All claims must be signed by the injured party or the person filing on his/her behalf (such as the personal representative or attorney).

1209
I have reviewed the information submitted on this proof of claim form and all documents submitted in support of my claim. To the best of my knowledge, the information is accurate and complete.

G. Patterson Kealey

SIGNATURE OF INJURED PARTY OR REPRESENTATIVE

G. Pa Hosen Kealey, Attorney

PLEASE PRINT THE NAME AND RELATIONSHIP TO THE INJURED PARTY OF THE SIGNATORY ABOVE

OTHER HELPFUL TIPS

- ◆ Review your claim one last time before you submit it to CRMC. Missing sections or attachments, or conflicting information will delay the processing of your claim.
- ◆ Check to ensure your supporting documentation is for the same person indicated on the claim. Frequently, we find medical reports mismatched with forms.
- ◆ Medical and other supporting documents must be readable. If poor photocopies are attached, we will consider the claim incomplete.
- ◆ Be sure we know whom to contact if we have a question about your claim. If a law firm is submitting the claim, complete the cover page indicating the person(s) in your firm responsible for answering filing questions and collecting the needed information. In most cases, this is not the attorney of record.
- ◆ If you are new to claim filing or not sure of the accepted way to complete claim forms, call us or send us a copy to preview before you submit your claim. Likewise, if you have created your own automated version of our form (for filing on paper), and have not yet submitted it to CRMC, please allow us to review it before you begin the submission process.
- ◆ When in doubt, call us; we are happy to help. The more assistance we can provide before you file your claim, the less time and frustration we'll both experience in the processing of your claim.

PULMONARY MEDICINE
OCCUPATIONAL LUNG DISEASE

John Stoor

WORKER'S Social Security Number

TYPE OF READING

438 W. ST. JAMES PLACE
CHICAGO, IL 60614

[Redacted Social Security Number]

A P

1A. DATE OF X-RAY: MONTH 08 DAY 24 YR 91

1B. FILM QUALITY: 2 3 4 5

1C. IS FILM COMPLETELY NEGATIVE? YES NO

2A. ANY PARENCHYMAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS? YES COMPLETE 2B and 2C NO PROCEED TO SECTION 3

2B. SMALL OPACITIES

a. SHAPE/SIZE: PRIMARY SECONDARY

P	S	P	S
Q	X	Q	X
R	U	R	U

b. ZONES: R L

X	X

c. PROFUSION:

0/0	0/0	0/0
X/1	1/1	1/2
2/1	2/2	2/3
3/2	3/3	3/4

2C. LARGE OPACITIES: SIZE 0 A B C

PROCEED TO SECTION 3

3A. ANY PLEURAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS? YES COMPLETE 3B, 3C and 3D NO PROCEED TO SECTION 4

3B. PLEURAL THICKENING

a. DIAPHRAGM (plaque): SITE R L

b. COSTOPHRIC ANGLE: SITE R L

3C. PLEURAL THICKENING... Chest Wall

a. CIRCUMSCRIBED (plaque): SITE R L

b. DIFFUSE: SITE R L

IN PROFILE: L WIDTH 0 1 2 3

ii. EXTENT: 0 1 2 3

FACE ON: iii. EXTENT 0 1 2 3

3D. PLEURAL CALCIFICATION

a. DIAPHRAGM: SITE R EXTENT 0 1 2 3

b. WALL: 0 1 2 3

c. OTHER SITES: 0 1 2 3

PROCEED TO SECTION 4

4A. ANY OTHER ABNORMALITIES? YES COMPLETE 4B and 4C NO PROCEED TO SECTION 5

4B. OTHER SYMBOLS (OBLIGATORY)

0 ax bu ca cn cp cv di ef em es fr hi ho id ih ki px rp tb

Report items which may be of present clinical significance in this section. (SPECIFY od) CARDIOMEGALY

Date Personal Physician notified? MONTH DAY YR

4C. OTHER COMMENTS

SHOULD WORKER SEE PERSONAL PHYSICIAN BECAUSE OF COMMENTS IN SECTION 4C. YES NO PROCEED TO SECTION 5

5. FILM READER'S INITIALS: AIJS

PHYSICIAN'S SOCIAL SECURITY NUMBER: [Redacted]

DATE OF READING: MONTH 09 DAY 24 YR 91

1277

ACandS, Inc.
CLAIM FORM

1212
CLAIMANT NAME: John D Stoor

SS#: [REDACTED] DATE OF BIRTH: 2-30-30

SPOUSE NAME: Allene H Stoor

SPOUSE SS#: [REDACTED]

IF DECEASED:

DATE OF DEATH: _____

PERSONAL REPRESENTATIVE NAME: _____

PERSONAL REPRESENTATIVE SS#: _____

DISEASE: MESO: _____ LUNG CANCER: _____

OTHER CANCER: _____ ALD: ✓

DATE OF DIAGNOSIS: _____

STATE AND JURISDICTION OF FILING: _____ MS, U.S. DIST. CT., NO. DIST.

DELTA DIV. - 2:02CV121-BB

DOCKET NUMBER: _____

DATE OF FILING: 4/3/2002

DATE OF FIRST EXPOSURE TO ANY ASBESTOS-CONTAINING MATERIAL: _____

ACandS, Inc. EXPOSURE HISTORY

JOBSITE 1: FMC Pocatello Idaho
(Name) (City) (State)

EXPOSURE DATES: 1958 TO 1994

OCCUPATION: Maintenance

EMPLOYER: FMC

RELEASE AND INDEMNITY

STATE OF IDAHO
COUNTY OF BANNOCK

KNOW ALL MEN BY THESE PRESENTS:

1213
THAT WE, John D. Stoor [redacted] individually, and,
(Client Name) (Social Security # of Client)
if he/she is married, his/her spouse, Olene H. Stoor [redacted]
(Spouse's Name) (Spouse's Social Security #)
as husband and wife, on behalf of themselves, their heirs, administrators, executors,
personal representatives, and assigns (hereinafter collectively referred to as "Releasers"),
in consideration of the payments to be made to Claimant in accordance with the
Settlement Agreement between ACandS, Inc., and Various Asbestos Claimants (the
"Settlement Agreement") and the Collateral Trust Agreement, and of other good and
valuable consideration, do hereby forever release and discharge ACandS, Inc., all of its
present and former shareholders, directors, officers, employees, agents and servants, and
all of its present and former divisions and subsidiary corporations, and any and all
predecessors (exclusive of Armstrong Word Industries, Inc., and its predecessors),
successors, affiliates, and assigns, and their insurance carriers to the extent of coverage
provided to any of the foregoing (hereinafter collectively referred to as "Releasees"),
from any and all claims, causes or rights of action, demands and damages of every kind
and nature whatsoever, including, but not limited to, any and all present claims relating to
asbestos-related diseases, injuries, cancers, and/or malignancies, including, but not
limited to, loss of consortium, companionship, service, support, pain and suffering, injury
and damage of any kind, including the wrongful death of Claimant, which any of the
Releasers now has that is in any way related to the possible exposure of Claimant to
asbestos or asbestos-containing products installed, sold, supplied, distributed,
manufactured, handled, or removed by any of the Releasees, which may have caused
injuries or damages to any of the Releasers and for which Releasees may bear legal
responsibility. The undersigned reserve all rights to proceed at law and/or in equity

against any other person, corporation and/or association other than Releasees for harmful exposure to asbestos or asbestos-containing products.

1214
The parties to this Release and Indemnity intend not to release, and the Releasors specifically do not release, claims for lung cancer, mesothelioma, primary colon-rectal laryngeal, esophageal or stomach cancer, or death resulting from lung cancer, mesothelioma, primary colon-rectal, laryngeal, esophageal or stomach cancer, not diagnosed as of the date hereof and allegedly resulting or alleged to result from Claimant's exposure to asbestos or asbestos-containing products.

The parties to this Release and Indemnity further understand and agree that nothing in this Release and Indemnity is intended to settle, waive, or relinquish any claim that Spouse individually may have today or in the future against Releasees or any other entity for an asbestos-related injury or disease that results from his/her personal exposure to asbestos fibers and/or products installed, sold, supplied, handled, manufactured, or distributed by Releasees, or any other manufacturer, supplier or distributor of asbestos-containing products. The parties to this Release and Indemnity agree that the Spouse's execution of this Release and Indemnity shall not be construed as releasing any present or future claims that such Spouse may have for injuries arising out of his or her own exposure to asbestos-containing products. The Releasors further agree that this is a compromise of doubtful and disputed claims and that the payment of the consideration for this Release and Indemnity is not to be considered as an admission of liability on the part of any person or entity released hereby. It is further understood that this Release and Indemnity is not intended to relinquish any claim of the Releasees may have against any part that is not a Releasee. The parties further agree that this Agreement shall not be admissible in any suit or proceeding whatsoever as evidence or admission of any liability.

As a further inducement of the aforesaid consideration, the Releasors, jointly and severally, do covenant and agree to defend, hold harmless and indemnify all Releasees from any and all claims, actions and suits, including any and all claims of any Worker's Compensation carrier, any employer who is self-insured for Worker's Compensation purposes, any governmental Worker's Compensation funds, and/or arising under any state Worker's Compensation law, (ii) arising under the Federal Longshoremen's and Harbor Worker's Act, (iii) of any health care provider (including all medical, hospital,

1215
ambulance and/or drug bills or related expenses), and (iv) of any insurance carrier or other party who has, or claims to have, a lien against the aforesaid consideration, and all such claims as may now be pending or which may heretofore have been made, against any or all of the Releasees, which may be brought and/or made on account of any claimed injuries and/or damages arising from or relating to the exposure of Claimant to asbestos or asbestos-containing products, and to indemnify them in legal tender and/or by offset, up to the full extent of the compensation paid or to be paid pursuant to the Settlement Agreement.

It is further agreed that this Release and Indemnity and the Settlement Agreement, in which Releasers have joined, set forth the entire agreement between the parties and that there is no other promise, agreement or inducement other than that as expressed herein and in the Settlement Agreement.

The Releasers further state:

1. That each of them is of legal age, with no mental disability of any kind, and is fully and completely competent to execute this Release and Indemnity on his or her own behalf;
2. That this Release and Indemnity has been explained to each of them and each knows the contents as well as the effect thereof; and
3. Claimant verifies that, between January 1, 1958 and December 31, 1974, he/she worked with or in proximity to asbestos or asbestos-containing products attributable to ACandS, and for which Claimant alleges ACandS, Inc. is legally liable.

Releasers further acknowledge that they executed this instrument after consultation with their attorney or being afforded the opportunity to consult with an attorney.

Each of the undersigned hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Name: John B. Stoor

Social Security Number: [REDACTED]

Date: 7-31-02

Spouse: Allene W. Stear

Social Security Number: [REDACTED]

Date: 7-31-2002

1216

1216

H. K. PORTER ASBESTOS TRUST CLAIM FORM

Instructions for the Claim Form

Complete this claim form as thoroughly and accurately as possible. Please type or print neatly.

Should there be insufficient space to list all relevant information, please attach additional sheets.

Representation

If Claimant is represented by counsel, please print or type the following information:

Attorney Name: Keahey Grover Patterson
Last Name First Name Middle Initial Suffix (Jr., Sr., II, etc.)

Paralegal or Contact Name: Lucy E. Jones
(Full name)

Name of Law Firm: Law Offices of G. Patterson Keahey
(Full name of firm)

Firm Address: One Independence Plaza, Suite 814
(Street, PO Box number, Suite number)

Birmingham, AL 35209
(City, State and Zip)

Law Firm's Taxpayer ID # 63-1216495

Attorney Phone: (205) 871-0707
(Area Code and Number)

Fax: (205) 871-0801
(Area Code and Number)

Contact Phone: (205) 871-0707
(Area Code and Number)

Fax: (205) 871-0801
(Area Code and Number)

E-mail Address Keahey@ix.netcom.com

Claim Type Election: (Described in Asbestos Claims Procedures Section 5.)

- 12/8
- Expedited Payment (5.2)
- Non-Expedited Payment (5.3)
- Exigent Health Claim (5.4)

An Exigent Health Claim must provide the following additional documentation:

- (i) documentation that a physician has diagnosed the Claimant as having an asbestos-related illness; and
- (ii) a declaration or affidavit made under penalty of perjury by a physician who has examined the Claimant within one hundred twenty (120) days of the date of the declaration or affidavit in which the physician states, that due to an asbestos disease, there is substantial medical likelihood that the Claimant will not survive beyond six (6) months from the date of the declaration or affidavit.

Claims electing either expedited or non-expedited processing may also elect to defer final processing of the claim until the claimant or his/her representative notifies CVCSC to change the status from deferred to active. All claim information is still to be submitted now and CVCSC will still review it for completeness. Only final processing will be deferred.

- Defer final processing of claim

Part 2: Diagnosed Asbestos-Related Injuries

Place an X next to all injuries that have been diagnosed for the injured party and for which medical documentation is available. The Trust maintains the right to request medical documentation for all individual claims.

1220

<input type="checkbox"/> Malignant Mesothelioma	Date of Diagnosis _____ / _____ / _____ (Month) (Day) (Year)
<input type="checkbox"/> Lung Cancer	Date of Diagnosis _____ / _____ / _____ (Month) (Day) (Year)
<input type="checkbox"/> Other Cancer _____ (Specify) (e.g. Colon, Rectal, Laryngeal, Esophageal, Pharyngeal)	Date of Diagnosis _____ / _____ / _____ (Month) (Day) (Year)
<input checked="" type="checkbox"/> Non-Malignancy <u>Pleural Disease + Interstitial Lung Disease</u> (Specify) (Pleural Disease, Interstitial Lung Disease, Other Asbestos Related Disease)	Date of Diagnosis <u>09 / 28 / 2007</u> (Month) (Day) (Year)

In order to expedite the processing of claims and minimize the expense of claims processing, the H. K. Porter Asbestos Trust intends to use the results of previous reviews of medical records for other asbestos defendants by Connecticut Valley Claim Service Company, Inc., (CVCS) for the verification of the claimed medical condition.

If CVCS has not previously received medical records for this claimant for the disease claimed, you will be notified and asked to submit appropriate medical records. Select A or B.

- A. Use results of previous medical reviews if available. (Default if neither is selected.)
- B. Do not use results of previous medical reviews. Required medical records are enclosed

Part 3: Asbestos Claims and Litigation

A. Does Claimant contend that he / she was exposed to asbestos through H. K. Porter products?

Yes No

B. Does Claimant contend that H. K. Porter was negligent and/or negligently failed to inform and / or warn of the risk of exposure to asbestos?

Yes No

C. Has Claimant ever received settlement money from H. K. Porter or from Wellington on behalf of H. K. Porter?

Yes No

If yes, you must include a copy of a limited release that shows that this claimant is still eligible for additional claims.

D. Has an asbestos-related lawsuit been filed on behalf of the injured party against H. K. Porter?

Yes No

E. If Yes, date lawsuit filed:

____/____/____
(Month) (Day) (Year)

Part 4: Smoking History (Optional)

Has the injured person ever smoked cigarettes? Yes No

If yes, enter the time period and quantity used:

From: ____/____ To: ____/____ Packs per day: ____
(Month) (Year) (Month) (Year)

Part 5: Exposure to an Occupationally Exposed Person

Is the claimant alleging an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member (spouse, parent, brother, sister, etc.)?

Yes No

If No, go on to Part 4.

If Yes, complete the following:

Date Exposure from Other Person Began: _____
(Month) (Year)

Date Exposure from Other Person Ended: _____
(Month) (Year)

Relationship to occupationally exposed individual: _____
(Spouse, Parent, Brother, Sister, etc.)

Occupationally exposed person: _____
(Last Name) (First Name) (M.I.) (Social Security #)

(Part 6 must be completed for the occupationally exposed person.)

Part 6: Exposure to Asbestos Products

If there were multiple instances of occupational exposure, you may list on a separate page each site or occupation in which occupational exposure to asbestos is alleged. (You may photocopy this page if needed.)

Date Exposure Began: 00 / 1958 (Month) (Year) Date Exposure Ended: 00 / 1992 (Month) (Year)

Occupation code(s): 30 (from list below) If 'Other', specify: maintenance man

Table with 3 columns of Occupation Codes: 1. Aluminum manufacturing worker, 2. Asbestos installer, 3. Asbestos products manufacturer, 4. Asbestos worker, 5. Boiler cleaner, 6. Boilermaker, 7. Brake mechanic, 8. Clutch mechanic, 9. Commercial laundry worker, 10. Electrician, 11. Foundry worker, 12. Industrial carpenter, 13. Insulation contractor, 14. Insulator, 15. Ironworker, 16. Machinist, 17. Merchant mariner, 18. Pipecoverer, 19. Pipefitter, 20. Plumber, 21. Powerhouse worker, 22. Railroad mechanic, 23. Refractory worker, 24. Sheetmetal worker, 25. Shipyard worker, 26. Steamfitter, 27. Steelworker, 28. Turbine mechanic, 29. Welder, 30. Other *

* If occupation code "30. Other" was used, you must supply a job site. Otherwise the job site is optional.

If the jobsite appears on the listing of jobsites, enter the numeric code: _____

Job site or location of exposure: FMC, Posaitello (City), ID (State)

Code(s) of H. K. Porter asbestos products to which person was exposed: A, C, F (Optional) (Code A-F)

- A. Cloth B. Tape C. Rope D. Yarn E. Felt F. Fiber

Check name(s) of each H. K. Porter Company which made product(s) to which person was exposed.

Table with 3 columns of company names: Asbestos Manufacturing Co. (AMCO) [checked], Carolina Asbestos Co., Inc., Pacific Asbestos Corp., Russell Manufacturing Co., Southern Asbestos Co., Southern Textile Corp., Tallman McClusky Fabrics Co., Thermoid Co., Other / Unknown [checked]

The following item is mandatory only for Non-Expedited Claims.

Describe how exposure occurred exposed to asbestos products from 1958-1992 including, but not limited to, HK Porter cloth, rope, fiber, etc.

1223

1224

Part 7: Authorization

Claim must be signed by the injured party or by the person filing on his/her behalf.

(Firms filing claims electronically should submit one signed affidavit in lieu of this page.)

To the best of my knowledge, the information contained in this claim is true and complete and the claimant has not previously relinquished his or her rights to such a claim against the H. K. Porter Company, Inc. or against the H. K. Porter Asbestos Trust.

G. Patterson Kealey

Signature of Claimant or Representative

G. Patterson Kealey, Attorney
(Print or type the name of the signatory above)

10 Oct 2001
(Date)

Submit completed claims to:

H. K. Porter Asbestos Trust
P.O. Box 950
525 Brook Street
Rocky Hill, CT 06067

ALVIN J. SCHONFELD, D.O., F.C.C.P., F.A.A.D.E.P.

PULMONARY MEDICINE
OCCUPATIONAL LUNG DISEASE

JOHN STOOD

WORKER'S Social Security Number

TYPE OF READING

438 W. ST. JAMES PLACE
CHICAGO, IL 60614

[REDACTED]

A P

<p>1A. DATE OF X-RAY</p> <p>MONTH DAY YR 08 24 91</p>	<p>1B. FILM QUALITY</p> <p><input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5</p>	<p>1C. IS FILM COMPLETELY NEGATIVE?</p> <p>YES <input type="checkbox"/> Proceed to Section 2 NO <input checked="" type="checkbox"/> Proceed to Section 2</p>																																	
<p>2A. ANY PARENCHYMAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS?</p> <p>YES <input checked="" type="checkbox"/> COMPLETE 2B and 2C NO <input type="checkbox"/> PROCEED TO SECTION 3</p>																																			
<p>2B. SMALL OPACITIES</p> <p>a. SHAPE/SIZE</p> <table style="width:100%;"> <tr> <td>PRIMARY</td> <td>SECONDARY</td> </tr> <tr> <td> <table border="1" style="width:50px; height:50px;"> <tr><td>P</td><td>S</td></tr> <tr><td>Q</td><td>X</td></tr> <tr><td>R</td><td>U</td></tr> </table> </td> <td> <table border="1" style="width:50px; height:50px;"> <tr><td>Q</td><td>S</td></tr> <tr><td>Q</td><td>X</td></tr> <tr><td>R</td><td>U</td></tr> </table> </td> </tr> </table> <p>b. ZONES</p> <table border="1" style="width:50px; height:50px;"> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td>X</td><td>X</td></tr> </table> <p>R L</p>	PRIMARY	SECONDARY	<table border="1" style="width:50px; height:50px;"> <tr><td>P</td><td>S</td></tr> <tr><td>Q</td><td>X</td></tr> <tr><td>R</td><td>U</td></tr> </table>	P	S	Q	X	R	U	<table border="1" style="width:50px; height:50px;"> <tr><td>Q</td><td>S</td></tr> <tr><td>Q</td><td>X</td></tr> <tr><td>R</td><td>U</td></tr> </table>	Q	S	Q	X	R	U					X	X	<p>2C. LARGE OPACITIES</p> <p>c. PROFUSION</p> <table border="1" style="width:50px; height:50px;"> <tr><td>0</td><td>1</td><td>2</td></tr> <tr><td>X</td><td>1</td><td>2</td></tr> <tr><td>2</td><td>2</td><td>2</td></tr> <tr><td>2</td><td>2</td><td>2</td></tr> </table> <p>SIZE <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C</p> <p>PROCEED TO SECTION 3</p>	0	1	2	X	1	2	2	2	2	2	2	2
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<p>3A. ANY PLEURAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS?</p> <p>YES <input checked="" type="checkbox"/> COMPLETE 3B, 3C and 3D NO <input type="checkbox"/> PROCEED TO SECTION 4</p>																																			
<p>3B. PLEURAL THICKENING</p> <p>a. DIAPHRAGM (plaque)</p> <p>SITE <input checked="" type="checkbox"/> R <input type="checkbox"/> L</p> <p>b. COSTOPHRENIC ANGLE</p> <p>SITE <input type="checkbox"/> R <input checked="" type="checkbox"/> L</p>	<p>3C. PLEURAL THICKENING... Chest Wall</p> <p>a. CIRCUMSCRIBED (plaque)</p> <table style="width:100%;"> <tr> <td>SITE</td> <td><input checked="" type="checkbox"/> R <input type="checkbox"/> L</td> </tr> <tr> <td>IN PROFILE</td> <td><input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C</td> </tr> <tr> <td>I. WIDTH</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> <tr> <td>II. EXTENT</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> <tr> <td>FACE ON</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> <tr> <td>III. EXTENT</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> </table> <p>b. DIFFUSE</p> <table style="width:100%;"> <tr> <td>SITE</td> <td><input type="checkbox"/> R <input checked="" type="checkbox"/> L</td> </tr> <tr> <td>IN PROFILE</td> <td><input type="checkbox"/> A <input checked="" type="checkbox"/> B <input type="checkbox"/> C</td> </tr> <tr> <td>I. WIDTH</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> <tr> <td>II. EXTENT</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> <tr> <td>FACE ON</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> <tr> <td>III. EXTENT</td> <td><input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3</td> </tr> </table>		SITE	<input checked="" type="checkbox"/> R <input type="checkbox"/> L	IN PROFILE	<input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C	I. WIDTH	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3	II. EXTENT	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3	FACE ON	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3	III. EXTENT	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3	SITE	<input type="checkbox"/> R <input checked="" type="checkbox"/> L	IN PROFILE	<input type="checkbox"/> A <input checked="" type="checkbox"/> B <input type="checkbox"/> C	I. WIDTH	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3	II. EXTENT	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3	FACE ON	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3	III. EXTENT	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3									
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<p>4A. ANY OTHER ABNORMALITIES?</p> <p>YES <input checked="" type="checkbox"/> COMPLETE 4B and 4C NO <input type="checkbox"/> PROCEED TO SECTION 5</p>																																			
<p>4B. OTHER SYMBOLS (OBLIGATORY)</p> <p><input type="checkbox"/> ax <input type="checkbox"/> bu <input type="checkbox"/> ca <input type="checkbox"/> cn <input checked="" type="checkbox"/> cp <input type="checkbox"/> cv <input type="checkbox"/> di <input type="checkbox"/> ef <input type="checkbox"/> em <input type="checkbox"/> es <input type="checkbox"/> fr <input type="checkbox"/> hi <input type="checkbox"/> ho <input type="checkbox"/> id <input type="checkbox"/> ih <input type="checkbox"/> ki <input checked="" type="checkbox"/> px <input type="checkbox"/> rp <input type="checkbox"/> tb</p> <p>Report items which may be of present clinical significance in this section. (SPECIFY od.)</p> <p>OD <u>CARDIOMEGALY</u></p> <p>Date Personal Physician notified? MONTH DAY YR</p>																																			
<p>4C. OTHER COMMENTS</p> <p>SHOULD WORKER SEE PERSONAL PHYSICIAN BECAUSE OF COMMENTS IN SECTION 4C. YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> PROCEED TO SECTION 5</p>																																			

5. FILM READER'S INITIALS
A.J.C.

PHYSICIAN'S SOCIAL SECURITY NUMBER
1225 [REDACTED]

DATE OF READING
MONTH DAY YR
08 24 91

Armstead Green

1226

*** PLEASE READ CAREFULLY. PLEASE COMPLETE THIS CLAIM FORM AND ATTACH ALL NECESSARY DOCUMENTATION IN ORDER TO HAVE YOUR CLAIM FULLY REVIEWED & CONSIDERED FOR QUALIFICATION UNDER THE MASTER SETTLEMENT AGREEMENT & CE SETTLEMENT TRUST AGREEMENT.

Participating Claimant Claim Form

I, John D. Stoor (the "Claimant"), understand that the information provided in this Claim form is provided to Combustion Engineering, Inc. ("CE"). It agents and representatives to induce payment in settlement of my claim for damages against it and its predecessors, successors, divisions, subsidiaries, officers, agents and employees. Combustion Engineering, Inc. and its agents and representatives can fully rely on the accuracy of the representations made herein.

1. Claimant Information:

Claimant Name:	John D. Stoor
Claimant Law Firm Representative:	G. Patterson Keahey
Claimant Law Firm Representative address & facimile Number:	One Independence Plaza Suite 612 Birmingham, AL 35209 (205) 871-0801
Social Security No:	[REDACTED]
Spouse's Name:	Adelene Stuart Stoor
Date of Birth:	02/03/30
Date of Death (if applicable):	
Decedent Estate Legal Representative	

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2. Claim Information

Has an asbestos related lawsuit been filed on behalf of the injured person (i.e. the Claimant)?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If Yes, Court and Jurisdiction of pending lawsuit	Circuit Court of Bolivar County, MS, Rosedale Circuit, First District	
Has CE been named as a defendant in such lawsuit?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Case Docket/Number (as assigned by Court)	<u>Mangialardi</u> CV-2001-37	
Date lawsuit was filed:	<u>04/03/02</u>	
*** Please attach a copy of the Face Sheet of Complaint		

3. Medical Information

Disease(s) Claimed	<u>Asbestosis</u>
Date of Diagnosis	<u>9-28-01</u>
*** Claim MUST attach BOTH (1) a copy of Claimant's Medical Report to Substantiate Claim AND (2) an executed Authorization to Obtain Claimant's Medical Records.	

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4. Asbestos Exposure Information*

Date of Each Exposure	Specific Address and Worksite of Each Exposure	Claimant's Employer & Employer's Address at the Time of Each Exposure	Claimant's Occupation /Trade and Job at the Time of Each Exposure & Specific Exposure	Occupationally exposed person (indicate self or family member such as spouse, parent, child, etc)
	<i>See Attached</i>			

*Attach additional paper if needed to completely fill out this Section 4.

Signature of Claimant or Legal Representative:

G. Patterson Keahy

Date: JUNE 26, 2003

(print name): G. Patterson Keahy

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EXHIBIT C

1229

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MANVILLE PERSONAL INJURY
SETTLEMENT TRUST

Proof of Claim Form

Submit Completed Claims to:

Claims Resolution Management Corporation
P.O. Box 10411
Fairfax, VA 22031
(703) 204-9300
(800) 536-2722

Law Firm Administrative Contact
Regarding this Claim:

Name: Lucy Jones Telephone Number: (205) 871-0707
Title: Legal Assistant E-mail address: keahoy@rx.netcom.com
Law Firm: Law Office of G. Patterson Keahoy

PART 1: INJURED PARTY INFORMATION

1231

NAME: John D. Stor
First Middle Last Jr/Sr

SOCIAL SECURITY NUMBER: ~~██████~~ - ~~██~~ - ~~██████~~

GENDER: (check box) MALE
 FEMALE

DATE OF BIRTH: 02 / 03 / 1930
(MM/DD/YYYY)

If injured party is LIVING

Mailing Address: 227 Stuart
Street Address
Chubbuck, ID 83202 USA
City, State (Province), Zip Code (Postal Code) Country

Daytime Telephone: (208) 237 - 3688 E-mail Address: -
Area Code

If injured party is DECEASED

Date of Death: _____
(MM/DD/YYYY)

Personal Representative Name (If injured party is deceased or is living and has a person, other than filing attorney, filing on his/her behalf):

Name: _____
First Middle Last Jr/Sr

Mailing Address: _____
Street Address

City, State (Province), Zip Code (Postal Code) Country

Daytime Telephone: _____ E-mail Address: _____
Area Code

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PART 2: LAW FIRM/ATTORNEY INFORMATION

IF AN ATTORNEY IS REPRESENTING THIS INJURED PARTY, COMPLETE THIS SECTION:

If previously supplied by CRMC, Law Firm Code: _____ Atty Code: _____

OR

Tax ID #: 63-1216495 Internet Address: Keahay@ix.netcom.com

Law Firm Name: Law Office of G. Patterson Keahay

Attorney Assigned: G. Patterson Keahay

Telephone: (205) 871-0707 Facsimile: (205) 871-0801
Area Code Area Code

Mailing Address For Claim-Related Correspondence:	<u>One Independence Plaza Ste 514</u>	
	<u>B'ham, AL 35209</u>	<u>USA</u>
	<u>City, State (Province), Zip Code (Postal Code)</u>	<u>Country</u>

IF THERE IS CO-COUNSEL, COMPLETE THIS SECTION:

If previously supplied by CRMC, Law Firm Code: _____ Atty Code: _____

OR

Tax ID #: _____ Internet Address: _____

Law Firm Name: _____

Attorney Assigned: _____

Telephone: _____ Facsimile: _____
Area Code Area Code

Mailing Address For Claim-Related Correspondence:	_____	
	_____	_____
	<u>City, State (Province), Zip Code (Postal Code)</u>	<u>Country</u>

PART 3: LITIGATION

Has any asbestos-related lawsuit been filed on behalf of this injured party?
(check one)

YES (give earliest date filed and state) NO

Month Year State of Jurisdiction

PART 4: EXPOSURE TO MANVILLE ASBESTOS

Describe all employment periods during which the injured party was exposed to Manville asbestos. Use occupation and industry codes listed on Page 5.

1. From: 1958 To: 1992
Year Year

Occupation Code: 10 Industry Code: 113

Exposure Site Code, if previously supplied by CRMC: _____ OR

Company or Union: FMC

Exposure Site: Pocahontas
Plant, Site or City
IO USA
State Country

2. From: _____ To: _____
Year Year

Occupation Code: _____ Industry Code: _____

Exposure Site Code, if previously supplied by CRMC: _____ OR

Company or Union: _____

Exposure Site: _____
Plant, Site or City

State Country

Attach additional pages if necessary.

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Occupation Codes

- 1234
- | | |
|--|---|
| 01. Air conditioning and heating installer/maintenance | 02. Insulator/asbestos |
| 03. Asbestos miner/plant worker | 25. Laborer (construction/demolition/shipyard) |
| 04. Asbestos removal/abatement | 53. Longshoreman/dock-worker |
| 06. Auto mechanic/bodywork | 26. Machinist |
| 09. Boiler worker/cleaner/inspector/engineer/repair | 27. Millwright |
| 12. Brake manufacturing/installer/repair | 28. Painter |
| 13. Brick mason/layer/hod carrier | 29. Pipecoverer - asbestos |
| 10. Building maintenance/building engineer | 30. Pipefitter/steamfitter |
| 50. Building occupant/office worker (clerical, professional, e.g. accountant, physician) | 31. Plasterer/sheetrock/drywall/joiner |
| 15. Carpenter/woodworker/cabinetmaker | 32. Plumber |
| 16. Chipper/grinder | 11. Railroad engineer/brakeman/carman/conductor/fireman |
| 18. Custodian/janitor | 34. Rigger |
| 19. Electrician/electrical worker | 35. Sandblaster |
| 20. Engineer (chemical, mechanical etc.) | 33. Seaman - engine room only |
| 05. Factory worker (assembly line) non asbestos | 36. Seaman - other than engine room |
| 51. Family member/bystander | 37. Sheet-metal worker |
| 21. Firefighter | 39. Shipfitter |
| 22. Furnace worker/ repair installer | 38. Shipwright |
| 52. Glass worker | 54. Steelworker/foundry/aluminum |
| 23. Heavy equipment operator (incl. truck, forklift and crane) | 40. Warehouse Worker |
| | 08. Welder/blacksmith |

Industry Codes

- | | |
|--|--|
| 101. Aerospace/aviation | 110. Maritime |
| 102. Asbestos abatement | 111. Military |
| 103. Auto manufacturing | 116. Munitions plant |
| 104. Automobile repair | 113. Non-asbestos products manufacturing |
| 002. Building occupant/environmental bystander | 125. Non-Manville asbestos products manufacturing/mining |
| 106. Chemical | 118. Paper/pulp manufacturing |
| 107. Construction trades | 114. Petrochemical |
| 112. Glass manufacturing | 117. Railroad |
| 115. Insulation | 120. Shipyard construction/repair |
| 108. Iron/steel/aluminum/foundry (manufacturing) | 121. Textile |
| 109. Longshore | 122. Tire/rubber manufacturing |
| 124. Manville asbestos products manufacturing/mining | 123. Utilities |

PART 5: ASBESTOS-RELATED INJURY

DIAGNOSED INJURIES:

Place a check next to all injuries below that have been, or were, diagnosed for this injured Party AND for which medical documentation is attached.

- Bilateral Pleural Disease (Category 1)
- Nondisabling Bilateral Interstitial Lung Disease (Category 2)
- Disabling Bilateral Interstitial Lung Disease (Category 3)
- Other Cancer (Category 4)
Select below:
 - Colorectal
 - Laryngeal
 - Esophageal
 - Pharyngeal
- Lung Cancer - One (Category 5)
- Lung Cancer - Two (Category 6)
- Malignant Mesothelioma (Category 6)
- Other Asbestos-Related Injury:

PART 6: SMOKING HISTORY

This section is to be completed ONLY when you have alleged a Category 6.

Has the injured party ever smoked cigarettes? (circle one) YES NO UNKNOWN

If Yes, is the injured party a current smoker? YES NO

If No, what year did the injured party quit smoking? _____
Year

PART 7: SIGNATURE

All claims must be signed by the injured party or the person filing on his/her behalf (such as the personal representative or attorney).

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I have reviewed the information submitted on this proof of claim form and all documents submitted in support of my claim. To the best of my knowledge, the information is accurate and complete.

G. Patterson Keahay

SIGNATURE OF INJURED PARTY OR REPRESENTATIVE

G. Patterson Keahay, Attorney

PLEASE PRINT THE NAME AND RELATIONSHIP TO THE INJURED PARTY OF THE SIGNATORY ABOVE

OTHER HELPFUL TIPS

- ◆ Review your claim one last time before you submit it to CRMC. Missing sections or attachments, or conflicting information will delay the processing of your claim.
- ◆ Check to ensure your supporting documentation is for the same person indicated on the claim. Frequently, we find medical reports mismatched with forms.
- ◆ Medical and other supporting documents must be readable. If poor photocopies are attached, we will consider the claim incomplete.
- ◆ Be sure we know whom to contact if we have a question about your claim. If a law firm is submitting the claim, complete the cover page indicating the person(s) in your firm responsible for answering filing questions and collecting the needed information. In most cases, this is not the attorney of record.
- ◆ If you are new to claim filing or not sure of the accepted way to complete claim forms, call us or send us a copy to preview before you submit your claim. Likewise, if you have created your own automated version of our form (for filing on paper), and have not yet submitted it to CRMC, please allow us to review it before you begin the submission process.
- ◆ When in doubt, call us; we are happy to help. The more assistance we can provide before you file your claim, the less time and frustration we'll both experience in the processing of your claim.

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EXHIBIT D

1238

1239
H. K. PORTER ASBESTOS TRUST CLAIM FORM

Instructions for the Claim Form

Complete this claim form as thoroughly and accurately as possible. Please type or print neatly.

Should there be insufficient space to list all relevant information, please attach additional sheets.

Representation

If Claimant is represented by counsel, please print or type the following information:

Attorney Name: Keahey Grover Patterson
Last Name First Name Middle Initial Suffix (Jr., Sr., II, etc.)

Paralegal or Contact Name: Lucy E. Jones
(Full name)

Name of Law Firm: Law Offices of G. Patterson Keahey
(Full name of firm)

Firm Address: One Independence Plaza, Suite 814
(Street, PO Box number, Suite number)

Birmingham, AL 35209
(City, State and Zip)

Law Firm's Taxpayer ID # 63-1216495

Attorney Phone: (205) 871 0707 Fax: (205) 871 - 0801
(Area Code and Number) (Area Code and Number)

Contact Phone: (205) 871 - 0707 Fax: (205) 871 - 0801
(Area Code and Number) (Area Code and Number)

E-mail Address Keahey@ix.netcom.com

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Claim Type Election: (Described in Asbestos Claims Procedures Section 5.)

- Expedited Payment (5.2)
 Non-Expedited Payment (5.3)
 Exigent Health Claim (5.4)

An Exigent Health Claim must provide the following additional documentation:

- (i) documentation that a physician has diagnosed the Claimant as having an asbestos-related illness; and
- (ii) a declaration or affidavit made under penalty of perjury by a physician who has examined the Claimant within one hundred twenty (120) days of the date of the declaration or affidavit in which the physician states, that due to an asbestos disease, there is substantial medical likelihood that the Claimant will not survive beyond six (6) months from the date of the declaration or affidavit.

Claims electing either expedited or non-expedited processing may also elect to defer final processing of the claim until the claimant or his/her representative notifies CVCSC to change the status from deferred to active. All claim information is still to be submitted now and CVCSC will still review it for completeness. Only final processing will be deferred.

- Defer final processing of claim

Part 1: Injured Party Information

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Name: Starr, John D. Social Security # [REDACTED] - [REDACTED] - [REDACTED]
 (Last name, First name, Middle Initial, Suffix)

Mailing Address: 227 Stuart Telephone # (208) 237 - 3058
 (Street, PO Box)

Chubbuck, ID 83202

Date of Birth: [REDACTED]

I. Living Deceased If deceased, was death asbestos related? Yes No

Date of Death: / /
(Month) (Day) (Year)

II. If injured party has a personal representative other than, or in addition to his/her attorney, complete the following for the representative:

Name: _____ Social Security # _____
(Last name, First name, Middle Initial, Suffix)

Address: _____ Telephone # (____) _____
(Street, PO Box)

(City, State and Zip)

Relationship to injured party: _____
(Guardian, Administrator, Brother, Sister, etc.)

III. If the injured party is deceased, a copy of the Death Certificate must be enclosed for Non-Expedited claims. (Mandatory only for Non-Expedited claims.)

1241

Part 2: Diagnosed Asbestos-Related Injuries

Place an X next to all injuries that have been diagnosed for the injured party and for which medical documentation is available. The Trust maintains the right to request medical documentation for all individual claims.

<input type="checkbox"/> Malignant Mesothelioma	Date of Diagnosis _____ / _____ / _____ (Month) (Day) (Year)
<input type="checkbox"/> Lung Cancer	Date of Diagnosis _____ / _____ / _____ (Month) (Day) (Year)
<input type="checkbox"/> Other Cancer _____ (Specify) (e.g. Colon, Rectal, Laryngeal, Esophageal, Pharyngeal)	Date of Diagnosis _____ / _____ / _____ (Month) (Day) (Year)
<input checked="" type="checkbox"/> Non-Malignancy <u>Pleural Disease + Interstitial Lung Disease</u> (Specify) (Pleural Disease, Interstitial Lung Disease, Other Asbestos Related Disease)	Date of Diagnosis <u>09</u> / <u>28</u> / <u>2007</u> (Month) (Day) (Year)

In order to expedite the processing of claims and minimize the expense of claims processing, the H. K. Porter Asbestos Trust intends to use the results of previous reviews of medical records for other asbestos defendants by Connecticut Valley Claim Service Company, Inc., (CVCSC) for the verification of the claimed medical condition.

If CVCSC has not previously received medical records for this claimant for the disease claimed, you will be notified and asked to submit appropriate medical records. Select A or B.

- A. Use results of previous medical reviews if available. (Default if neither is selected.)
- B. Do not use results of previous medical reviews. Required medical records are enclosed.

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Part 3: Asbestos Claims and Litigation

A. Does Claimant contend that he / she was exposed to asbestos through H. K. Porter products?

Yes No

B. Does Claimant contend that H. K. Porter was negligent and/or negligently failed to inform and / or warn of the risk of exposure to asbestos?

Yes No

C. Has Claimant ever received settlement money from H. K. Porter or from Wellington on behalf of H. K. Porter?

Yes No

If yes, you must include a copy of a limited release that shows that this claimant is still eligible for additional claims.

D. Has an asbestos-related lawsuit been filed on behalf of the injured party against H. K. Porter?

Yes No

E. If Yes, date lawsuit filed:

_____/_____/_____
(Month) (Day) (Year)

Part 4: Smoking History (Optional)

Has the injured person ever smoked cigarettes? Yes No

If yes, enter the time period and quantity used:

From: ____/____/____ To: ____/____/____ Packs per day: _____
(Month) (Year) (Month) (Year)

1243

1244

Part 5: Exposure to an Occupationally Exposed Person

Is the claimant alleging an asbestos-related disease resulting solely from exposure to an occupationally exposed person, such as a family member (spouse, parent, brother, sister, etc.)?

Yes No

If No, go on to Part 4.

If Yes, complete the following:

Date Exposure from Other Person Began: _____
(Month) (Year)

Date Exposure from Other Person Ended: _____
(Month) (Year)

Relationship to occupationally exposed individual: _____
(Spouse, Parent, Brother, Sister, etc.)

Occupationally exposed person: _____
(Last Name) (First Name) (M.I.) (Social Security #)

(Part 6 must be completed for the occupationally exposed person.)

1244

Part 6: Exposure to Asbestos Products

If there were multiple instances of occupational exposure, you may list on a separate page each site or occupation in which occupational exposure to asbestos is alleged. (You may photocopy this page if needed.)

Date Exposure Began: 00 / 1958 (Month) (Year)

Date Exposure Ended: 00 / 1992 (Month) (Year)

Occupation code(s): 30 (from list below)

If 'Other', specify: maintenance man

Occupation Codes

Table with 3 columns of occupation codes: 1. Aluminum manufacturing worker, 2. Asbestos installer, 3. Asbestos products manufacturer, 4. Asbestos worker, 5. Boiler cleaner, 6. Boilermaker, 7. Brake mechanic, 8. Clutch mechanic, 9. Commercial laundry worker, 10. Electrician, 11. Foundry worker, 12. Industrial carpenter, 13. Insulation contractor, 14. Insulator, 15. Ironworker, 16. Machinist, 17. Merchant mariner, 18. Pipecoverer, 19. Pipefitter, 20. Plumber, 21. Powerhouse worker, 22. Railroad mechanic, 23. Refractory worker, 24. Sheetmetal worker, 25. Shipyard worker, 26. Steamfitter, 27. Steelworker, 28. Turbine mechanic, 29. Welder, 30. Other *

* If occupation code "30. Other" was used, you must supply a job site. Otherwise the job site is optional.

If the jobsite appears on the listing of jobsites, enter the numeric code: _____

Job site or location of exposure: FMC, Pocatello, ID (City) (State)

Code(s) of H. K. Porter asbestos products to which person was exposed: A, C, F (Optional) (Code A-F)

- A. Cloth B. Tape C. Rope D. Yarn E. Felt F. Fiber

Check name(s) of each H. K. Porter Company which made product(s) to which person was exposed.

Table with 3 columns of company names: Asbestos Manufacturing Co. (AMCO), Carolina Asbestos Co., Inc., Pacific Asbestos Corp., Russell Manufacturing Co., Southern Asbestos Co., Southern Textile Corp., Tallman McClusky Fabrics Co., Thermoid Co., Other / Unknown

The following item is mandatory only for Non-Expedited Claims.

Describe how exposure occurred exposed to asbestos products from 1958-1992 including, but not limited to, HK Porter cloth, rope, fiber, etc.

Part 7: Authorization

Claim must be signed by the injured party or by the person filing on his/her behalf.

(Firms filing claims electronically should submit one signed affidavit in lieu of this page.)

To the best of my knowledge, the information contained in this claim is true and complete and the claimant has not previously relinquished his or her rights to such a claim against the H. K. Porter Company, Inc. or against the H. K. Porter Asbestos Trust.

G. Patterson Kealey

Signature of Claimant or Representative

G. Patterson Kealey, Attorney
(Print or type the name of the signatory above)

10 Oct 2001
(Date)

Submit completed claims to:

H. K. Porter Asbestos Trust
P.O. Box 950
525 Brook Street
Rocky Hill, CT 06067

ALVIN J. SCHONFELD, D.O., F.C.C.P., F.A.A.D.E.P.

PULMONARY MEDICINE
OCCUPATIONAL LUNG DISEASE

WORKER'S Social Security Number

TYPE OF READING

438 W. ST. JAMES PLACE
CHICAGO, IL 60614

[REDACTED]

A P

1247 JOHN STOOD #

1A. DATE OF X-RAY MONTH DAY YR 08 4 91	1B. FILM QUALITY X 2 3 4 5 1 2 3 4 5	If Not Grade 1 Give Reason: _____	1C. IS FILM COMPLETELY NEGATIVE? YES <input type="checkbox"/> Proceed to Section 1 NO <input checked="" type="checkbox"/> Proceed to Section 2
--	--	---	--

2A. ANY PARENCHYMAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS?	YES <input checked="" type="checkbox"/> COMPLETE 2B and 2C	NO <input type="checkbox"/> PROCEED TO SECTION 3
--	---	---

2B. SMALL OPACITIES a. SHAPE/SIZE PRIMARY SECONDARY <table border="1"> <tr><td>P</td><td>S</td></tr> <tr><td>Q</td><td>X</td></tr> <tr><td>R</td><td>U</td></tr> </table> <table border="1"> <tr><td>P</td><td>S</td></tr> <tr><td>Q</td><td>X</td></tr> <tr><td>R</td><td>U</td></tr> </table>	P	S	Q	X	R	U	P	S	Q	X	R	U	b. ZONES <table border="1"> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> <tr><td>X</td><td>X</td></tr> </table> R L					X	X	c. PROFUSION <table border="1"> <tr><td>0</td><td>0</td><td>0</td></tr> <tr><td>X</td><td>X</td><td>1/2</td></tr> <tr><td>2</td><td>2</td><td>2</td></tr> <tr><td>3</td><td>3</td><td>3</td></tr> </table>	0	0	0	X	X	1/2	2	2	2	3	3	3	2C. LARGE OPACITIES SIZE <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C
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Q	X																																
R	U																																
P	S																																
Q	X																																
R	U																																
X	X																																
0	0	0																															
X	X	1/2																															
2	2	2																															
3	3	3																															

3A. ANY PLEURAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS?	YES <input checked="" type="checkbox"/> COMPLETE 3B, 3C and 3D	NO <input type="checkbox"/> PROCEED TO SECTION 4
--	---	---

3B. PLEURAL THICKENING a. DIAPHRAGM (plaque) SITE <input checked="" type="checkbox"/> R <input type="checkbox"/> L b. COSTOPHRENIC ANGLE SITE <input type="checkbox"/> R <input checked="" type="checkbox"/> L	3C. PLEURAL THICKENING... Chest Wall	
	a. CIRCUMSCRIBED (plaque) SITE <input checked="" type="checkbox"/> R <input type="checkbox"/> L IN PROFILE <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C I. WIDTH <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 II. EXTENT <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 FACE ON <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 III. EXTENT <input type="checkbox"/> 0 <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	b. DIFFUSE SITE <input type="checkbox"/> R <input checked="" type="checkbox"/> L IN PROFILE <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C I. WIDTH <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 II. EXTENT <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 3 FACE ON <input type="checkbox"/> 0 <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 III. EXTENT <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3

3D. PLEURAL CALCIFICATION SITE <input checked="" type="checkbox"/> R <input type="checkbox"/> L EXTENT	EXTENT
a. DIAPHRAGM <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	a. DIAPHRAGM <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3
b. WALL <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	b. WALL <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3
c. OTHER SITES <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3	c. OTHER SITES <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3

4A. ANY OTHER ABNORMALITIES?	YES <input checked="" type="checkbox"/> COMPLETE 4B and 4C	NO <input type="checkbox"/> PROCEED TO SECTION 5
------------------------------	---	---

4B. OTHER SYMBOLS (OBLIGATORY) <input type="checkbox"/> ax <input type="checkbox"/> bu <input type="checkbox"/> ca <input type="checkbox"/> cn <input checked="" type="checkbox"/> cp <input type="checkbox"/> cv <input type="checkbox"/> di <input type="checkbox"/> ef <input type="checkbox"/> em <input type="checkbox"/> es <input type="checkbox"/> fr <input type="checkbox"/> hi <input type="checkbox"/> ho <input type="checkbox"/> id <input type="checkbox"/> ih <input type="checkbox"/> ki <input checked="" type="checkbox"/> px <input type="checkbox"/> rp <input type="checkbox"/> th	Date Personal Physician notified? MONTH DAY YR
Report items which may be of present clinical significance in this section. <input type="checkbox"/> (SPECIFY cod) <u>CARDIOMEGALY</u>	

4C. OTHER COMMENTS	SHOULD WORKER SEE PERSONAL PHYSICIAN BECAUSE OF COMMENTS IN SECTION 4C. YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
--------------------	---

5. FILM READER'S INITIALS A.J.S.	PHYSICIAN'S SOCIAL SECURITY NUMBER* [REDACTED]	DATE OF READING MONTH DAY YR 08 4 91
-------------------------------------	---	--

1247

PULMONARY MEDICINE
OCCUPATIONAL LUNG DISEASE

WORKER'S Social Security Number

TYPE OF READING

438 W. ST. JAMES PLACE
CHICAGO, IL 60614

[REDACTED]

A P

1248

JOHN STOOD

1A. DATE OF X-RAY MONTHS | MAX | YR | 1B. FILM QUALITY 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

2A. ANY PARENCHYMAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS? YES COMPLETE 2B and 2C NO PROCEED TO SECTION 3

2B. SMALL OPACITIES

1. SHAPE/SIZE PRIMARY SECONDARY

p	s
q	x
r	u

p	s
q	x
r	u

2. ZONES

x	x

R L

3. PROFUSION

0	0	0
x	1	1/2
2	2	2
3	3	3
4	4	4

2C. LARGE OPACITIES

SIZE A B C

PROCEED TO SECTION 3

3A. ANY PLEURAL ABNORMALITIES CONSISTENT WITH PNEUMOCONIOSIS? YES COMPLETE 3B, 3C and 3D NO PROCEED TO SECTION 4

3B. PLEURAL THICKENING

1. DIAPHRAGM (plaque) SITE R L

2. COSTOPHRENIC ANGLE SITE R L

3C. PLEURAL THICKENING... Chest Wall

1. CIRCUMSCRIBED (plaque)

SITE R L

IN PROFILE

0	A	B	C
0	1	2	3

2. DIFFUSE

SITE R L

IN PROFILE

0	A	B	C
0	1	2	3

3D. PLEURAL CALCIFICATION

SITE R L EXTENT

1. DIAPHRAGM 0 1 2 3

2. WALL 0 1 2 3

3. OTHER SITES 0 1 2 3

PROCEED TO SECTION 4

4A. ANY OTHER ABNORMALITIES? YES COMPLETE 4B and 4C NO PROCEED TO SECTION 5

4B. OTHER SYMBOLS (OBLIGATORY)

ax bu ca cn cp cv di ef em es fr hi ho id ih ki px rp tb

Report items which may be of present clinical significance in this section. (SPECIFY odd)

CARDIOMEGALY

Date Personal Physician notified? MONTH | DAY | YR

4C. OTHER COMMENTS

SHOULD WORKER SEE PERSONAL PHYSICIAN BECAUSE OF COMMENTS IN SECTION 4C. YES NO PROCEED TO SECTION 5

5. FILM READER'S INITIALS A J S

PHYSICIAN'S SOCIAL SECURITY NUMBER [REDACTED]

DATE OF READING MONTH | DAY | YR

09 | 28 | 91

1248

1249

EXHIBIT E

1249

State of Idaho
INDUSTRIAL COMMISSION
317 Main Street Boise, Idaho 83720
NOTICE OF INJURY AND CLAIM FOR BENEFITS

Every work injury to an employee (including disease or infection in respect of such injury) which requires medical services other than first-aid treatment, must be reported within TEN days after the employer has knowledge of the injury.

EMPLOYER

1. Name ASTARIS F.M.C. 2. Phone No. 208-236-8200
(GIVE NAME UNDER WHICH CONCERN DOES BUSINESS)
3. Type of Business (State major activity, goods handled, work done, type of mine & ore extracted, products manufactured, etc.) phosphorous produce

4. Address P.O. Box 4111 Pocatello Ida 83205
(BOX OR STREET NO.) (CITY OR TOWN) (STATE) (ZIP)

5. Location if different from mail address Highway 30 West
6. Name of Insurance Carrier _____

INJURED OR ILL EMPLOYEE

7. Name John Stoer 8. Soc. Sec. No. _____
(FIRST) (MIDDLE NAME) (LAST)

9. Address 227 Stewart Chubbuck Ida 83302 Phone No. 208-237-3688
(BOX OR STREET NO.) (CITY OR TOWN) (STATE) (ZIP)

11. Age 22 12. Sex (check) Male Female 18. (Check) Married Single Divorced 14. No. Children under 18 0
15. Hours worked per day 40 16. Number of days worked per week _____ 17. Wages \$ _____ per _____
(Hour, Day, Week, Month)
18. If board, lodging, or other advantages furnished in addition to wages, give estimated value: \$ _____ per week
19. If gratuities (tips, etc.) were received in the course of employment, give estimated value: \$ _____ per week
20. Occupation Millwright Maintenance 21. How long employed by you _____
in this occupation? (YEARS and/or MONTHS)
22. Department regularly employed in Maintenance

ACCIDENT OR EXPOSURE TO OCCUPATIONAL ILLNESS

23. Place of Accident or Exposure P.O. Box 4111 Pocatello Ida POWER
(BOX OR STREET NO.) (CITY OR TOWN) (STATE) (COUNTY)
24. Was place of accident or exposure on employer's premises? Yes No a.m.
25. Date of accident, exposure, or initial diagnosis 11-01 26. If accident, give time _____ p.m.
27. Date employer learned of accident 12-11-01
28. Did injury result in disability beyond date of accident? Yes No 29. If yes, give date last worked _____
30. Was injured paid in full for this day? Yes No 31. Has employee returned to work? Yes No
32. If yes, give date _____ 33. At what wage? \$ _____ per _____

CAUSE OF ACCIDENT

34. What was employee doing when accident occurred? (Describe briefly, such as loading truck, shoveling dirt, walking down stairs, etc.)
During normal course of daily work activities
35. How did the accident happen? (Describe fully, stating whether the injured person fell, was struck, etc.; give all factors contributing to accident. Use other side for additional space.)
As millwright, employee was exposed to asbestos while mixing up the substance as used as when sanding off old asbestos for replacement.
36. What machine, tool, substance, or object was most closely connected with the accident? (Name the specific tool, machine, appliance, gas, liquid, etc., involved.)
Asbestos
37. If mechanical apparatus or vehicle, what part of it? (Gears, pulley, blade, motor, etc.)
NA
38. Were mechanical guards, or other safeguards provided? Yes No. 39. Was injured using them? Yes No.

INJURY OR OCCUPATIONAL ILLNESS

40. Describe the injury or illness in detail and indicate the part of body affected. (For example: amputation of right index finger at second joint, fracture of ribs, lead poisoning, dermatitis of left hand, etc.)
Employee has been clinically diagnosed with asbestosis, showing signs & symptoms of active asbestosis.
41. Name and address of physician _____
42. Name and address of hospital _____
43. In Patient Out Patient 44. Did employee die? Yes No. 45. If yes, give date _____
46. In case of death, give name and address of nearest relative _____

Signature of Employer _____ Signature of Employee John H. Stoer
Prepared by Jan E. Kealey, R.N. Official Position Plant Nurse Date of Report 12-11-01
Filing of this report is not an admission of liability. This report shall not be evidence of any fact stated herein in any proceeding in respect of the injury or death on account of which this report is made.
1250

1251

EXHIBIT F

1251

1252

Armstead Green

*** PLEASE READ CAREFULLY. PLEASE COMPLETE THIS CLAIM FORM AND ATTACH ALL NECESSARY DOCUMENTATION IN ORDER TO HAVE YOUR CLAIM FULLY REVIEWED & CONSIDERED FOR QUALIFICATION UNDER THE MASTER SETTLEMENT AGREEMENT & CE SETTLEMENT TRUST AGREEMENT.

Participating Claimant Claim Form

I, John D. Stoor (the "Claimant"), understand that the information provided in this Claim form is provided to Combustion Engineering, Inc. ("CE"). Its agents and representatives to induce payment in settlement of my claim for damages against it and its predecessors, successors, divisions, subsidiaries, officers, agents and employees. Combustion Engineering, Inc. and its agents and representatives can fully rely on the accuracy of the representations made herein.

1. Claimant Information:

Claimant Name:	John D. Stoor
Claimant Law Firm Representative:	G. Patterson Keahey
Claimant Law Firm Representative address & facimile Number:	One Independence Plaza Suite 612 Birmingham, AL 35209 (205) 871-0801
Social Security No:	[REDACTED]
Spouse's Name:	Adelene Stuart Stoor
Date of Birth:	[REDACTED]
Date of Death (if applicable):	
Decedent Estate Legal Representative	

1252

1253

2. Claim Information

Has an asbestos related lawsuit been filed on behalf of the injured person (i.e. the Claimant)?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
If Yes, Court and Jurisdiction of pending lawsuit	Circuit Court of Bolivar County, MS, Rosedale Circuit, First District	
Has CE been named as a defendant in such lawsuit?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Case Docket/Number (as assigned by Court)	<u>Mangialardi</u> CV-2001-37	
Date lawsuit was filed:	<u>04/03/02</u>	
*** Please attach a copy of the Face Sheet of Complaint		

3. Medical Information

Disease(s) Claimed	<u>Asbestosis</u>
Date of Diagnosis	<u>9-28-01</u>
*** Claim MUST attach BOTH (1) a copy of Claimant's Medical Report to Substantiate Claim AND (2) an executed Authorization to Obtain Claimant's Medical Records.	

1253

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4. Asbestos Exposure Information*

Date of Each Exposure	Specific Address and Worksite of Each Exposure	Claimant's Employer & Employer's Address at the Time of Each Exposure	Claimant's Occupation /Trade and Job at the Time of Each Exposure & Specific Exposure	Occupationally exposed person (indicate self or family member such as spouse, parent, child, etc)
	<i>See Attached</i>			

*Attach additional paper if needed to completely fill out this Section 4.

Signature of Claimant of Legal Representative:

G. Patterson Keahly

Date: June 26, 2003

(print name): G. Patterson Keahly

1254

1255

EXHIBIT G

1255

DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

1256

MILDRED CASTORENA,)
 Individually and as Spouse)
 and Personal Representative)
 of the Estate of TED)
 CASTORENA; ALENE STOOR,)
 Individually and as Spouse)
 and Personal Representative)
 of the Estate of JOHN D.)
 STOOR; STEPHANIE BRANCH,)
 Individually and as Personal)
 Representative of the Estate)
 of ROBERT BRANCH, JR; ROBERT)
 L. HRONEK; MARLENE KISLING,)
 Individually and as Personal)
 Representative of the Estate)
 of WILLIAM D. FRASURE;)
 NORMAN L. DAY,)
)
 Plaintiffs,)
 vs.) Case No. CV-2006-2474-PI
)
 GENERAL ELECTRIC, et al.,)
)
 Defendants.)
)

ORAL DEPOSITION OF GERRIE K. TRAMMELL

Taken on June 7, 2007

1256

1257

Page 2

1 APPEARANCES:
2 For the Plaintiff:
3 JAMES C. ARNOLD
4 Petersen Parkinson & Arnold
5 Attorneys at Law
6 P. O. Box 1645
7 Idaho Falls, Idaho
8
9 For A. W. Chesterton and Shepard Niles:
10 DAVID H. MAGUIRE
11 Maguire & Kress
12 Attorneys at Law
13 1414 East Center
14 Pocatello, Idaho
15
16 For Crown Cork & Seal:
17 CHARLES JOHNSON
18 Johnson Olson
19 Attorneys at Law
20 P. O. Box 1725
21 Pocatello, Idaho
22
23 For Ingersoll-Rand and Westinghouse:
24 JULIE S. TETRICK
25 Greener Banducci Shoemaker
Attorneys at Law
950 West Bannock Street, Suite 900
Boise, Idaho
For Warren Pumps, Sterling Pumps, Henry Vogt Machine
Company and FMC Corporation:
LEE RADFORD
Moffatt Thomas, Barrett Rock & Fields
Attorneys at Law
412 West Center
Pocatello, Idaho
For Eaton Electrical, Inc., fna Cutler-Hammer:
HOWARD D. BURNETT
Hawley Troxell Ennis & Hawley
Attorneys at Law
333 South Main Street
Pocatello, Idaho

Page 4

1 For NIBCO:
2 DANA HERBERHOLZ
3 Hall Farley, Oberrecht & Blanton
4 Attorneys at Law
5 P. O. Box 1271
6 Boise, Idaho
7
8 For Cranco and Honeywell:
9 BROOK B. BOND
10 Perkins Coie, LLP
11 Attorneys at Law
12 251 East Front Street, Suite 400
13 Boise, Idaho
14
15 For Zurn Industries and Paramount Supply:
16 JASON DAYWITT
17 Steven V. Rizzo, PC
18 Attorneys at Law
19 1620 Southwest Taylor Street
20 Portland, Oregon
21
22 For ITT Corporation, Bell & Gossett, Aqua-Chem, and
23 Cleaver-Brooks:
24 A. BRUCE LARSON
25 Attorney at Law
P. O. Box 6369
Pocatello, Idaho
For Hill Brothers Chemical Company:
STEVEN R. KRAFT
Moore, Baskin & Elia
Attorneys at Law
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Boise, Idaho
For Bullough Abatement:
GARY L. COOPER
Cooper & Larsen
Attorneys at Law
151 North Third
Pocatello, Idaho

Page 3

1 For Guard-Lite:
2 BRIAN D. HARPER
3 Attorney at Law
4 P. O. Box 2838
5 Twin Falls, Idaho
6 For IMO Industries:
7 CHRIS H. HANSEN
8 Anderson, Julian & Hull
9 Attorneys at Law
10 P. O. Box 7426
11 Boise, Idaho 83707
12
13 For Kelly Moore, Square D, and Alaska Copper:
14 STEVEN K. BROWN
15 Hopkins Roder, Crockett Hansen & Hoopes
16 Attorneys at Law
17 P. O. Box 51219
18 Idaho Falls, Idaho
19
20 For Owens-Illinois:
21 IAN C. JOHNSON
22 Merrill & Merrill
23 Attorneys at Law
24 P. O. Box 991
25 Pocatello, Idaho
For Rockwell Automation, Reliance Electric, Babbitt Steam
Specialties and Steel West:
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Quane Smith, LLP
Attorneys at Law
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Idaho Falls, Idaho
For Garlock, Anchor Packing, and Fairbanks Morse Pump:
CHRISTOPHER P. GRAHAM
Trout Jones Gledhill Fuhrman
Attorneys at Law
P. O. Box 1097
Boise, Idaho

Page 5

1 For Gould Incorporated:
2 JOHN A. BAILEY
3 Racine, Olson, Nye,
4 Budge & Bailey
5 Attorneys at Law
6 Center Plaza Building
7 Pocatello, Idaho
8 For Advanced Industrial Supply:
9 CAROL TIPPI VOLYN
10 Racine, Olson, Nye,
11 Budge & Bailey
12 Attorneys at Law
13 Center Plaza Building
14 Pocatello, Idaho
15 For the Union Pacific Railroad:
16 SAMANTHA J. SLARK
17 Berman & Savage
18 Attorneys at Law
19 170 South Main Street
20 Salt Lake City, Utah
21
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Page 6

I N D E X

Examination By:	Page
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Mr. Maguire	11
Mr. Charles Johnson	27
Ms. Tetrick	28
Mr. Radford	33
Mr. Cooper	34
Mr. Hansen	41
Mr. Harper	42
Mr. Ian Johnson	43
Mr. Bailey	44
Mr. Carey	45
Mr. Graham	47
Mr. Herberholz	47
Mr. Bond	48
Mr. Burnett	51
Ms. Slark	57
Mr. Brown	58
Mr. Larson	61
Mr. Kraft	62
Mr. Maguire	63
Mr. Carey	64
Mr. Herberholz	65

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1 BE IT REMEMBERED that on the 7th day of June,
2 2007, at the hour of 1:05 p.m. the deposition of GERRIE
3 K. TRAMMELL, produced as a witness at the instance of the
4 defendants in the above-entitled action now pending in
5 the above-named court, was taken before Paul D. Buchanan,
6 CSR #7, and notary public, State of Idaho, in the
7 Ameritel Inn, 1440 Bench Road, Pocatello, Bannock County,
8 Idaho.
9
10 WHEREUPON, the following proceedings were had:
11
12 (Deposition Exhibit Nos. 2-A through 2-J
13 marked for identification.)
14
15 MR. MAGUIRE: Before we get started, two
16 matters. The first one, Mr. Arnold, relates to the
17 continuation of the deposition in the event we obtain
18 additional information after today. I know in a lot of
19 these cases we simply don't have a lot of the history
20 pertaining to employment, health, that sort of thing, and
21 if we need to reconvene the deposition at a later time,
22 we want to make sure that the record reflects that we are
23 reserving the right to do so.
24 For the record, I see that we have a number of
25 new faces here this afternoon. We probably ought to

Page 7

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1 introduce ourselves again so we know who all is here. I
2 am David Maguire on behalf of A.W. Chesteron and Shepard
3 Niles.
4 MR. CHARLES JOHNSON: Charles Johnson for
5 Crown Cork & Seal Company.
6 MS. TETRICK: Julie Tetrick on behalf
7 Ingersoll-Rand and Westinghouse.
8 MR. RADFORD: Lee Radford on behalf Warren
9 Pumps, Sterling Pumps, Henry Vogt Machine, and FMC
10 Corporation.
11 MR. COOPER: Gary Cooper on behalf of
12 Bullough.
13 MS. VOLYN: Tippi Volyn on behalf of Advanced
14 Industrial Supply.
15 MR. HANSEN: Chris Hansen on behalf IMO
16 Industries.
17 MR. HARPER: Brian Harper representing
18 Guard-Line.
19 MR. IAN JOHNSON: Ian Johnson on behalf of
20 Owens-Illinois.
21 MR. BAILEY: John Bailey on behalf of Gould.
22 MR. CAREY: Don Carey on behalf of Rockwell
23 Automation, Reliance Electric, Babbitt Steam, and Steel
24 West.
25 MR. LARSON: Bruce Larson on behalf of ITT

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1 Corporation and on behalf of Cleaver-Brooks.
 2 MR. GRAHAM: Chris Graham on behalf of
 3 Garlock, Anchor Packing, and Fairbanks Morse Pump.
 4 MR. HERBERHOLZ: Dana Herberholz on behalf of
 5 NIBCO.
 6 MR. BOND: Brook Bond on behalf of Cranco and
 7 Honeywell.
 8 MR. DAYWITT: Jason Daywitt for Zurn
 9 Industries and Paramount Supply.
 10 MR. BURNETT: Howard Burnett on behalf of
 11 Eaton Electrical, Inc., formerly known as Cutler-Hammer,
 12 Inc.
 13 MS. SLARK: Samantha Slark on behalf of the
 14 Union Pacific.
 15 MR. KRAFT: Steve Kraft on behalf of Hill
 16 Brothers Chemicals.
 17 MR. BROWN: Steve Brown on behalf of Kelly
 18 Moore, Square D, and Alaska Copper.
 19 MR. ARNOLD: And James Arnold on behalf of
 20 plaintiff.
 21 MR. MAGUIRE: Let the record reflect that this
 22 is the time set for the taking of the deposition of
 23 Gerrie Trammell who is the personal representative of
 24 John D. Stoor, the plaintiff in this case. Let the
 25 record reflect the deposition is being taken pursuant to

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1 Q. How old are you?
 2 A. I am 45.
 3 Q. How is it that you came to be appointed as the
 4 personal representative of his estate?
 5 A. My father passed away three years ago June 13,
 6 so next week it will be three years, and my mother passed
 7 away five and a half months ago, and I became the
 8 personal representative at that time.
 9 Q. Is it a joint administration? Are you doing
 10 both estates at the same time?
 11 A. Yes.
 12 Q. Are you familiar with your father's medical
 13 history concerning asbestos?
 14 A. I am familiar with his medical history to a
 15 certain extent.
 16 Q. But the reason I am asking the question is you
 17 did on behalf of your father's estate, and on behalf of
 18 you as one of the survivors bring an action against
 19 numerous defendants alleging that your father suffered
 20 damages as a result of exposure to asbestos. Is that
 21 correct?
 22 A. The initial -- my father initially brought the
 23 lawsuit and he passed away during the process, and my
 24 mother then became the personal representative and now
 25 she is passed away during the process. So now I am

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1 the Idaho Rules of Civil Procedure and may be used for
 2 all purposes allowed for by those rules. Is there
 3 anything that anybody would like to add at this point in
 4 time?
 5 (No response.)
 6
 7 GERRIE K. TRAMMELL,
 8 called at the instance of the defendants, having been
 9 first duly sworn, was examined and testified as follows:
 10 EXAMINATION
 11 BY MR. MAGUIRE:
 12 Q. How do you say your name?
 13 A. Gerrie Trammell.
 14 Q. How do you wish to be called?
 15 A. Gerrie is fine.
 16 Q. If I call you Ms. Trammell, would that be all
 17 right as well?
 18 A. That's fine.
 19 Q. Ms. Trammell, could you state your full legal
 20 name?
 21 A. Gerrie K. Trammell.
 22 Q. What is your address?
 23 A. 5916 Eden Street, Chubbuck, Idaho 83202.
 24 Q. What is your relation to John Stoor?
 25 A. He is my father.

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1 continuing the lawsuit.
 2 Q. You are following up with the representation
 3 of that case.
 4 A. That's correct.
 5 MR. MAGUIRE: Mr. Arnold, I did have marked
 6 and included in the big binder that you see in front of
 7 you the answers to interrogatories and the supplemental
 8 answers to interrogatories that were provided by you or
 9 Mr. Keahey on behalf of the Stoor estate. Could we agree
 10 that we could make those a part of the record of this
 11 deposition?
 12 MR. ARNOLD: Yes.
 13 MR. MAGUIRE: Very good. We need to get one
 14 procedural issue resolved, Mr. Arnold. The plaintiff's
 15 response that was filed in this case, the original
 16 response apparently does not have a signature page. Do
 17 you know if the originals were signed by some person?
 18 MR. ARNOLD: I do not.
 19 MR. MAGUIRE: Let's get started in any event
 20 and see where it takes us.
 21 Q. Ms. Trammell, did you have a chance to review
 22 some responses to interrogatories and responses to
 23 request for production that were prepared in this case?
 24 A. I have reviewed some documents.
 25 Q. Why don't we take a look at the original

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1 answers to interrogatories, and I have got them tabbed
 2 there, right there in the front. Could you take a look
 3 at that document (indicating) and see if you have seen it
 4 before and assisted in the preparation of the answers
 5 that are contained therein?
 6 A. I can see that this was probably the initial
 7 document that my mother and father were taking care of.
 8 All of the names on here are some of my dad's coworkers
 9 that I know that he worked with.
 10 Q. Why don't you just glance through it and after
 11 you have had a chance to take a look at it tell me
 12 whether you were involved in the preparation of these
 13 answers or not.
 14 (Pause in proceedings.)
 15 A. Can you tell me when these (indicating) were
 16 initiated?
 17 Q. I believe that my office received them in
 18 February of this year.
 19 A. I did have a coworker of my father, his name
 20 was Red Phillips, and he did go over the documents with
 21 me and he notarized what he did know that my father had
 22 been exposed to. And during which period of time is
 23 that, the documents that we are speaking about right now?
 24 Q. I don't want to try to anticipate what
 25 somebody else might have done. I am just wondering if

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1 after looking at what is captioned the Plaintiff Stoor's
 2 Response to Defendants' Master Interrogatories and
 3 Request For Production of Documents to the Plaintiffs, if
 4 you recognize that as a document that you helped prepare.
 5 Have you ever seen this before today?
 6 A. I believe that I have seen some of these
 7 documents before today.
 8 Q. Have you had a chance, as you look back, have
 9 you had a chance to take a look at them and do you agree
 10 with their accuracy?
 11 A. I agree with their accuracy as far as I know
 12 what is going on.
 13 Q. And that's a fair answer. Could you turn to
 14 Interrogatory No. 12, and I want to read the question
 15 that's propounded there and this is what it says: When
 16 was exposed person diagnosed with any asbestos related
 17 disease? For each such diagnosis, please state the month
 18 and year of such diagnosis and the name and address of
 19 the physician making such diagnosis. Do you see that?
 20 A. Yes.
 21 Q. And on the next page is this response,
 22 September 28, 2001, Dr. Carl Vance, 2220 East 25th
 23 Street, Idaho Falls, Idaho 83404. Do you see that?
 24 A. Yes.
 25 Q. Do you believe that answer to be accurate?

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1 A. Yes, I do.
 2 Q. And why do you believe that answer to be
 3 accurate?
 4 A. Carl Vance was my dad's physician at that time
 5 and I do remember that he had done some studies to see if
 6 my dad had asbestosis.
 7 Q. Is it your recollection that those studies
 8 were done sometime before September 28 of 2001?
 9 A. Yes.
 10 Q. Do you know what kind of studies were done?
 11 A. No, I do not. I know that he did have to go
 12 to a cancer center in Idaho Falls and have some studies
 13 done, but I'm not exactly sure which studies were taken
 14 for that. My mom and dad took care of that at that time.
 15 Q. I would like to proceed to those answers to
 16 interrogatories and have you identify another document
 17 that is at the back of those responses, it's the death
 18 certificate, and just see if you recognize that as his
 19 death certificate.
 20 A. Yes, it is.
 21 Q. And that's a State of Idaho Certificate of
 22 Vital Record?
 23 A. Yes.
 24 Q. Death certificate for your father showing his
 25 death having occurred on, what is it, June 13 of 2004?

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1 A. Yes, that's correct.
 2 Q. I would like to have you next go to the
 3 supplemental response to the master interrogatories, and
 4 they should be behind that pink tab right there. Do you
 5 see those?
 6 A. Yes.
 7 Q. Could you take a look and see if you recall
 8 having reviewed and signed these supplemental answers?
 9 A. Were these again in February?
 10 Q. Yes. No, I think these were a little bit
 11 later than that. If you look at the back, there is a
 12 verification page near the end. And I believe it's after
 13 the certificate of service.
 14 A. Yes, I did, on the 3rd of April.
 15 Q. Do you recall just verifying that you reviewed
 16 these answers and approved them and they are what you
 17 remember if you were actually placed under oath at that
 18 time?
 19 A. I had to sign them in front of a notary.
 20 Q. I take it that you believe the answers that
 21 you provided and the documents that you provided are true
 22 to the best of your knowledge and belief.
 23 A. Yes.
 24 Q. I would like to have you go back, and there
 25 should be a document in there and it should be marked

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1 2-A. Do you see that, going back on the supplemental
2 answers. There is a document captioned Pro Tanto Release
3 and Indemnity.
4 Ms. Trammell, could you take a look at the
5 document and I believe it's been marked as 2-A. Would
6 you take a look at that and see if you can tell me what
7 that is.
8 A. It appears that it's a release of claim.
9 Q. I understand that you may not know what it is.
10 A. Right.
11 Q. Do you know what it is?
12 A. No.
13 Q. And did you understand that your father had
14 been making claims against various companies alleging
15 asbestos injury and was receiving settlements for those
16 claims?
17 A. I understood that there were some settlements,
18 minimal settlements that were coming in, yes.
19 Q. Did you know if he had actually worked out a
20 release with a company or an entity known as the Pfizer
21 Protected Parties?
22 A. I didn't know which company it was.
23 Q. Let's take a look at the document that's been
24 marked as Exhibit No. 2-B. Ms. Trammell, do you
25 recognize Exhibit 2-B?

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1 A. I have not seen it before, I don't believe.
2 Q. Let me represent to you that it's a document
3 that was attached to the supplemental responses that you
4 signed, and I understand that sometimes attorneys will
5 attach documents to supplemental responses because they
6 have documents, the client might not see them, but in
7 order to comply with the request, the attorney will
8 include the documents in any event. So, if I understand
9 it, you haven't seen this document before today.
10 A. I don't believe so.
11 MR. MAGUIRE: Can we agree, counsel, that this
12 document was attached as part of the supplemental
13 responses?
14 MR. ARNOLD: Yes.
15 Q. Ms. Trammell, do you recall your father making
16 a workmen's compensation asbestos claim with FMC
17 Corporation?
18 A. Yes, I do.
19 Q. Do you remember when that was?
20 A. I don't remember the exact date. Would the
21 date of the report be (indicating) when it would be or --
22 Q. Well, I believe that to be true.
23 A. Okay.
24 Q. The question is what do you believe to be
25 true.

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1 A. That would stand to reason, that it would be
2 close to that time.
3 Q. Taking a look back in history, is it your
4 recollection that your dad made a workmen's compensation
5 claim in about December of 2001 for asbestos-related
6 injuries?
7 A. I would think so, yes.
8 Q. Is that his signature?
9 A. It is my dad's signature.
10 Q. Let's go on and take a look at Exhibit 2-C.
11 Do you recognize Exhibit 2-C?
12 A. Yes, I do.
13 Q. Is that the autopsy that was performed on your
14 father concerning his death?
15 A. Yes.
16 MR. CAREY: David, would you just identify the
17 document with particularity for the record?
18 MR. MAGUIRE: You bet.
19 Q. This is a Western Pathology Associates autopsy
20 concerning your father's death?
21 A. Yes.
22 Q. Were you involved in the decision to have the
23 autopsy performed?
24 A. Yes.
25 Q. Why was it that you had the autopsy performed?

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1 A. To my recollection, the attorneys had asked my
2 mother to have the autopsy performed to verify that my
3 dad had had asbestosis and his other related diseases
4 from FMC.
5 Q. Let's go to 2-D. This is the Manville
6 Personal Injury Settlement Trust document? That's what I
7 am going to call it because that's on the front of it.
8 A. Okay.
9 Q. Do you recognize that as a proof of claim form
10 that was submitted by your father for compensation for
11 asbestos injuries?
12 A. I don't know.
13 Q. You are not sure about that. Just take a look
14 and see if you have ever seen it before. If you haven't,
15 that's fine.
16 A. I know that the general power of attorney was
17 signed to my mother by my father, but other than that,
18 some of the things in the document, most of the things in
19 the documents I recognize as true dates.
20 Q. I am just wondering if you recognize this
21 document which is captioned the Manville Personal Injury
22 Settlement Trust.
23 A. No, I don't.
24 Q. You don't recognize that document.
25 A. No.

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1 Q. And if your father was involved in it with his
 2 attorney, it was something that they did between those
 3 two and it didn't involve you.
 4 A. That's correct.
 5 Q. Let's take a look at, and I think it's 2-E,
 6 it's captioned a release and indemnity agreement.
 7 A. I haven't seen this one.
 8 Q. The document that we are talking about, it's
 9 captioned Release and Indemnity, and in the body of the
 10 agreement it says that John D. Stoor and Allene Stoor
 11 make a release with AC and S, Inc., and various asbestos
 12 claimants; do you see that?
 13 A. Yes.
 14 Q. So this document you haven't seen before
 15 either.
 16 A. That's correct.
 17 Q. Let's go to the next document that's marked as
 18 2-F. Could you take a look and see if you recognize
 19 that.
 20 A. No, I do not.
 21 Q. That document 2-F is captioned Discounted Cash
 22 Payment Claim Form for the Celotex Asbestos Settlement
 23 Trust. Do you see that?
 24 A. Yes.
 25 Q. You haven't seen that before today?

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1 A. No.
 2 Q. I would like to have you take a look at what I
 3 am going to call Page 4 -- well, we are going to move to
 4 another document. The next one should be 2-G and it
 5 should be captioned H. K. Porter Asbestos Trust Claim
 6 Form. Do you see a document -- right on the very top, if
 7 you go through, you will see a H. K. Porter Asbestos
 8 Claim Form.
 9 MR. ARNOLD: That's actually H.
 10 Q. Okay, 2-H. Could you take a look at that
 11 document and see if you recognize it.
 12 A. No, I do not.
 13 Q. We do this for the record just so we have it
 14 straight. Exhibit 2-H is the H. K. Porter Asbestos Trust
 15 Claim Form, or that is the document, and the document
 16 appears to relate to a claim form prepared by Mr. G.
 17 Patterson Keahey as the attorney for your father. Do you
 18 see that?
 19 A. Yes.
 20 Q. Do you recall if Mr. Keahey was representing
 21 your father in the year 2001 concerning asbestos claims?
 22 A. Yes, I believe he was.
 23 Q. Could I have you take a look at Page 4 of that
 24 claim form. Up on the top it's captioned Part 2:
 25 Diagnosed Asbestos-Related Injuries?

Page 24

1 A. Yes.
 2 Q. And then down below there is a checkmark and
 3 in the box it says Non-Malignancy, pleural disease and
 4 some sort of lung disease. Do you see that?
 5 A. Yes, I do.
 6 Q. And then there is a date of diagnosis of
 7 9/28/2001?
 8 A. Yes.
 9 Q. As you look back at the year 2001, is it your
 10 recollection that no later than by September 28 of 2001
 11 your father had been diagnosed with asbestos related
 12 diseases?
 13 A. I believe that to be correct, yes.
 14 Q. Let's go on to 2-I. The one that I want you
 15 to look at is the claim form, captioned Claim Form,
 16 Discounted Cash Payment, Eagle Picher Industries Personal
 17 Injury Settlement Trust. Is that marked as 2-I?
 18 A. It is. I don't recognize this form either.
 19 Q. So Exhibit 2-I, which is captioned Claim Form,
 20 Discounted Cash Payment, Eagle Picher Industries Personal
 21 Injury Settlement Trust is not a document that you
 22 recognize pertaining to your father's claims for asbestos
 23 exposure?
 24 A. I do not recognize it, but I know that it is
 25 part of his claim.

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1 Q. You were aware that he made a claim against
 2 Eagle Picher Industries?
 3 A. I wasn't aware of who the claim was against,
 4 no.
 5 Q. You were aware, though, he was making what
 6 appeared to be numerous claims for asbestos-related
 7 injuries.
 8 A. Yes.
 9 Q. I would like to have you take a look at one
 10 final document, I think it's 2-J, the lawsuit.
 11 MR. ARNOLD: J is the lawsuit.
 12 Q. I would like to have you take a look at that
 13 caption page and see if you recognize that.
 14 A. No, I don't.
 15 Q. For the record I am going to describe what the
 16 document is. Exhibit 2-J is the caption sheet or the
 17 front page of a lawsuit filed in the Circuit Court of
 18 Bolivar County, Mississippi, Rosedale Circuit, First
 19 District, and the caption on the left-hand says Flower
 20 Mangialardi, deceased, plaintiff, et al., versus Harold's
 21 Auto Parts, et al. And it's captioned a master complaint
 22 with jury trial requested.
 23 Do you know if your father was a plaintiff in
 24 this lawsuit filed in Bolivar County as Cause No. 2001-37
 25 on about December 7 of 2001?

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7 (Pages 22 to 25)

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1 he would get winded very easily, and he had a CPAP
 2 machine so he would have to go and lay down and put the
 3 CPAP machine on several times a day.
 4 Q. The year he passed away was 2003; is that
 5 right?
 6 A. Three years ago, so that would have been 2004.
 7 Q. 2004, I am sorry. Between the years 1996 when
 8 he retired and the year that he passed away in 2004, can
 9 you describe to us how his condition was the same or
 10 different or changed during that period of time?
 11 A. He deteriorated through the years. He was
 12 hospitalized more often, when he would go outside in the
 13 cold air, almost every time he would get pneumonia and
 14 have to be hospitalized for it in the last few years of
 15 his life. So he was in the hospital quite a bit the last
 16 few years of his life.
 17 Q. Was he more involved in yard work or that sort
 18 of thing right after he retired?
 19 A. Right after he retired, yes, he would have
 20 been.
 21 Q. For how many years after he retired was he
 22 able to do yard work, for example?
 23 A. I'm not sure how many years, but not very long
 24 and not very much. My dad, he was such a hard worker his
 25 whole life and then to see that he was not able to do

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1 anything and was deteriorating the way that he did, it
 2 was quite quick that he . . .
 3 Q. Did any of your siblings continue to live at
 4 home with your parents after they reached adulthood?
 5 A. Yes, my brothers did.
 6 Q. Which brothers were those?
 7 A. John and Kyle.
 8 Q. And how long did they continue to live at your
 9 parents' home?
 10 A. Periodically through the years.
 11 Q. When was the last time they lived at home with
 12 your parents?
 13 A. Actually when my mom passed away they were
 14 both living there. When my dad passed away, I believe
 15 that John was living there at that time.
 16 Q. You were asked this earlier. Was John or your
 17 other brother -- was it Kyle?
 18 A. Yes.
 19 Q. -- at that time were they dependent upon your
 20 father financially for support or were they living at
 21 home as a matter of convenience?
 22 A. They were living at home as a matter of
 23 convenience and I believe that my dad had probably gave
 24 them a percentage of their support, didn't charge them
 25 rent or anything like that.

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1 Q. Were they employed at the time?
 2 A. I believe part time, yes.
 3 Q. And they were both in construction work?
 4 A. Yes.
 5 Q. By whom were they employed or was it a number
 6 of different contractors?
 7 A. John has had a number of different
 8 contractors, and he actually was injured prior to the
 9 time of my dad's death on a job-related injury.
 10 Q. And what about Kyle, was he working for a
 11 single contractor or various jobs?
 12 A. Various jobs.
 13 Q. One other item, Ms. Trammell. If you would
 14 turn to what Mr. Maguire previously marked as Exhibit
 15 2-E, please. That is the form called Release and
 16 Indemnity that refers to AC and S, Inc. And if you will
 17 turn to the third page of that document, there is a
 18 signature block at the bottom. Are you able to recognize
 19 your father's signature?
 20 A. Yes.
 21 Q. And is that a copy of your father's signature
 22 on the document?
 23 A. Yes.
 24 Q. That was his signature as far as you can tell
 25 as of July 31, 2002?

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1 A. Yes.
 2 MR. BURNETT: I believe that's all I have.
 3 Thank you very much.
 4 EXAMINATION
 5 BY MS. SLARK:
 6 Q. My name is Samantha Slark and I represent the
 7 Union Pacific. Are you familiar with your father's work
 8 history outside of FMC?
 9 A. No.
 10 Q. Are you aware if he ever worked for Union
 11 Pacific?
 12 MR. ARNOLD: They can't hear you back there.
 13 MS. SLARK: I asked if she was aware of his
 14 work history outside of FMC.
 15 Q. If so, do you have any reason to believe he
 16 would have ever worked for Union Pacific?
 17 A. No, I know that Union Pacific brought cars in
 18 to FMC, but I am not aware, I don't have knowledge of him
 19 working for the Union Pacific.
 20 Q. Do you have any reason to believe that he
 21 worked at FMC prior to 1958?
 22 A. I wasn't born then, so, no, I don't.
 23 MR. ARNOLD: You mean you don't know?
 24 THE WITNESS: No.
 25 Q. You were saying that you were aware that Union

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