THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

DOCKET NO.: 03-E-0106

In the Matter of the Liquidation of
The Home Insurance Company

CLAIMANTS SHELDON HOLSON AND MELVIN HOLSON'S
MOTION TO RECOMMIT AND REQUEST FOR ORAL ARGUMENT

I. INTRODUCTION

Claimants Sheldon Holson and Melvin Holson file this Motion to Recommit pursuant to Section 20 of the "Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation" ("The Home"). The Holsons request that the Court reverse the November 5, 2009, "Order of the Merits" (the "Order") that found The Home did not have a duty to defend the Holsons for the underlying claims brought by the K.V.L. Corporation ("KVL").

The Home plainly had a duty to defend the Holsons against the KVL claim. Under Connecticut law, the applicable standard for determining whether an insurance company must defend an insured is whether "the claims against the insured allege *any facts* that *even possibly fall* within the coverage terms . . . . " Order, page 7, citing Community Action for Greater Middlesex County, Inc. v. American Alliance Insr. Co., 757 A.2d 1074, 1081 (Conn. 2000)(emphasis added). The Referee correctly cited to this standard three times in the Order on the Merits as the applicable test, but then applied a different standard – the wrong standard – to conclude that The Home had no duty to defend the Holsons. The Referee denied any duty to defend because the underlying complaint contained "no specific allegation" that there was a

sudden and accidental release of pollutants that would except the underlying complaint from the pollution exclusion. At The Home's urging, the Referee applied a fact-based "outcome" from a Connecticut case that bears no resemblance to this case – a Connecticut case where the insured – a waste hauler – deliberately released waste into the environment. Here, there is no evidence that the Holsons' deliberately released waste into the environment, and the allegations of the Complaint contemplate and assert claims based on negligence that encompass accidental and sudden events. As set forth below, because the underlying KVL complaint "falls even possibly" within the coverage, The Home had a duty to defend the Holsons, and this Court should reverse the decision of the Referee.

II. BACKGROUND

Continuing a business their father started in 1943, Melvin and Sheldon Holson assembled and sold photo albums. Under their management, the Holson Company grew, and in 1968 moved into a new facility located on the westerly side of Route 7 at 111 Danbury Road, Wilton, Connecticut (the "Site"). There, the Holson Company assembled photo albums, combining cardboard, plastic sheets, three ring binders, paper and glue. The waste produced from this assembly consisted almost exclusively of pieces of plastic and cardboard that was placed into a dumpster.

In 1986, the Holsons sold the Holson Company to an acquisition corporation that in turn eventually sold the company to the Intercraft Company. As part of this transaction, the Holsons received back the Site, and in 1989 sold the Site to K.V.L. Corporation ("KVL"). Before purchasing the property, KVL retained an environmental consultant to conduct a site inspection, and KVL was satisfied with the results of that inspection. After the purchase, KVL's business plans changed, and it decided to sell the Site. In 1990, a site inspection by a

potential buyer noted some solvent contamination in an underground sump and a concrete vault on the southern end of the Site. Further investigation uncovered groundwater contamination in the same area. The primary contaminants included freon-113, 1,1,1 trichloroethene, trichloroethylene, and tetrochloroethylene.

In 1991, KVL sued Melvin and Sheldon Holson and the Holson Company in the United States District Court in Connecticut, eventually seeking more than $30 million in damages and interest.[1] (Copies of the original and amended complaints in the KVL action are attached as Exhibit A.) The Holsons and the Holson Company asked their primary insurers, The Travelers Indemnity Company ("Travelers") and Fireman's Fund Insurance Company ("Fireman's Fund"), to defend them pursuant to insurance policies they had purchased for many years. This was their first liability claim of any significance.

The Holsons and the Holson Company also notified The Home Insurance Company, (the "Home") on February 22, 1991, and asked The Home to defend them pursuant to insurance polices that provided coverage in excess of the coverage provided by Travelers and Fireman's Fund.

All of the insurers refused to defend, and left the Holsons to fend for themselves. The KVL action was tried over six weeks in March, April and May of 1995 before District Court Judge Thompson.

During the five year wait for a bench decision from the district court, the Holsons filed suit against the primary insurers, Travelers and Fireman's Fund, for breach of their duty to defend the KVL action. The Holsons ultimately reached a settlement with Travelers and

[1] KVL also sued the Danbury Road Family Partnership ("DRFP"), the entity that took possession of the real estate in 1986 after the Holsons sold the Holson Company. Melvin and Sheldon Holson were the general partners of DRFP.

Fireman's Fund, and on two occasions, by letters dated September 27, 1999, and October 5, 1999, the Holsons' counsel informed The Home of these settlements. The Holsons expressly informed The Home that the primary insurers had exhausted the coverage provided by these insurance policies and the Holsons renewed their demand for a defense. The Home again declined to provide a defense or coverage, and provided no written explanation for its refusal. In fact, The Home could not even find its file and disputed the notice given by the Holsons back in 1991.

On August 3, 2000, Judge Thompson issued a Memorandum Opinion in which the Court found in favor of KVL and against the Holsons on several claims raised in the Complaint. KVL then moved for judgment, seeking $25,201,265.31 dollars in damages, an amount that far exceeded the net worth of the Holsons. The Holsons again demanded a defense, and The Home again refused. On April 25, 2001, Judge Thompson entered a "Partial Judgment" that set forth the claims in the Complaint for which the Holsons were liable, and the amount of damages the Holsons were liable for on these claims. Facing a judgment that could exceed $15 million with interest, the Holsons settled with KVL in July, 2002, for $612,500.00.

III. ARGUMENT

The Holsons Have Demonstrated the Applicability of the Sudden and Accidental Exception to the Pollution Exclusion, and Therefore The Home Had a Duty to Defend the Holsons.

The allegations in the KVL Complaint set forth claims for covered property damage that occurred during the extended period in which The Home policies were in effect. The facts alleged in the KVL Complaint fall squarely within the coverage terms of The Home's

policies. The Home therefore wrongfully breached its duty to defend the Holsons against the KVL action.

The Home denied coverage because it claimed that its policies contain a "pollution exclusion" that relieved it of any defense obligation in this case. This qualified pollution exclusion provides coverage for the discharge or release of pollution where "such discharge, dispersal, release or escape is sudden and accidental."

The applicable test under Connecticut law to determine whether an insurance company has a duty to defend is not at issue in this case. The Referee recited the appropriate standard three times in the Order on the Merits: "If any allegation of the complaint falls *even possibly* within the coverage, then the insurance company must defend the insured." See Order, pages 6, 7, and 9, citing Community Action for Greater Middlesex County, Inc. v. American Alliance Insr. Co., 757 A.2d 1074, 1081 (Conn. 2000); Schilberg Integrated Metals Corp. v. Continental Cas. Co, 819 A.2d 773, 783 (Conn. 2003). See also Palace Laundry Co. v. Hartford Accident & Indem. Co., 234 A.2d 640, 645 (Conn. C. P. 1967)(finding that the insurer breached duty to defend where "although the allegations of the complaint on the issue of bodily injury caused by accident [were] gossamer thin, there was at least the possibility that the plaintiff" in the underlying suit would prove that her injury resulted from a covered accident). This test is the same in virtually every other jurisdiction in the United States, and illustrates that an insurer's contractual duty to defend its insured is independent of and considerably broader than its duty to pay settlements or judgments. The insured does not control the allegations of the Complaint, and unless the allegations exclude coverage, the insurer owes a duty to defend.

Despite repetitively acknowledging this well-settled standard to determine an insurer's duty to defend, the Referee went on to apply a different and incorrect standard, one that does not exist under Connecticut law:

> Although the facts reviewed by the Supreme Court in Schilberg differ from those in this case, the test set forth by the Court is clear. Based on the Supreme Court's reasoning in these cases, the Holsons assertions are not enough to demonstrate that the sudden and accidental exception to the pollution exclusion applied based on the allegations in the KVL complaint. ***There is no specific allegation of such dispersal, release or escape of pollutants.*** To find one would require the kind of speculation the Supreme Court specifically refused to undertake. The claims do not fall within the sudden and accidental exception to the pollution exclusion.

Order, page 9-10 (emphasis added).

The Referee did not apply the correct standard. Instead, the Referee applied the outcome from Schilberg that was determined by the extraordinary facts in that case rather than by a departure from the well-settled standard for determining the duty to defend. The Referee failed to analyze whether the allegations in the KVL Complaint could "possibly" have encompassed a sudden and accidental release of pollutants that would trigger the duty to defend. Rather, the Referee summarily concluded in this one sentence analysis that there was no duty to defend because the KVL Complaint did not contain an affirmative "specific allegation" of a sudden and accidental release.

The Connecticut Supreme Court has never held, in Schilberg or any other case, that an insured must demonstrate that a complaint "specifically alleges" a covered occurrence to trigger an insurer's duty to defend. To the contrary, even in Schilberg the Connecticut Supreme Court has held that an insurer's duty to defend is triggered when "the plaintiff has demonstrated that a reasonable interpretation of the substance of the [Complaint] would bring the claims within the purview of the sudden and accidental discharge exception to the

policies." Schilberg, 819 A.2d at 784. All the insured must do is demonstrate that the allegations within the four corners of the complaint "raise the *possibility* that the event which caused the pollution-related property damage was sudden and accidental." Schilberg, 819 A.2d at 787.

Here, the allegations in the KVL Complaint plainly encompass the possibility of a sudden or accidental event which caused the pollution-related property damage. The Complaint alleged that there was "severe environmental contamination on the Wilton Site, concentrated in but not limited to the areas surrounding several large underground concrete 'vaults' which are adjacent and connected to the building on the Wilton Site through a network of underground piping." First Amended Complaint, ¶ 17. Quoting from an environmental assessment performed at the request of KVL, the complaint alleges that the contamination resulted from "disposal practices at the facility," which introduced the contaminant into the sump and vaults 1 and 2 and which in turn resulted in contamination of soils and groundwater. Id. at ¶ 19. This contamination, according to the complaint, was the result of "negligence or other actions" on the part of the Holson Company and the Holsons individually. Id. at ¶¶ 37, 41

The Complaint does not specify how the contamination itself occurred, at what point it occurred, or with what frequency it occurred. In other words, the allegations do not specify whether the contaminating event or events occurred over time or as a sudden event. The allegations certainly raise "the possibility" that the contamination came from a sudden and accidental discharge into or from the vaults and/or the underground piping. Whether it got

there as a result of a break or rupture in one of the underground structures or a spill inside the facility is not specifically alleged, but that is one of the only two likely ways it got there.[2]

Perhaps most important, KVL did not limit its opportunity to recover to underlying events that *did not fit* the sudden and accidental definition, and that is really the critical inquiry because the Holsons remained exposed to those covered claims. As a result, even according the pollution exclusion its broadest interpretation, the allegations of the Complaint raise the possibility that the exclusion may not apply to the particular facts developed in the KVL action. This is certainly a "reasonable interpretation" that can be inferred from the general allegations, and that is all that Schilberg and the other Connecticut cases require before imposing a duty to defend on the insurer.

The Referee cites to the decision in Schilberg at length, and also agrees that "the facts" "differ from those in this case." Order, page 9. That is a gross understatement – the facts in Schilberg bear no resemblance to this case. The KVL Complaint allegations could not be more different than the allegations in Schilberg, and they serve only to highlight why the Referee's failure to actually compare and discuss the differences between the allegations in these cases, and to apply the correct standard, resulted in the wrong conclusion.

The plaintiff in Schilberg was engaged in the business of treating and disposing of hazardous waste, and conducting waste reclamation, at its site. The "complaint" in Schilberg was the state agency's administrative action to recover its cost of cleanup at the site. The

---

[2] In EDO Corp. v. Newark Insurance Co., 898 F. Supp. 952, 962 (D.Conn. 1995), the court rejected the insurer's claim that the relevant allegations did not bring the dispute within the exception for "sudden and accidental" discharges:

> [b]ecause the Letter [from the EPA] is couched in general terms, and is silent as to the nature of the polluting releases, whether abrupt or slow, short term or long term, expected or unexpected, intentional or unintentional, it allows for the possibility that the pollution referred to occurred both suddenly and accidentally – and therefore that it was covered by the policies.

complaint alleged that Schilberg was a "generator of much of the waste unlawfully processed and disposed of at the site" and that its core "business dealings consist[ed] of arranging for treatment and disposal of waste containing hazardous substances." Schilberg, 819 A.2d at 785, fn. 7. The complaint described the use of a wide range of hazardous substances – including ash containing high levels of lead, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, dioxin and tetrachloroethylene – at various locations at the property, including the site soil, water creek sediments, and in five residential wells around the site. These alleged facts conclusively undermined "even the possibility" that the release was sudden and accidental.

It would be virtually impossible for a party conducting a waste business that included waste disposal on its site to claim that the occurrence of a pollution event was either sudden or accidental. Still, the plaintiff in Schilberg tried to "torture" the language in the complaint to suggest, against all hope and reason, that the release might have been sudden. The Supreme Court correctly rejected this absurd claim.

Schilberg argued that because its recycling activities "hypothetically" gave it an economic incentive to remove all of the processing by-products from the site, there was a possibility that those by-products that contaminated the site could have been the result of a sudden and accidental event. The court rejected this argument, because the facts demonstrated that Schilberg was in the waste disposal and handling business, and it would truly be "mere speculation" rather than a "reasonable interpretation" of the allegations in the complaint to suggest that in the midst of this intentional dumping some "accidental release" may have occurred. The court noted that the complaint "alleged that plaintiff's discharge of pollutants occurred over a span of five years and was the result of plaintiff's ongoing business

relationship with Cardinale" and there was "nothing accidental about such an arrangement, which is characteristic of an ordinary course of business." Schilberg, 819 A.2d at 788. In short, Schilberg could not offer a "reasonable interpretation" of the complaint that would even "possibly" cause coverage. The allegations established that Schilberg discharged waste on the site for many years in the ordinary course of business, and these allegations – in the absence of any other allegations suggesting an accidental release – negated any reasonable claim of a sudden and accidental release. Thus, the Connecticut Supreme Court properly rejected that claim.

The facts in Schilberg are nothing like the facts present in this case. The Holsons were in the business of manufacturing photo albums – not disposing of hazardous waste. The Holsons did not run their business on a hazardous waste disposal facility, they operated it on what they believed to be a clean manufacturing site with no history of disposal. The Holsons did not contract with third parties to treat their hazardous wastes – they contracted with third parties to manufacture photo albums, a very clean light-manufacturing process. The Connecticut DEP did not issue a complaint accusing the Holsons of years of intentional dumping; the KVL Complaint did not rest on any intentional dumping activities. The Holsons never intentionally disposed of any hazardous waste on their property. In sum, the KVL Complaint, unlike the complaint in Schilberg, did not accuse the Holsons of operating a hazardous waste business or releasing pollutants at the site as an ordinary part of their business for more than five years.

The Connecticut Supreme Court rejected Schilberg's frivolous claim because in the face of these extensive allegations of systematic, intentional disposal, the Supreme Court refused to credit Schilberg's speculation – in the absence of any specific allegations giving

credence to that speculation – that some accidental releases might have occurred. The Home seized on this aspect of the Schilberg decision to distort the holding into a hard and fast rule that unless a complaint contains a specific allegation of a sudden and accidental event, there is no duty to defend. That is not the holding in Schilberg. Rather, the Supreme Court held that in the face of a complaint that is predicated on systematic, intentional dumping over many years, it will require more than speculation before it concludes that the complaint encompasses sudden and accidental releases.

The Holsons do not quibble with the court's ruling in Schilberg – they dispute the Referee's misapplication of Schilberg (using the wrong standard) to the facts present in this case. Schilberg was in many respects the unusual case where the insured could not "raise the possibility" of a sudden or accidental event, and could not offer a "reasonable interpretation [that] [ ] the [Complaint] potentially would bring the claims within the purview of the sudden and accidental discharge exception to the policies." Id. The Schilberg administrative complaint's allegations precluded such a finding.

Schilberg ultimately stands for the unremarkable proposition that even the broad standard that imposes a duty to defend when the complaint "raises the possibility" of coverage has some limits. But the well-settled standard reiterated in Schilberg – that the allegations of a release could "possibly" fall within the coverage – is easily met here, where the KVL Complaint plainly encompasses pollution events that fall within the policy's coverage. This does not require "speculation" based on a "strained" and "implausible" reading of the complaint. Instead, it correctly applies a standard that triggers an insurer's duty to defend where a complaint "raises the possibility" that the allegations fall within an exclusion exception.

It is usually the case that plaintiffs do not have all of the facts when they institute an action, and that is why the KVL Complaint contains broad allegations and theories of liability. It is beyond peradventure that the contamination alleged by KVL could "possibly" have been the result of a sudden and accidental event,[3] and until all the facts are established, insurance companies have a duty and obligation to defend, since the facts uncovered in discovery often demonstrate covered causes.

In sum, the Referee misinterpreted and misapplied the applicable Connecticut standard for determining whether The Home had a duty to defend the KVL Complaint. Under Connecticut law, a reasonable interpretation of the allegations in the KVL Complaint "raises the possibility that the event which caused the pollution-related property damage was sudden and accidental." The Referee erred by accepting and applying the erroneous standard advanced by The Home. Under settled law, the KVL complaint triggered The Home's duty to defend, and The Home breached that duty. For these reasons, the Court should reverse the Referee's ruling.

IV. CONCLUSION

For the reasons set forth above, the Court should reverse the Referee's decision in the Order on the Merits and find that The Home breached its duty to defend the Holsons. The Holsons also respectfully request oral argument on this Motion.

[3] The Referee could not and did not dispute the conclusion that the KVL Complaint raised the possibility of coverage. The Referee's ruling is predicated solely on the erroneous application of Schilberg advanced by The Home, which plainly recognized that it could not succeed unless the Referee deviated from the well-established and correct standard.

Respectfully submitted,

SHELDON HOLSON AND MELVIN HOLSON

By their attorneys,

Dated: November 20, 2009

Gerald J. Petros (admitted *pro hac vice*)
Hinckley, Allen & Snyder LLP
50 Kennedy Plaza, Suite 1500
Providence, RI 02903
Phone: (401) 274-2000
Fax: (401) 277-9600
gpetros@haslaw.com

Christopher H.M. Carter, Esq. (#12452)
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, NH 03301
Phone: (603) 225-4334
Fax: (603) 224-8350
ccarter@haslaw.com

CERTIFICATE OF SERVICE

I hereby certify that I sent via electronic and first class mail a true and accurate copy of the within Merits Brief to Eric A. Smith, Esq., Rackemann, Sawyer & Brewster P.C., 160 Federal Street, Boston, MA 02110-1700 on November 20, 2009 and via first class mail to the Office of the Attorney General, Department of Justice, 33 Capitol Street, Concord, NH 03301.

1014116

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

K.V.L. CORPORATION, f/k/a MILL'S PRIDE, INC.,	:	
Plaintiff,	:	3:91CV00059 TFGD
vs.	:	CIVIL ACTION NO.
THE HOLSON COMPANY, DANBURY ROAD FAMILY PARTNERSHIP, MELVIN HOLSON SHELDON HOLSON TRC ENVIRONMENTAL CONSULTANTS, INC.,	:	
Defendants.	:	
	:	FEBRUARY 1, 1991

COMPLAINT

I. INTRODUCTION

1. This action is brought under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub.L. 99-499 ("CERCLA"); Connecticut's hazardous waste clean-up reimbursement statute, Conn.Gen.Stat. §22a-452; and Connecticut common law. The plaintiff, K.V.L. Corporation, f/k/a Mill's

Pride, Inc. ("Mill's Pride") is seeking:

(a) Recovery from each defendant of the response costs expended and to be expended by Mill's Pride, Inc. with respect to the soil, sediment, and groundwater contamination at property located on the westerly side of U.S. Route 7 (a/k/a Danbury Road) in Wilton, Connecticut, more particularly described in Exhibit "A" attached hereto (the "Wilton site");

(b) contribution from each defendant for its respective share of the response costs expended and to be expended at the Wilton site;

(c) a declaratory judgment finding each defendant liable for the future clean-up costs to be incurred at the Wilton site and allocating responsibility for such costs among the defendants;

(d) an injunction requiring each defendant to join with Mill's Pride to implement the additional work to be conducted at the Wilton site;

(e) monetary damages for negligence, breach of contract, strict liability in tort, nuisance, and misrepresentation.

II. JURISDICTION AND VENUE

2. This action arises under §§107(a) and 113(f)(1) of

CERCLA, 42 U.S.C. §§9607(a) and 9613(f)(1), under Conn.Gen.Stat. §22a-452, and under Connecticut common law.

3. This court has jurisdiction over this action pursuant to 28 U.S.C. §1331, and 42 U.S.C. §9613(b). This court has pendent jurisdiction over the state law claims.

4. Venue lies in the District of Connecticut pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b), because the Wilton site is located within this district and the alleged release or threatened releases of hazardous wastes or hazardous substances or materials from the Wilton site occurred in this district. Additionally, each of the defendants conducted business within this district at all times relevant to the events described in this Complaint.

III. PARTIES

5. The plaintiff K.V.L. Corporation, f/k/a Mill's Pride, Inc. is a corporation incorporated under the laws of the State of Connecticut, with its principal place of business in Stamford, Connecticut. The corporate plaintiff was originally incorporated on June 30, 1987 as K.V.L. Corporation. On March 24, 1988, K.V.L. Corporation changed its name to Mill's Pride, Inc. On June 12, 1990, Mill's Pride, Inc. changed its name back to K.V.L. Corporation.

6. The defendant The Holson Company ("Holson") is a corporation incorporated under the laws of the State of Connecticut, with its principal place of business in Forestdale, Rhode Island.

7. The defendant Danbury Road Family Partnership ("Partnership") is a Connecticut general partnership with offices at 22 Pent Road, Weston, Connecticut.

8. The defendants Melvin Holson and Sheldon Holson are individuals residing in Connecticut and were the sole partners of the defendant Partnership at all times relevant to this action.

9. The defendant TRC-Environmental Consultants, Inc. ("TRC") is a corporation incorporated under the laws of the State of Connecticut with its principal place of business at 800 Connecticut Boulevard, East Hartford, Connecticut.

IV. FACTUAL BACKGROUND

10. The Wilton site consists of 17.486 acres of land located on the westerly side of U.S. Route 7 (a/k/a Danbury Road). The site is traversed from north to south by the Norwalk River. The site is improved with a two-story masonry building serviced by an adjacent asphalt parking area.

11. From October 11, 1968 until December 19, 1986, Holson

owned the Wilton side. On December 19, 1986, Holson conveyed the Wilton site to the Partnership, although Holson continued, through a lease agreement, to possess a portion of the premises and operate its business from the site. On January 9, 1989, the defendant Partnership conveyed the Wilton site to Mill's Pride. Mill's Pride assumed the lease with Holson. Holson left the Wilton site at the expiration of its lease term on June 30, 1989.

12. Holson manufactured photograph albums at the Wilton site from its purchase in 1968 until approximately 1988, when it moved its manufacturing operations to other locations, but retained the Wilton site for office space.

13. On August 22, 1968, Mill's Pride, as buyer, and the Partnership, as seller, entered into a written purchase and sale agreement covering the Wilton site. The agreement contained the following provision:

> "To induce the Buyer to purchase, the Seller makes the following representations: . . .
>
> (d) That during the period of the Seller's ownership of the Premises, the Seller has not, to the best of the Seller's knowledge and belief, violated or permitted to be violated any environmental law or standard, including those related to pollution

> control, hazardous waste or other waste, and that the use made of the Premises during the period of the Seller's ownership would not provide the basis for any exercise of regulatory authority to enforce and such environmental law or standard or provide the basis of a claim now or in the future, by any person to be compensated for damage to person or property based upon pollution or contamination of the site."

14. Subsequent to entering into the purchase and sale agreement, and prior to the closing of title, Mill's Pride retained the services of TRC to conduct an "environmental audit" of the Wilton site so that Mill's Pride would be fully informed as to any past or present environmental problems affecting the Wilton site.

15. TRC issued a written report regarding its findings at the Wilton site which concluded, inter alia, that "the only chemical of concern used in the facility" was trichlorethylene or TCE, and that "the environmental site assessment found no conclusive evidence that any hazardous materials have been spilled on the Property."

16. Mill's Pride, relying upon the findings of TRC and the representations of the Partnership, completed the purchase of the Wilton site on January 9, 1989. Mill's Pride paid the

Partnership $7,180,000.00 for the site.

17. At the closing of title on January 9, 1989, the defendant Melvin Holson, on behalf of the Partnership, executed a sworn affidavit stating that the representations set forth in Paragraph 13, supra., were true and remained true as of the closing date.

18. Mill's Pride has not moved any of its business operations to the Wilton site, which has remained vacant since the departure of the tenant and former owner Holson.

19. During August and September, 1990, Mill's Pride, Inc. entered into negotiations to sell the Wilton site to United States Surgical Corporation ("U.S. Surgical"). U.S. Surgical commissioned an environmental site assessment prior to executing a written purchase and sale agreement.

20. The environmental site assessment commissioned by U.S. Surgical, and subsequent environmental testing undertaken by a consultant employed by Mill's Pride, have both discovered severe environmental contamination on the Wilton site, concentrated in but not limited to the areas surrounding several large underground concrete "vaults" connected to the building on the site through a network of underground piping. These "vaults" are constructed with pervious sidewalls designed

to allow their contents to leach out into the surrounding soil. The piping leading from the building to the "vaults" is, in many locations, within plain view, and was, in fact, seen and commented upon by TRC during its environmental site assessment.

21. U.S. Surgical informed Mill's Pride in writing on October 1, 1990 that, in view of "the apparent environmental and other unsatisfactory conditions of the property", it was no longer interested in purchasing the Wilton site.

22. The consultant retained by Mill's Pride after U.S. Surgical first raised its environmental concerns has issued a written report in which it has concluded, inter alia:

> "From our observations, laboratory analyses, and historical information obtained, we conclude that disposal practices at the facility introduced solvent contaminated materials into the sump and vaults 1 and 2, which has in turn resulted in contamination of soils and groundwater at the southern end of the site. Data from the sump and vaults 1 and 2 indicate elevated levels of a variety of solvent related compounds, including but not limited to 1,1,1-trichloroethane (TCA), trichloroethylene (TCE), tetrachloroethylene (PCE), toluene, ethyl benzene, and xylene. Groundwater samples from the two shallow wells, which are down gradient from these structures, indicated lower

levels of fewer, but related compounds."

23. As a result of the contamination of the Wilton site, Mill's Pride has been forced to expend large sums of money to identify the contaminants and evaluate the severity of the contamination, and will be forced to expend additional sums of money in the future to clean up the site and remediate the conditions existing there.

V. COUNT ONE (COST RECOVERY UNDER CERCLA)

24. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 23 of this Complaint in this Count One as if fully set forth herein.

25. Mill's Pride is a "person" within the meaning of §101(21) of CERCLA (42 U.S.C. §9601(21)).

26. The Wilton site is a "facility" within the meaning of §101(9)(B) of CERCLA (42 U.S.C. §9601(9)(B)).

27. Holson, the Partnership, and Sheldon and Melvin Holson are "persons" as defined in §101(21) of CERCLA (42 U.S.C. §9601(21)).

28. In accordance with Section 113(1) of CERCLA (42 U.S.C. §9613(1)), Mill's Pride has served a copy of this Complaint on the Attorney General of the United States and the

Administrator of the Environmental Protection Agency.

29. The materials and residues contained in the vaults, pipes, and surrounding soils and groundwater at the Wilton site either consist of or contain one or more hazardous substances as defined in §101(14) of CERCLA (42 U.S.C. §9601(14)). These substances include, but are not limited to, the following: 1,1,1-trichlorethane, trichloroethylene, toluene, ethyl benzene, and xylene.

30. There has been a "release" or "threatened release" of one or more hazardous substances at the Wilton site within the meaning of §101(22) of CERCLA (42 U.S.C. §9601(22)).

31. Pursuant to Section 107(a)(4)(B) of CERCLA (42 U.S.C. §9607(a)(4)(B)), any person who incurs necessary costs, consistent with the National Contingency Plan ("NCP"), 42 U.S.C. §9605 and 40 C.F.R. §300.1, et seq., in responding to a release or threatened release of hazardous substances at a facility, is authorized to recover these costs from other liable persons.

32. Under CERCLA, several classes of parties may be liable for response costs at a facility from which there has been a release or threatened release of a hazardous substance. These include, inter alia, the current owners or operators of a

facility (42 U.S.C. §9607(a)(1)); persons who owned or operated the facility at the time hazardous substances were disposed of or treated (42 U.S.C. §9607(a)(2)); and persons who arranged for the disposal of a hazardous substance at the facility (42 U.S.C. §9607(a)(3)).

33. The defendants Holson, the Partnership, and Sheldon and Melvin Holson are liable under 42 U.S.C. §9607(a)(2) or 42 U.S.C. §9607(a)(3), or both.

34. All response costs incurred and to be incurred by Mill's Pride in its clean-up of soil and groundwater at the Wilton site have been and will be necessary and consistent with the NCP.

35. The defendants Holson, the Partnership, and Sheldon and Melvin Holson are jointly and severally liable under §107(a) of CERCLA (42 U.S.C. §9607(a)), for the costs Mill's Pride has incurred and will incur in the future at the Wilton site.

VI. COUNT TWO (CONTRIBUTION UNDER CERCLA)

36. Mill's Pride, Inc. hereby incorporates the allegations contained in Paragraphs 1 through 35 of this Complaint in this Count Two as if fully set forth herein.

37. Pursuant to Section 113(f)(1) of CERCLA (42 U.S.C

§9613(f)(1)), any person who has paid more than its allocable share of response costs may seek contribution from any other person who is liable or potentially liable under §107(a) of CERCLA (42 U.S.C. §9607(a)).

38. As a result of the expenditures it has incurred and will incur for clean-up of the Wilton site, Mill's Pride has a right of contribution against the defendants Holson, the Partnership, and Melvin and Sheldon Holson for their allocable shares of the response costs incurred and to be incurred.

VII. COUNT THREE (CONNECTICUT HAZARDOUS WASTE REIMBURSEMENT)

39. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 23 of this Complaint in this Count Three as if fully set forth herein.

40. The existence of the contamination in the soil and groundwater at the Wilton site is the result of the negligence or other actions of the defendants Holson and/or the Partnership.

41. Upon the discovery of the contamination at the Wilton site, Mill's Pride acted to contain, to remove, and/or to otherwise mitigate the effects of these hazardous substances.

42. Because the polluted condition of the Wilton site is a result of the negligence or other actions of the defendants

Holson and/or the Partnership, Mill's Pride seeks reimbursement for containment and removal costs incurred to date and for any such future costs pursuant to Conn.Gen.Stat. §22a-452.

VIII. COUNT FOUR (NEGLIGENCE OF HOLSON)

43. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 23 of this Complaint in this Count Four as if fully set forth herein.

44. The contamination of the Wilton site was caused by the negligence of the defendant Holson in that it knew or should have known that the improper disposal of the substances found in and around the "vaults" and associated piping was likely to cause the type of harm discovered by Mill's Pride, and the defendant Holson was, therefore, obliged to use due care.

45. The defendant Holson failed to exercise the required care in disposing of the substances found on the Wilton site.

46. As a result of the negligence of the defendant Holson as aforesaid, Mill's Pride has suffered damages, including loss of property value, clean-up expenditures, and other as yet undetermined losses.

IX. COUNT FIVE (NEGLIGENCE OF TRC)

47. Mill's Pride hereby incorporates the allegations

contained in Paragraphs 1 through 23 of this Complaint in this Count Five as if fully set forth herein.

48. The defendant TRC was negligent in its performance of the environmental site assessment at the Wilton site in that it failed to discover the contamination of the site caused by the improper disposal of hazardous substances in the "vaults" located on the site.

49. As a result of the negligence of the defendant TRC, Mill's Pride has been damaged in that it chose to purchase the Wilton site in reliance upon the findings of the defendant TRC to the effect that there were no serious environmental problems at the site.

X. COUNT SIX (BREACH OF CONTRACT BY THE PARTNERSHIP)

50. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 23 of this Complaint in this Count Six as if fully set forth herein.

51. The defendant Partnership breached the terms of the purchase and sale agreement it entered into with Mill's Pride in that the defendant Partnership violated or permitted to be violated environmental laws and/or standards at the Wilton site, contrary to the representations made in said agreement.

52. As a result of the defendant Partnership's breach

Mill's Pride has been damaged, in that, in reliance upon the representation of said defendant, Mill's Pride purchased the Wilton site, and has since been forced to incur expenses and will incur future expenses to complete an environmental clean-up of the site.

XI. COUNT SEVEN (BREACH OF CONTRACT OF TRC)

53. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 23 of this Complaint in this Count Seven as if fully set forth herein.

54. The defendant TRC breached the contract it entered into with Mill's Pride to perform an environmental site assessment of the Wilton site in that it performed said assessment so inadequately that it failed to discover any evidence of the contamination which was subsequently discovered throughout the site.

55. As a result of the breach of TRC, Mill's Pride has been damaged, in that, in reliance upon the findings of TRC, it purchased the Wilton site and has since been forced to incur expenses and will incur future expenses to complete the environmental clean-up of the site.

XII. COUNT EIGHT (STRICT LIABILITY OF HOLSON)

56. Mill's Pride hereby incorporates the allegations

contained in Paragraphs 1 through 23 of this Complaint in this Count Eight as if fully set forth herein.

57. Regardless of the lawful purpose of the defendant Holson's activities at the Wilton site or its exercise of due care, the defendant Holson engaged in an abnormally dangerous activity by disposing or leaking several substances which are classified as hazardous by the federal government.

58. The hazardous substances disposed of by the defendant Holson expose persons and property to injury.

59. As a result of the intrinsically dangerous conduct of the defendant Holson, said defendant is liable to Mill's Pride for property damage, financial loss, and other as yet undetermined injuries.

XIII. COUNT NINE (NUISANCE - AS TO HOLSON)

60. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 23 of this Complaint in this Count Nine as if fully set forth herein.

61. The disposal or leakage of the hazardous substances discovered at the Wilton site had an inherent tendency to create damage or inflict injury upon persons or property in the area and were an unreasonable use of the site.

62. The improper disposal or leakage of the hazardous

substances created an unreasonable dangerous and continuous condition of soil and ground water contamination which has interfered with and continues to interfere with Mill's Pride's use and enjoyment of the Wilton site.

63. The presence of hazardous substances in the soil and groundwater of the Wilton site constitutes a continuing nuisance for which the defendant Holson is responsible.

XIV. COUNT TEN (MISREPRESENTATION)

64. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 23 of this Complaint in this Count Ten as if fully set forth herein.

65. By executing the written purchase and sale agreement containing the representations set forth in Paragraph 13, supra., and by executing the affidavit set forth in Paragraph 17, supra., the defendants Partnership, Melvin Holson, and Sheldon Holson fraudulently and/or negligently misrepresented environmental conditions at the Wilson site.

66. Mill's Pride relied on said representations in electing to purchase the Wilson site.

67. As a result of said misrepresentations, Mill's Pride has been damaged, in that, in reliance on said misrepresentations, Mill's Pride purchased the Wilton site and

has since been forced to incur expenses and will incur future expenses to complete the environmental clean-up of the site.

WHEREFORE, the Plaintiff claims:

1. A judgment declaring the defendants Holson, the Partnership, and Melvin and Sheldon Holson jointly and severally liable for all response costs Mill's Pride has incurred and may incur in the future at the Wilton site;

2. A judgment declaring the allocable liability of the defendants Holson, the Partnership, and Melvin and Sheldon Holson and awarding damages against each defendant for that portion of the costs that Mill's Pride has expended (with interest thereon from the date of the expenditure) in conducting a clean-up of the Wilton site and in other activities preliminary thereto;

3. A judgment declaring the defendants Holson, the Partnership and Melvin and Sheldon Holson liable for their proportionate share of the future costs Mill's Pride may incur in clean-up of the Wilton site;

4. (As to the defendants Holson, the Partnership, and Melvin and Sheldon Holson only) monetary damages equal to the response costs expended to the date of judgment (with interest thereon from the date of expenditure) at the Wilton site;

5. (As to the defendants Holson, the Partnership, and Melvin and Sheldon only) costs and attorney's fees incurred in connection with this suit;

6. Monetary damages;

7. Punitive damages;

8. Costs;

9. Such other and further relief as the Court deems appropriate.

PLAINTIFF
K.V.L. CORPORATION, f/k/a
MILL'S PRIDE, INC.

By _____
Clifford J. Grandjean, of
Sorokin, Sorokin, Gross,
Hyde & Williams, P.C.
One Financial Plaza
Hartford, CT 06103
(203) 525-6645

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, with the buildings and improvements thereon situated in the Town of Wilton, County of Fairfield and State of Connecticut, being 17.68 acres, more or less, in area, bounded and described as follows:

Beginning at a point on the Westerly side of the Norwalk-Danbury Road, which point is 150 feet North of Arrowhead Road, thence running along land of Nicholas Santaniello, et al and land of Lois Santaniello, each in part;

N 53-49-40 W - 12.49 feet.
N 58-41-30 W - 20.01 feet.
N 55-17-30 W - 306.59 feet.
and N 62-23-20 W - 50 feet, more or less, to the centerline of the Norwalk River.

Thence running in a Northerly direction along said river centerline 136 feet, more or less to a point. Thence running in a Northwesterly direction along land of the State of Connecticut, a distance of 734 feet, more or less, to a point, and N 85-54-00 W - 69.91 feet to a point.

Thence continuing along land of the State of Connecticut in a Northeasterly direction along a curve to the right of radius 4,468.66 feet, an arc distance of 392.50 feet,

N 40-37-31 E - 196.62 feet;
N 33-23-19 E - 344.95 feet to a point in the Norwalk River at land of The Perkin Elmer Corporation.

Thence running in a Southerly direction along the approximate centerline of said Norwalk River adjoining land of said Perkin Elmer Corporation;

S 14-22-00 E - 18.30 feet.
S 8-15-00 E - 56.47 feet.
S 1-02-00 E - 75.20 feet.
S 15-17-30 W - 132.70 feet.
and S 4-28-00 W - 100.08 feet to a point.

Thence running in an Easterly direction along land of said Perkin Elmer Corporation;

S 67-58-30 E - 66.00 feet.
S 84-00-00 E - 9.47 feet.
S 88-08-40 E - 100.10 feet.
S 83-02-40 E - 100.01 feet and,
S 78-53-00 E - 34.74 feet to land of Calvin W. Irwin

Thence running in a Southerly and Easterly direction along land of said Irwin;

S 15-06-55 W - 330.46 feet.
N 76-20-05 E - 13.00 feet.
S 89-21-33 E - 9.84 feet.
N 10-53-23 E - 12.62 feet.
N 85-58-30 E - 22.24 feet and,
S 85-33-00 E - 224.26 feet to a point on the Westerly side of Norwalk-Danbury Road.

Thence running in a Southerly direction along said Westerly side of the Norwalk-Danbury Road;

S 19-13-20 W - 92.30 feet.
S 21-01-30 W - 101.10 feet.
S 15-27-00 W - 129.73 feet.
S 14-54-10 W - 725.28 feet.
S 18-26-00 W - 0.76 feet to the point or place of beginning.

The premises described herein are more particularly shown and described on that certain map entitled "Map of Property Prepared For The Nolson Company -Wilton, Connecticut - Scale 1" = 50' - May 27, 1986 - by Leo Leonard, Land Surveyor" which map is on file as Map No. 4330 in the office of the Wilton Town Clerk.

EXCEPTING THEREFROM all that certain tract or parcel of land condemned by the State of Connecticut by filing an Assessment and Notice of Condemnation on December 1, 1988 with the Clerk of the Superior Court in the Judicial District of Stamford-Norwalk at Stamford. A Certificate of Condemnation has been recorded on December 1, 1988 in Volume 669, Page 262 of the Wilton Land Records. This Excepted parcel is bound and described as follows:

All that certain tract or parcel of land, with the buildings and improvements thereon situated, in the Town of Wilton, County of Fairfield and State of Connecticut, on the southeasterly side of Present U.S. Route 7, and bounded:

NORTHWESTERLY: by land of the State of Connecticut, Present U.S. Route 7, a total distance of 460 feet, more or less;

EASTERLY: by Owner's remaining land, 98 feet, more or less, by a line designated "Taking Line," as shown on the map hereinafter referred to;

SOUTHEASTERLY: by said remaining land, 349 feet, more or less, by a line designated "Taking Line," as shown on said map;

SOUTHERLY: by land of the State of Connecticut, 39 feet, more or less.

And said parcel contains 0.300 of an acre, more or less, together with all appurtenances, all of which more particularly appears on a map entitled: "Town of Wilton, Map Showing Land Acquired From Danbury Road Family Partnership by The State of Connecticut, U.S. Route 7, Scale 1" = 40', October 1987, Robert W. Cubala, Transporation Chief Engineer - Bureau of Highways."

JUN 11 1993

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

K.V.L. CORPORATION, f/k/a MILL'S PRIDE, INC.,	:	
Plaintiff,	:	CIVIL ACTION NO. 5:91cv59(TFGD)
v.	:	
THE HOLSON COMPANY, DANBURY ROAD FAMILY PARTNERSHIP, MELVIN HOLSON, and SHELDON HOLSON	:	
Defendants.	:	JUNE 9, 1993

FIRST AMENDED COMPLAINT

I. INTRODUCTION

1. This action is brought under the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub.L. 99-499 ("CERCLA"); Connecticut's hazardous waste clean-up reimbursement statute, Conn.Gen.Stat. §22a-452; Connecticut's Transfer Act, Conn. Gen. Stat. § 22a-134a and Connecticut common law. The plaintiff, K.V.L. Corporation, f/k/a Mill's Pride, Inc. ("Mill's Pride") is seeking:

(a) Recovery from each defendant of the response costs expended and to be expended by Mill's Pride with respect to the soil, sediment, and groundwater contamination at property located on the westerly side of U.S. Route 7 (a/k/a

Danbury Road) in Wilton, Connecticut, more particularly described in Exhibit "A" attached hereto (the "Wilton Site");

(b) contribution from each defendant as to each defendant's respective share of the response costs expended at the Wilton Site;

(c) a declaratory judgment finding each defendant liable for the future clean-up costs to be incurred at the Wilton Site and allocating responsibility for such costs among the defendants;

(d) an injunction requiring each defendant to join with Mill's Pride to implement the additional work to be conducted at the Wilton site;

(e) monetary damages for negligence, breach of contract, strict liability in tort, nuisance, and misrepresentation, and failure to comply with the Transfer Act.

II. JURISDICTION AND VENUE

2. This action arises under CERCLA, 42 U.S.C. §§9607(a) and 9613(f)(1), under Conn. Gen. Stat. §22a-452, and under Connecticut common law.

3. This court has jurisdiction over this action pursuant to 28 U.S.C. §1331, and 42 U.S.C. §9613(b). This court has pendent jurisdiction over the state law claims.

4. Venue lies in the District of Connecticut pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §9613(b), because the Wilton Site is located within this district and the alleged release or threatened releases of hazardous wastes or hazardous substances at the Wilton Site occurred in this district. Additionally, each of the defendants conducted business within this district at all times relevant to the events in this Complaint.

III. **PARTIES**

5. The plaintiff K.V.L. Corporation, f/k/a Mill's Pride, Inc. is a corporation incorporated under the laws of the State of Connecticut, with its principal place of in Stamford, Connecticut. The corporate plaintiff was originally incorporated on June 30, 1987 as K.V.L. Corporation. On March 24, 1988, K.V.L. Corporation changed its name to Mill's Pride, Inc. On June 12, 1990, Mill's Pride, Inc. changed its name back to K.V.L. Corporation.

6. The defendant The Holson Company ("Holson") is a corporation incorporated under the laws of the State of Connecticut, with its principal place of business in Forestdale, Rhode Island.

7. The defendant Danbury Road Family Partnership (the "Partnership") is a Connecticut general partnership with offices at 22 Pent Road, Weston, Connecticut.

8. The defendants Melvin Holson and Sheldon Holson are individuals residing in Connecticut and were the general partners of the defendant Partnership at all times relevant to this action.

IV. FACTUAL BACKGROUND

9. The Wilton Site consists of 17.486 acres of land located on the westerly side of U.S. Route 7 (a/k/a Danbury Road). The Wilton Site is traversed from north to south by the Norwalk River, and is improved with a two-story masonry building serviced by an adjacent asphalt parking area.

10. From October 11, 1968 until December 19, 1986, Holson owned the Wilton Site. On December 19, 1986, Holson conveyed the Wilton Site to the Partnership, and Holson continued to possess a portion of the premises pursuant to a Lease agreement between the Partnership and Holson. On January 9, 1989, the Partnership conveyed the Wilton Site to Mill's Pride and Mill's Pride assumed the lease with Holson. Holson left the Wilton Site at the expiration of its lease term on June 30, 1989.

11. Holson manufactured and assembled photograph albums and conducted various related activities at the Wilton Site from its purchase in 1968 until approximately July, 1988, when it moved its manufacturing operations to other locations, but Holson retained the Wilton Site for office space until it vacated the premises on or about June 29, 1989.

12. On August 22, 1988, Mill's Pride, as buyer, and the Partnership, as seller, entered into a written purchase and sale agreement covering the Wilton Site, which agreement contained the following provision:

> "To induce the Buyer to purchase, the Seller makes the following representations: ...
>
> (d) That during the period of the Seller's ownership of the Premises, the Seller has not, to the best of the Seller's knowledge and belief, violated or permitted to be violated any environmental law or standard, including those related to pollution control, hazardous waste or other waste, and that the use made of the Premises during the period of the Seller's ownership would not provide the basis for any exercise of regulatory authority to enforce and such environmental law or standard or provide the basis of a claim now or in the future, by any person to be compensated for damage to person or property based upon pollution or contamination of the site."

13. At the closing of title on January 9, 1989, the defendant Melvin Holson, on behalf of the Partnership, executed a sworn affidavit stating that the representations

set forth in Paragraph 12, supra, were true and remained true as of the closing date.

14. Mill's Pride, relying upon the representations of the Partnership and Melvin Holson, completed the purchase of the Wilton Site on January 9, 1989. Mill's Pride paid the Partnership $7,180,000.00 for the Wilton Site.

15. Mill's Pride has not moved any of its business operations to the Wilton Site and has not operated any other businesses at the Wilton Site, which has remained vacant since the departure of the tenant and former owner, Holson.

16. During August and September, 1990, Mill's Pride entered into negotiations to sell the Wilton Site to United States Surgical Corporation ("U.S. Surgical"). U.S. Surgical commissioned an environmental site assessment prior to executing a written purchase and sale agreement.

17. The environmental site assessment commissioned by U.S. Surgical, and subsequent environmental testing undertaken by a consultant employed by Mill's Pride, have discovered severe environmental contamination on the Wilton Site, concentrated in but not limited to the areas surrounding several large underground concrete "vaults" which are adjacent and connected to the building on the Wilton Site through a network of underground piping. These "vaults" were

constructed with pervious sidewalls and/or open bottoms designed to allow their contents to leach out into the surrounding soil.

18. U.S. Surgical informed Mill's Pride in writing on October 1, 1990 that, in view of "the apparent environmental and other unsatisfactory conditions of the property," it was no longer interested in purchasing the Wilton Site.

19. The consultant retained by Mill's Pride after U.S. Surgical first raised its environmental concerns has issued a written report in which it concluded, inter alia:

> "From our observations, laboratory analyses, and historical information obtained, we conclude that disposal practices at the facility introduced solvent contaminated materials into the sump and vaults 1 and 2, which has in turn resulted in contamination of soils and groundwater at the southern end of the site. Data from the sump and vaults 1 and 2 indicate elevated levels of a variety of solvent related compounds, including but not limited to 1,1,1-trichloroethane (TCA), trichloroethylene (TCE), tetrachloroethylene (PCE), toluene, ethyl benzene, and xylene. Groundwater samples from the two shallow wells, which are down gradient from these structures, indicated lower levels of fewer but related compounds."

20. As a result of the contamination of the Wilton Site, Mill's Pride has been forced to expend large sums of money to identify the contaminants and evaluate the severity of the contamination, and will be forced to expend additional sums of

money in the future to clean up the Wilton Site and remediate the conditions existing there.

V. COUNT ONE (COST RECOVERY UNDER CERCLA)

21. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amended Complaint in this Count One as if fully set forth herein.

22. Mill's Pride is a "person" within the meaning of §101(21) of CERCLA (42 U.S.C. §9601(21).

23. The Wilton Site is a "facility" within the meaning of §101(9)(B) of CERCLA (42 U.S.C. §9601(9)(B)).

24. Holson, the Partnership, Melvin Holson and Sheldon Holson are "persons" as defined in §101(21) of CERCLA (42 U.S.C. §9601(21)).

25. In accordance with 42 U.S.C. §9613(1), Mill's Pride has served a copy of its original Complaint on the Attorney General of the United States and the Administrator of the Environmental Protection Agency.

26. The materials and residues contained in the vaults, pipes, and surrounding soils and groundwater at the Wilton site either consist of or contain one or more hazardous substances as defined in CERCLA (42 U.S.C. §9601(14)). These substances include, but are not limited to, the following:

1,1,1-trichloroethane, trichloroethylene, toluene, ethyl benzene, and xylene.

27. There has been a "release" or "threatened release" of one or more hazardous substances at the Wilton site within the meaning of CERCLA (42 U.S.C. §9601(22)).

28. Pursuant to CERCLA (42 U.S.C. §9607(a)(4)(B)), any person who incurs necessary costs, consistent with the National Contingency Plan ("NCP"), 42 U.S.C. §9605 and 40 C.F.R. 300.1, et seq., in responding to release or threatened release of hazardous substances at facility, is authorized to recover these costs from other liable persons.

29. Under CERCLA, several classes of parties may be liable for response costs at a facility from which there has been a release or threatened release of a hazardous substance. These include, inter alia, persons who owned or operated the facility at the time hazardous substances were disposed of or treated (42 U.S.C. §9607(a)(2)); and persons who arranged for the disposal of a hazardous substance at the facility (42 U.S.C. §9607(a)(3)).

30. The defendants Holson, the Partnership, Sheldon Holson, and Melvin Holson are liable under 42 U.S.C. §9607(a)(2) or 42 U.S.C. §9607(a)(3), or both.

31. All response costs incurred and to be incurred by Mill's Pride in its clean-up of soil and groundwater at the Wilton Site have been and will be necessary and consistent with the NCP.

32. The defendants Holson, the Partnership, Sheldon Holson, and Melvin Holson are jointly and severally liable under CERCLA (42 U.S.C. §9607(a)), for the costs Mill's Pride has incurred and will incur in the future at the Wilton Site.

VI. COUNT TWO (CONTRIBUTION UNDER CERCLA)

33. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 32 of this First Amended Complaint in this Count Two as if fully set forth herein.

34. Pursuant to CERCLA (42 U.S.C. §9613(f)(1)), any person who has paid more than its allocable share of response costs may seek contribution from any other person who is liable or potentially liable under CERCLA (42 U.S.C. §9607(a)).

35. As a result of the expenditures it has incurred and will incur for clean-up of the Wilton Site, Mill's Pride has a right of contribution against the defendants Holson, the Partnership, Melvin Holson, and Sheldon Holson for their allocable shares of the response costs incurred and to be incurred.

VII. COUNT THREE (CONNECTICUT HAZARDOUS WASTE REIMBURSEMENT)

36. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amended Complaint in this Count Three as if fully set forth herein.

37. The existence of the contamination in the soil and groundwater at the Wilton Site is the result of the negligence or other actions of the defendants Holson and/or the Partnership.

38. Upon the discovery of the contamination at the Wilton Site, Mill's Pride acted to contain, to remove, and/or to otherwise mitigate the effects of these hazardous substances.

39. Because the polluted condition of the Wilton Site is a result of the negligence or other actions of the defendants Holson and/or the Partnership, Mill's Pride seeks reimbursement from the defendants for containment and removal costs incurred to date and for any such future costs pursuant to Conn.Gen.Stat. §22a-452.

VIII. COUNT FOUR (NEGLIGENCE OF HOLSON)

40. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amended Complaint in this Count Four as if fully set forth herein.

41. The contamination of the Wilton Site was caused by the negligence of the defendant Holson in that it knew or should have known that the improper disposal of the substances found in and around the "vaults" and associated piping was likely to cause the type of harm discovered by Mill's Pride, and the defendant Holson was, therefore, obliged to use due care.

42. The defendant Holson failed to exercise the required care in disposing of the substances found on the Wilton Site and in failing to warn Mill's Pride of such contamination in advance of its purchase of the property on January 9, 1989.

43. As a result of the negligence of the defendant Holson as aforesaid, Mill's Pride has suffered damages, including loss of property value, clean-up expenditures, and other as yet undetermined losses.

IX. COUNT FIVE (BREACH OF CONTRACT BY THE PARTNERSHIP)

44. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amdended Complaint in this Count Five as if fully set forth herein.

45. The defendant Partnership breached the terms of the purchase and sale agreement it entered into with Mill's Pride in that the defendant Partnership violated or permitted to be violated environmental laws and/or standards at the Wilton Site, contrary to the representations made in said agreement and/or the representation concerning the environmental use and condition of the premises was otherwise false.

46. As a result of the defendant Partnership's breach, Mill's Pride has been damaged, in that, in reliance upon the representation of said defendant, Mill's Pride purchased the Wilton Site, and has since been forced to incur expenses and will incur future expenses to complete clean-up of the Wilton Site.

X. COUNT SIX (STRICT LIABILITY OF HOLSON)

47. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amended Complaint in this Count Six as if fully set forth herein.

48. Regardless of the lawful purpose of the defendant Holson's activities at the Wilton Site or its exercise of due

care, the defendant Holson engaged in an abnormally dangerous activity by disposing or leaking several substances which are classified as hazardous by the federal government and/or the State of Connecticut.

49. The hazardous substances improperly disposed of by the defendant Holson expose persons and property to injury and pose a threat to the environment.

50. As a result of the intrinsically dangerous conduct of the defendant Holson, said defendant is liable to Mill's Pride for property damage, financial loss, and other as yet undetermined injuries.

XI. COUNT SEVEN (NUISANCE - AS TO HOLSON)

51. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amended Complaint in this Count Seven as if fully set forth herein.

52. The disposal or leakage of the hazardous substances discovered at the Wilton Site had an inherent tendency to create damage or inflict injury upon persons or property in the area and were an unreasonable use of the Wilton Site.

53. The improper disposal or leakage of the hazardous substances created an unreasonable dangerous and continuous condition of soil and ground water contamination which has

interfered with and continues to interfere with Mill's Pride's use and enjoyment of the Wilton Site.

54. The presence of hazardous substances in the soil and groundwater of the Wilton site constitutes a continuing nuisance for which the defendant Holson is responsible.

XII. COUNT EIGHT (MISREPRESENTATION)

55. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amended Complaint in this Count Eight as if fully set forth herein.

56. By executing the written purchase and sale agreement containing the representations set forth in Paragraph 12, supra, by executing the affidavit set forth in Paragraph 13, supra, and by making certain other representations about the use of the Wilton Site by Holson the defendants Partnership, Melvin Holson, and Sheldon Holson fraudulently and/or negligently misrepresented environmental conditions at the Wilton Site.

57. Mill's Pride relied on said representations in electing to purchase the Wilson Site.

58. As a result of said misrepresentations, Mill's Pride has been damaged, in that, in reliance on said misrepresentations, Mill's Pride purchased the Wilton Site and has since been forced to incur expenses and will incur future

expenses to complete the environmental clean-up of the Wilton Site.

XIII. COUNT NINE (VIOLATION OF TRANSFER ACT BY HOLSON)

59. Mill's Pride hereby incorporates the allegations contained in Paragraphs 1 through 20 of this First Amended Complaint in this Count Nine as if fully set forth herein.

60. From 1968 through January, 1989, the Wilton Site was an "establishment" under Section 22a-134(3) of the Connecticut General Statutes, in that Holson generated more than 100 kilograms of "hazardous waste" at the Wilton Site in one or more months during that time period.

61. The sale of the Wilton Site from Holson to the Partnership on December 19, 1986, constituted the "transfer of an establishment" under Section 22a-134(1) of the Connecticut General Statutes, in that it was a transfer of the ownership of an operation which involved the generation, storage, handling and/or disposal of "hazardous waste."

62. Holson, in transferring the Wilton Site to the Partnership on December 19, 1986, failed to file a "negative declaration" or "certification" with the Commissioner of the Connecticut Department of Environmental Protection ("DEP"),

and therefore was and continues to be in violation of §22a-134a, Conn. Gen. Stat.

63. Mill's Pride as a subsequent transferee of the Wilton Site has been directly and indirectly damaged by Holson's failure to file a "negative declaration" or "certification" in that Mill's Pride was not put on notice of the contamination at the Wilton Site and therefore acquired the property and suffered damages including the loss in the property value after the true condition of the Wilton Site was discovered and the costs to remediate and maintain the property.

XIV. COUNT TEN (VIOLATION OF THE TRANSFER ACT BY THE PARTNERSHIP, MELVIN HOLSON AND SHELDON HOLSON)

64. Mill's Pride hereby incorporates the allegations contained in paragraphs 1 through 20 of this First Amended Complaint in this Count Ten as if fully set forth herein.

65. From 1968 through January, 1989, the Wilton Site was an "establishment" under Section 22a-134(3) of the Connecticut General Statutes, in that Holson generated more than 100 kilograms of "hazardous waste" at the Wilton Site in one or more months during that time period.

66. On or about October 26, 1986, Sheldon Holson and Melvin Holson transferred a controlling interest in the stock of Holson to certain investors and such transfer constituted a

"transfer of an establishment" under § 22a-134(1) in that it was a transfer of the ownership of substantially all of the stock of Holson which was an operation which involved the generation, storage, handling and/or disposal of "hazardous waste."

67. The transfer by Sheldon and Melvin Holson of a controlling interest in Holson was made without the filing of any "negative declaration" or "certification" with the DEP and was therefore in violation and continues to the present time to be in violation of §22a-134a Conn. Gen. Stat.

68. The Partnership's transfer of the Wilton Site to Mill's Pride on January 9, 1989, constituted the "transfer of an establishment" under Section 22a-134(1) of the Connecticut General Statutes, in that it was a transfer of the ownership of an operation which involved the generation, storage, handling and/or disposal of "hazardous waste."

69. The Partnership in selling the Wilton Site to Mill's Pride violated Section 22a-134a of the Connecticut General Statutes in that the Partnership failed to file a "negative declaration" or "certification" with the DEP as required and the Partnership's violation has continued to the present.

70. Mill's Pride as a subsequent transferee of the Wilton Site has been directly and indirectly damaged by the

failures of Sheldon Holson, Melvin Holson, and the Partnership to file "negative declarations" or "certifications" in that Mill's Pride was not put on notice of the contamination at the Wilton Site and therefore acquired the property and suffered damages including the loss in the property value after the true condition of the Wilton Site was discovered and the costs to remediate and maintain the property.

WHEREFORE, the Plaintiff claims:

1. All costs that Plaintiff has caused to be expended or will cause to be expended in response to the release of Hazardous Substances at the site pursuant to CERCLA, including attorneys' fees pursuant to CERCLA, 42 U.S.C. 9601 et seq.;

2. A judgment declaring the defendants Holson, the Partnership, Melvin Holson and Sheldon Holson jointly and severally liable for all future costs of remediation of the Wilton Site pursuant to CERCLA 42 U.S.C. § 9607(a)(4)(b) 9613(g)(2);

3. All costs, including reasonable attorney's fees, that Plaintiff has been caused to expend or will be caused to expended in connection with containing, removing, or mitigating the effects of the release or seepage of Hazardous Substances by Defendants pursuant to Conn. Gen. Stat. §22a-452;

4. Compensatory and consequential damages pursuant to the Transfer Act Conn. Gen. Stat. § 22a-134b and common law;

5. Prejudgment and postjudgment interest;

6. Reasonable attorney's fees pursuant to CERCLA, and Conn. Gen. Stat. §22a-452, 22a-134b;

7. Punitive damages pursuant to common law;

8. Costs of this action;

9. Such other and further relief as the Court deems appropriate.

THE PLAINTIFF,
K.V.L. CORPORATION, f/k/a MILL'S PRIDE, INC.

By _____

Peter M. Nolin (CT 06223)
Gary S. Klein (CT 09827)
Schatz & Schatz, Ribicoff & Kotkin
One Landmark Square, Suite 1700
Stamford, CT 06901-2676
(203) 964-0027
(203) 357-9251 (Fax)
Its Attorneys

CERTIFICATION

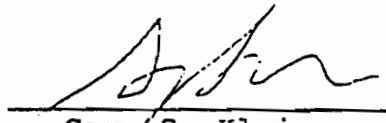
I hereby certify that a copy of the foregoing has been sent via U.S. mail, postage prepaid on this 9th day of June, 1993 to the following:

Donna Nelson Heller, Esq.
Finn, Dixon & Herling
One Landmark Square
Stamford, CT 06901

Stewart I. Edelstein, Esq.
Cohen & Wolf, P.C.
1115 Broad Street
Bridgeport, CT 06604

Mark J. Zimmerman, Esq.
Updike, Kelly & Spellacy
One State Street
P.O. Box 31277
Hartford, CT 06103

Gerald J. Petros
Hinckley Allen & Snyder
1500 Fleet Center
Providence, RI 02903



Gary S. Klein

J:\4011563.01

EXHIBIT "A"

J:\4011563.01

ALL THAT CERTAIN TRACT OR PARCEL OF LAND, with the buildings and improvements thereon situated in the Town of Wilton, County of Fairfield and State of Connecticut, being 17.68 acres, more or less, in area, bounded and described as follows:

Beginning at a point on the Westerly side of the Norwalk-Danbury Road, which point is 150 feet North of Arrowhead Road, thence running along land of Nicholas Santaniello, et al and land of Lois Santaniello, each in part;

N 53-49-40 W - 32.49 feet.
N 58-41-30 W - 20.01 feet.
N 55-17-30 W - 306.59 feet.
and N 62-23-20 W - 50 feet, more or less, to the centerline of the Norwalk River.

Thence running in a Northerly direction along said river centerline 136 feet, more or less to a point. Thence running in a Northwesterly direction along land of the State of Connecticut, a distance of 734 feet, more or less, to a point, and N 85-54-00 W - 69.91 feet to a point.

Thence continuing along land of the State of Connecticut in a Northeasterly direction along a curve to the right of radius 4,468.66 feet, an arc distance of 392.50 feet,

N 40-37-31 E - 196.62 feet;
N 33-23-19 E - 344.95 feet to a point in the Norwalk River at land of The Perkin Elmer Corporation.

Thence running in a Southerly direction along the approximate centerline of said Norwalk River adjoining land of said Perkin Elmer Corporation:

S 14-22-00 E - 18.30 feet.
S 8-[illegible]-00 E - 56.47 feet.
S 1-02-00 E - 75.20 feet.
S 15-17-30 W - 132.70 feet.
and S 4-28-00 W - 100.08 feet to a point.

Thence running in an Easterly direction along land of said Perkin Elmer Corporation;

S 67-[illegible]-30 E - 66.00 feet.
S 84-00-00 E - 9.47 feet.
S [illegible]-[illegible]-40 E - 100.10 feet.
S 83-02-40 E - 100.01 feet and,
S 78-53-00 E - 34.74 feet to land of Calvin W. Irwin

Thence running in a Southerly and Easterly direction along land of said Irwin;

S 15-06-55 W - 330.46 feet.
S 76-20-05 E - 13.00 feet.
S 89-21-33 E - 9.84 feet.
N 10-53-23 E - 12.62 feet.
N 85-58-30 E - 22.24 feet and,
S 85-33-00 E - 224.26 feet to a point on the Westerly side of Norwalk-Danbury Road.

Thence running in a Southerly direction along said Westerly side of the Norwalk-Danbury Road:

S 19-13-20 W - 92.30 feet.
S 21-01-30 W - 101.10 feet.
S 15-27-00 W - 129.73 feet.
S 14-54-10 W - 725.28 feet.
S 18-26-00 W - 0.76 feet to the point or place of beginning.

The premises described herein are more particulary shown and described on that certain map entitled "Map of Property Prepared For The Nolson Company -Wilton, Connecticut - Scale 1" = 50' - May 27, 1986 - by Leo Leonard, Land Surveyor" which map is on file as Map No. 4330 in the office of the Wilton Town Clerk.

EXCEPTING THEREFROM all that certain tract or parcel of land condemned by the State of Connecticut by filing an Assessment and Notice of Condemnation on December 1, 1988 with the Clerk of the Superior Court in the Judicial District of Stamford-Norwalk at Stamford. A Certificate of Condemnation has been recorded on December 1, 1988 in Volume 669, Page 262 of the Wilton Land Records. This Excepted parcel is bound and described as follows:

All that certain tract or parcel of land, with the buildings and improvements thereon situated, in the Town of Wilton, County of Fairfield and State of Connecticut, on the southeasterly side of Present U.S. Route 7, and bounded:

NORTHWESTERLY: by land of the State of Connecticut, Present U.S. Route 7, a total distance of 460 feet, more or less;

EASTERLY: by Owner's remaining land, 98 feet, more or less, by a line designated "Taking Line," as shown on the map hereinafter referred to;

SOUTHEASTERLY: by said remaining land, 349 feet, more or less, by a line designated "Taking Line," as shown on said map;

SOUTHERLY: by land of the State of Connecticut, 39 feet, more or less.

And said parcel contains 0.300 of an acre, more or less, together with all appurtenances, all of which more particularly appears on a map entitled: "Town of Wilton, Map Showing Land Acquired From Danbury Road Family Partnership by The State of Connecticut, U.S. Route 7, Scale 1" = 40', October 1987, Robert W. Gubala, Transporation Chief Engineer - Bureau of Highways."