

**BEFORE THE COURT-APPOINTED REFEREE  
IN THE MATTER OF THE LIQUIDATION OF  
THE HOME INSURANCE COMPANY  
DISPUTED CLAIMS DOCKET**

**In Re Liquidation Number: 2013-HICIL-56  
Claimant: Flexible Products Company  
Proof of Claim Number: INSU389339-001**

**FLEXIBLE PRODUCTS COMPANY'S MANDATORY DISCLOSURES**

Dated: April 5, 2013

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Claimant Flexible Products Company (“Flexible”) hereby submits its Mandatory Disclosures (the “Mandatory Disclosures”) pursuant to Section 14(b) of the Court’s January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation.

**I. Introduction**

Flexible, a subsidiary of The Dow Chemical Company (“Dow”), filed Proof of Claim No. INSU389339-001 (the “Claim”) on June 11, 2004 with The Home Insurance Company in Liquidation (“Home”). (See Cl. File at B.) Flexible seeks reimbursement of Home’s proportionate share of the defense costs Flexible incurred in connection with five lawsuits filed by over 1,500 coal miners who claimed bodily injury due to exposure to isocyanate-containing products, including products manufactured by Flexible (the “Underlying Lawsuits”).<sup>1</sup>

Flexible’s Claim should be allowed under six primary general liability policies Home issued to Flexible, which were in effect from January 1, 1979 through May 31, 1984 (together, the “Home Policies”). The Home Policies each contain a duty to defend, which is triggered if there is any possibility that coverage exists under that Home Policy. In the Underlying Lawsuits, the plaintiffs claimed exposure to Flexible’s products during the entire time they worked in the underground mines, with numerous defendants alleging exposure to isocyanate-containing products during the 1970s and 1980s. These allegations trigger Home’s duty to defend, even if they were ultimately found to be “groundless, fraudulent or false.” (See Exhibit 1, The Home Insurance Company, Policy # GL-1 42 52 06, May 31, 1983-May 31, 1984 (the “1983-84 Home

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<sup>1</sup> It is not possible to resolve Flexible’s claim for indemnity absent a confidentiality agreement, because the settlement amounts agreed to in the Underlying Lawsuits are confidential. Accordingly, Flexible has not presented a claim for indemnity here but notes that it would add up to \$1 million to its claim. However, Flexible reserves its rights to seek indemnity at a later time.

Policy”) at § I (Coverage A & Coverage B).<sup>2</sup> Plaintiffs continued to assert, in responses to written discovery that they were exposed to isocyanate-containing products during the Home Policy periods.

Home’s denial of the Claim is apparently based in part on its belief that the first documented sale of Flexible’s isocyanate-containing product occurred in October 1984, which is after the expiration of the last Home Policy. Home’s duty to defend, however, is governed by the allegations of the complaints, which allege either exposure during the Home periods or no dates at all. Moreover, Home has no basis for extinguishing its duty (which arose based on the allegations of the complaints) to defend Flexible in the Underlying Lawsuits as extrinsic evidence cannot be used for this purpose.

Home’s apparent assertion that Flexible’s allegedly late notice of the Underlying Lawsuits excuses its duties to its insured is similarly unavailing. Under New Hampshire law,<sup>3</sup> a court will consider the reasons for the delayed notice and will require the insurer to prove it suffered prejudice as a result of the late notice. Here, Flexible’s reasons for giving notice of the Underlying Lawsuits in 2005 were reasonable, and, in any event, Home suffered no prejudice. There was no prejudice for at least three reasons: (1) by the time discovery and motion practice in the Underlying Lawsuits substantially moved forward, Home was already insolvent and in no position to meaningfully participate, thus relieving Flexible of its notice obligations; (2) Home still would have had a duty to defend even if it had received notice of the lawsuits in 2001; and (3) Home did not lose its opportunity to investigate or otherwise defend the claim.

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<sup>2</sup> Citations to the Home Policies herein are to the 1983-84 policy; however, all of the Home Policies are believed to be substantially the same.

<sup>3</sup> Counsel for Flexible has been advised in other matters that Home prefers to apply New Hampshire law in liquidation proceedings for consistent interpretation of Home’s insurance policies. Accordingly, this brief references and discusses New Hampshire law.



## II. Factual Background

### A. Underlying Lawsuits

Before it was acquired by Dow in February 2000, Flexible was a manufacturer of, among other things, isocyanate-containing products. The Underlying Lawsuits involved two types of isocyanate-containing products sold by Flexible, as well as by other co-defendants in the Underlying Lawsuits. These products were used to stabilize the walls and roof of an underground mine or to seal cracks in the mining walls constructed to direct and control the air flow in the mines. In the Underlying Lawsuits, coal miners alleged that they sustained bodily injury as a result of exposure to these products. Flexible defended and settled claims arising from five<sup>4</sup> such lawsuits involving over 1,500 plaintiff coal miners, which are the Underlying Lawsuits at issue here.

The Bice Lawsuit was filed in September 2001 with 23 plaintiffs, the Abernathy Lawsuit was filed in November 2001 with more than 400 plaintiffs and the Acklin Lawsuit was filed in October 2002, with more than 600 plaintiffs, each in Alabama state court. Prior to 2004, the Bice, Abernathy and Acklin Lawsuits were largely stayed at the plaintiffs' request. In late 2004, those cases were consolidated by court order; they are referred to collectively herein as the "Consolidated Bice Lawsuit." The Tanner Lawsuit was filed in November 2005 as a putative class action in Alabama federal court with 15 named plaintiffs, and the Abbott Lawsuit was filed in June 2008 in West Virginia state court with approximately 100 plaintiffs. Amended complaints adding or changing plaintiffs were later filed in some of the Underlying Lawsuits.

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<sup>4</sup> *Randy Wade Bice, et al. v. Micon, Inc., et al.*, Case No. CV 01-1194 (Ala. Cir. Ct.), filed September 20, 2001 (the "Bice Lawsuit"); *Richard G. Abernathy, et al. v. Micon, Inc., et al.*, Case No. CV 01-1341 (Ala. Cir. Ct.), filed November 22, 2001 (the "Abernathy Lawsuit"); *Robert W. Acklin, Jr. et al. v. Micon, Inc., et al.*, Case No. CV 02-1518 (Ala. Cir. Ct.), filed October 31, 2002 (the "Acklin Lawsuit"); *Tanner, et al. v. Flexible Products Company, et al.*, Case No. CV-05-HGD-2341-E (N.D. Ala.) (the "Tanner Lawsuit"), filed November 16, 2005; and *Abbott, et al. v. Flexible Products Company, et al.*, Civil Action No. 08-C-138 (W.V. Cir. Ct.) (the "Abbott Lawsuit"), filed June 11, 2008.

In general terms, the plaintiffs in each Underlying Lawsuit alleged that they suffered from some or all of the following symptoms: asthmagenic and asthma-like sensitization, dermatological impairment/complication, breathing and other respiratory impairment, neurological, immune system and reproductive system impairment, and cancer. (*See* Cl. File at G, Bice Plaintiffs' Second Amended Complaint, filed on May 20, 2004 (hereinafter the "Bice Compl.") at ¶¶ 2, 33.) The Bice, Tanner and Abbott complaints allege dates that the plaintiffs were employed in the underground mines, which include dates of exposure during the Home Policy periods. (*See* Cl. File at G (Bice Compl.) at ¶ 2 (listing plaintiffs' employment dates beginning in the 1970s and 1980s); Exhibit 2, Tanner Plaintiffs' Complaint filed November 15, 2005 (hereinafter "Tanner Compl.") at ¶¶ 13-27 (listing plaintiffs' employment dates beginning in the 1970s and 1980s); Exhibit 3, Abbott Plaintiffs' Amended Complaint filed June 23, 2008 (hereinafter "Abbott Compl.") at ¶¶ 2, 40 (listing plaintiffs' employment dates beginning in the 1970s and 1980s).) Those complaints also allege that the plaintiffs were exposed to isocyanate-containing products throughout their employment in those mines. (*See* Cl. File at G (Bice Compl.) at ¶ 33 (alleging that plaintiffs were "continually and regularly exposed to isocyanate products while working at the [ ] mines"); Exhibit 2 (Tanner Compl.) at ¶¶ 13-27 (alleging that plaintiffs were exposed to isocyanates during their employment); Exhibit 3 (Abbott Compl.) at ¶ 40 (alleging that plaintiffs were exposed to isocyanates during their employment).) The Abernathy and Acklin complaints allege the plaintiffs were exposed to the isocyanate-containing products while working in the mines but the complaints do not include specific employment dates. (*See* Exhibit 4 (Abernathy Compl.) at ¶ 32; Cl. File at F (Acklin Compl.) at ¶ 33.)

After substantial discovery and motion practice as well as heated negotiations among the parties, Flexible and other settling defendants executed a Confidential Master Settlement

Agreement with the plaintiffs in the Consolidated Bice Lawsuit and Abbott Lawsuit in June 2011. Flexible also reached a settlement in the Tanner Lawsuit in March 2011. The defense costs Flexible incurred in connection with each Underlying Lawsuit are as follows:

Lawsuit	Defense Costs
Bice/Abernathy/Acklin	\$31,107,175
Abbott	\$140,370
Tanner	\$662,402
<b>TOTAL</b>	<b>\$31,909,947</b>

To recover amounts it expended in defense and settlement of the Underlying Lawsuits, Flexible filed an insurance coverage action against the carriers that issued Flexible primary and certain first-layer excess insurance for policy periods from May 31, 1984 through December 31, 2000 in the United States District Court for the Eastern District of Michigan. Those carriers raised a variety of coverage defenses, including the allocation and late notice issues asserted by Home here. Flexible recently settled with the insurers<sup>5</sup> on the risk from 1984 to 2000. Home is the only relevant primary insurer that continues to altogether deny Flexible coverage for the Underlying Lawsuits.

**B. Home's Coverage Obligation**

**1. The Home Policies**

Home issued primary general liability insurance policies to Flexible, covering the periods from January 1, 1979 to May 31, 1984. Each Home Policy in effect from January 1, 1979 to May 31, 1983 provided coverage of up to \$500,000 per occurrence. The Home Policy in effect from May 31, 1983 to May 31, 1984 provided coverage of up to \$1,000,000. Each Home policy also contained a duty to defend and defense costs were supplemental to the limits of liability.

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<sup>5</sup> The recovery sought from Home is only for its proportionate share of the defense costs incurred by Flexible and will not result in double recovery.

The insuring clause of the illustrative 1983-84 Home Policy provided, in relevant part, that:

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. bodily injury or
- B. property damage

to which this insurance applies, caused by an occurrence and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent...

(See, e.g., Exhibit 1 (1983-84 Home Policy) at § I (Coverage A & Coverage B) (emphasis added).)

The 1983-1984 Home Policy goes on to define an “Occurrence” to be:

an accident, including continuous or repeated exposure to conditions, which results in bodily injury and property damage neither expected nor intended from the standpoint of the insured.

(*Id.* at Definitions.) Finally, the exemplar policy contains a definition of “Bodily injury,” which provides as follows:

bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom.

(*Id.*)

## 2. Flexible’s Claim

The total amount Flexible seeks to recover from Home is \$2,621,588 million for its share of defense costs. As set forth above, Flexible incurred a total of nearly \$32 million in defense costs in connection with the various Underlying Lawsuits, and Flexible’s allocation of the defense costs it incurred is based on an injury-in-fact trigger. Here, the plaintiffs’ date of injury coincides with their date of first exposure to the products, because their alleged injuries,

including sensitization, occurred upon, or shortly after, inhalation or other contact with the isocyanate-containing products. *Cf. Stonewall Ins. Co. v. Asbestos Claims Mgmt. Corp.*, No. 86 Civ. 9671 (JSM), 1998 U.S. Dist. LEXIS 10954, at \*7 (S.D.N.Y. July 17, 1998) (explaining that an asbestos injury likely occurs at the time of exposure).

In connection with the Consolidated Bice Lawsuit, Flexible used the dates of each plaintiff's alleged initial exposure to the isocyanate-containing products, as asserted during discovery in the Consolidated Bice Lawsuit, as the date of injury. For the Abbott plaintiffs, each plaintiff's date of injury was based on the first exposure date, which was taken from a document provided by counsel for the underlying plaintiffs to the settlement administrator following settlement of those lawsuits, which contained the exposure information used in calculating each Abbott Lawsuit plaintiff's appropriate share of the settlement. For the Tanner Lawsuit plaintiffs, each plaintiff's date of injury was the first exposure date, taken from the complaint in that action.<sup>6</sup>

Based on this exposure data, Flexible has allocated defense costs it incurred to its insurers, including Home, on the risk from the time of the plaintiff's first exposure to the product through the time that Flexible stopped manufacturing the isocyanate-containing products in 2000. Flexible's claim for approximately \$2.62 million in defense costs represents Home's allocated share of those amounts.<sup>7</sup>

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<sup>6</sup> Only class discovery was taken in the Tanner Lawsuit prior to its settlement in March 2011. No discovery was taken in the Abbott Lawsuit, as it was stayed due to the overlap with the discovery underway (among the same lawyers) in the Consolidated Bice Lawsuit.

<sup>7</sup> Home does not appear to challenge Flexible's allocation method. However, in the event that Home disputes this, Flexible's allocation method is consistent with New Hampshire law that a court will look to the allegations of the complaint in the underlying lawsuit to trigger the insurer's duty to defend. *United States Fidelity & Guar. Co. v. Johnson Shoes (Johnson Shoes)*, 123 N.H. 148 (1983).

### C. Flexible's Notice of the Underlying Lawsuits to Home

Flexible was named as a defendant in the Bice Lawsuit, the first of the Underlying Lawsuits to be filed, on September 20, 2001. Flexible had been purchased by Dow the year before and Dow's Corporate Risk Management ("CRM") had assumed all risk management responsibilities for the company, including the provision of notice. When Flexible was named as a defendant in the Bice Lawsuit, CRM was in the process of obtaining Flexible's historic insurance policies because only the current policies were provided to it at the time of the acquisition. When the first Underlying Lawsuits were served, Hartford Insurance Co. ("Hartford"), Flexible's primary insurer at the time of acquisition, was notified, but unfortunately no CRM employee had copies of the Home Policies at that time. Indeed, although Dow had been provided with limited information regarding Flexible's historic coverage, (*see* Exhibit 5 (representative excerpts of historic insurance information provided to Dow and Dow's internal analysis of same)), CRM received no documents or information reflecting that Home had ever been a liability insurer of Flexible.

As noted earlier, the Underlying Lawsuits were largely stayed at the request of the plaintiffs from the time they were filed in 2001. After renewed commencement of discovery in early 2004, in searching for various documents requested by plaintiffs, CRM discovered several boxes of historic Flexible documents that had been misplaced after Flexible's acquisition by Dow. These boxes included some of Flexible's historic policies, including the Home Policies. This was the first time that CRM became aware that Flexible had any historic liability coverage with Home. At this point, however, Home was already well into insolvency proceedings.<sup>8</sup>

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<sup>8</sup> Home received notice of the Underlying Lawsuits in June 2005 when it was copied on a notice letter sent to Flexible's excess carriers. However, by the time CRM first discovered the Home policies in 2004, Home was already insolvent and had stopped paying claims by that time. (*See* Exhibit 6 (June 24, 2005 Letter from J. Hopson to T. Edwards-Belcher).)

Home was placed into liquidation proceedings on June 13, 2003 and stopped paying claims at that time. Flexible filed its Claim in Home's insolvency proceeding on June 11, 2004. After Flexible filed its Claim and after Home received notice of the Underlying Lawsuits, Home did nothing to involve itself in Flexible's defense, though the substantial majority of Flexible's defense costs in the Underlying Lawsuits were incurred after Home entered insolvency in June 2003.<sup>9</sup> All the key discovery and dispositive motion practice in the Consolidated Bice Lawsuit occurred after Home's insolvency.<sup>10</sup>

The Tanner and Abbott Lawsuits were filed on November 15, 2005 and June 11, 2008, respectively, years after the commencement of the Home liquidation. When CRM notified its excess insurers of the Underlying Lawsuits, CRM gave notice to Home of the Tanner Lawsuit in December 2005 and the Abbott Lawsuit in December 2008. (*See* Exhibit 7 (December 30, 2005 Letter from J. Hopson to T. Edwards-Belcher); Exhibit 8 (December 14, 2008 Letter from J. Hopson to T. Edwards-Belcher).)

#### **D. Procedural Posture**

As set forth above, Flexible filed its Claim in the Home insolvency on June 11, 2004. Subsequently, in response to various inquiries, Flexible has provided Home with factual information regarding the Underlying Lawsuits as well as Flexible's Claim. Following these communications, on August 21, 2012, the Liquidator issued a Notice of Determination denying Flexible's Claim. Flexible filed its Objection to Notice of Determination (the "Objection") on October 18, 2012. (Cl. File at I.)

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<sup>9</sup> Of the \$31.1 million in defense costs of the Consolidated Bice Lawsuit, only about \$4.2 million, or about thirteen percent, was incurred prior to Home's insolvency in 2003.

<sup>10</sup> Hartford was actively involved in the defense of the Underlying Lawsuits since 2001 and had substantial communications about litigation issues and defense strategy with counsel responsible for managing the isocyanate cases and Flexible's outside counsel.

### III. Legal Argument

#### A. Home Has a Duty to Defend Flexible in Underlying Lawsuits

##### 1. The Complaints Trigger Home's Duty to Defend Flexible in the Underlying Lawsuits

Under well-settled law, an insurer's duty to defend its policyholder is determined by whether a third party alleges facts that bring the claim within the insurer's policy's terms, even if the suit ultimately is meritless. *See, e.g., Johnson Shoes*, 123 N.H. at 152 (affirming the trial court's holding that the insurer had an obligation to defend the insured based on the allegations of the underlying pleadings and the insurance policy, which allowed groundless suits to give rise to the insurer's duty to defend). The Home Policies make this explicit, as they provide that the duty to defend extends to suits that are "groundless, false or fraudulent." (*See, e.g., Exhibit 1* (1983-84 Home Policy) at § I (Coverage A & Coverage B)); *see also Johnson Shoes*, 123 N.H. at 152.

Moreover, if even one plaintiff or one cause of action in a complaint alleges facts that bring a complaint within the scope of coverage, an insurer's duty to defend the entire lawsuit is triggered. *See SIG Arms, Inc. v. Emp'rs Ins.*, 122 F. Supp. 2d 255, 260 (D.N.H. 2000) ("An insurer's duty to defend arises if claims are alleged in the underlying complaint that if proved true would be covered by the policy, even if other claims in the underlying complaint would not be covered."). Where there is doubt about whether a complaint alleges liability that would be covered under an insurer's policy, any doubt as to coverage, including, particularly, the duty to defend, is resolved in the insured's favor. *See N. Sec. Ins. Co. v. Connors*, 161 N.H. 645, 653 (2011) ("In cases of doubt as to whether the complaint against the insured alleges a liability of the insurer under the policy, the doubt must be resolved in the insured's favor"); *Johnson Shoes*, 123 N.H. at 153 (finding that the trial court had evidence to find that there was an occurrence



during the policy period and resolving the doubt in the insured's favor when determining the duty to defend). There is no question that the complaints allege bodily injury caused by an occurrence. As discussed below, the complaints also allege exposure during the Home policy periods or are silent as to exposure dates, thus triggering Home's duty to defend.

**a. The Underlying Complaints Alleging Exposure During the Home Policy Periods Trigger the Duty to Defend**

In the Bice, Tanner and Abbott complaints, the plaintiffs each allege their dates of employment in the underground mines at issue, and those allegations include dates that fall within the Home policy periods. (*See, e.g.*, Cl. File at G (Bice Compl.) at ¶ 2 (identifying over a dozen plaintiffs with employment dates beginning in the 1970s); Exhibit 2 (Tanner Compl.) at ¶ 13 (identifying the named plaintiff's exposure to isocyanate-containing products "during his employment" from 1976-2002 and other plaintiffs who "since the 1980s" have worked in underground mines); Exhibit 3 (Abbott Compl.) at ¶ 2 (identifying over 75 plaintiffs with employment dates during the Home Policy periods).) The plaintiffs in those lawsuits also allege exposure to isocyanate-containing products from the start of their employment until the lawsuits were filed. (*See, e.g.*, Cl. File at G (Bice Compl.) at ¶ 33 ("[t]he Plaintiffs have been continually and regularly exposed to isocyanate products while working at the JWR and USM mines".)) The complaints allege that all defendants were manufacturing, selling and applying isocyanate-containing products at all times, including during the Home Policy periods. Because Alabama law, which governed the Consolidated Bice Lawsuit, holds tortfeasors jointly and severally liable and provides no right of contribution, Flexible (and every other defendant) had a risk of liability for the claims brought by all plaintiffs, regardless of which defendant sold the products to which that plaintiff was exposed. *See Holcim (US), Inc. v. The Ohio Cas. Ins. Co.*, 38 So. 3d 722, 727 (Ala. 2009).

Thus, the plaintiffs in the Bice, Tanner, and Abbott Lawsuits expressly alleged that they were exposed to the isocyanate-containing products during the Home Policy periods, which triggered Home's duty to defend Flexible against all claims in those lawsuits.

**b. The Underlying Complaints and Discovery Alleging Exposure Without Identifying Specific Dates Allow For The Possibility of Coverage, Likewise Triggering Home's Duty to Defend**

A complaint without specific occurrence dates may still trigger an insurer's duty to defend. *See Broom v. Cont'l Cas. Co.*, 152 N.H. 749, 751 (2005) (finding that although "[n]one of these pleadings identified any specific date or time period with regard to the alleged campaign of disparagement," the insurer had a duty to defend). The courts hold that an insurer cannot shirk the duty to defend so long as the potential exists for a covered claim during the policy period. *Id.* at 752 (finding that where a "potentially covered claim" existed within the policy period, the insurer owed the insured a duty to defend). While they did not contain specific dates, the complaints in the Abernathy and Acklin Lawsuits each contained allegations that the plaintiffs were exposed to the isocyanate-containing products during the course of the employment at the mines at issue. (*See* Exhibit 4 (Abernathy Compl.) at ¶ 32; Cl. File at F (Acklin Compl.) at ¶ 33.) Furthermore, the Abernathy and Acklin Lawsuits were consolidated with the Bice Lawsuit, and the complaints in the Bice Lawsuit asserted specific exposure dates that triggered the Home Policies, further supporting the conclusion that the allegations in the Abernathy and Acklin Lawsuits alleged exposure to isocyanate-containing products during the Home policy periods.

**2. Home Cannot Use Extrinsic Evidence to Extinguish the Duty to Defend that is Triggered by the Allegations of the Underlying Complaints**

Unlike with the duty to indemnify, an insurer cannot use the underlying facts or extrinsic evidence to terminate its duty to defend. *See Windt on Ins. Claims and Disputes* § 4:4 (“Insurers, as a general rule, are not allowed to refuse to defend on the grounds that they are in possession of information establishing that the allegations in the complaint giving rise to coverage are untrue”). In other words, when courts consider facts extrinsic to the allegations to evaluate an insurer’s duty to defend, they do so in order to bring a claim within coverage and establish an insurer’s duty to defend, rather than to relieve an insurer of the duty to defend. Thus, Home cannot escape its duty to defend by suggesting that any exposure to Flexible’s products occurred entirely outside its Policy periods.

**3. Even if Extrinsic Evidence Were Considered in Connection with Home’s Duty to Defend, that Evidence Cannot Conclusively Establish that the Home Policy Periods Were Not Implicated by the Complaints**

Here, the Underlying Lawsuits’ pleadings either asserted exposure dates that fall within the Home Policy periods or, as in *Broom*, listed no dates. While Home contends “that Flexible first marketed isocyanate products after the expiration date of all of the Home policies,” (*see* Cl. File at C, p. 7.), this extrinsic evidence is both inadmissible to defeat the duty to defend and, regardless, insufficient to defeat a potentially covered claim under Home’s Policy periods. *See Broom*, 152 N.H. at 752. The date of Flexible’s products’ manufacture and sale was never conclusively determined; to the contrary, there was evidence in the Underlying Lawsuits that Flexible’s products were in fact used during the Home Policy periods. (*See, e.g.*, Exhibit 9 (Rowe Trans.) at 23:3-11 (testifying that the Flexible product became available for actual use by certain underground mines “in late ’83, early ’84 early months”).)

Before June 2003, when Home was placed into liquidation proceedings, and indeed, even today, no evidence has been uncovered to demonstrate conclusively that the claims in the Underlying Lawsuits fall outside the coverage period of the Home Policies. The parties to the Underlying Lawsuits engaged in extensive discovery, taking hundreds of depositions, serving hundreds of discovery responses, producing millions of pages of documents and engaging in battles over documents in both the trial court and courts of appeal. Flexible believes that if evidence existed to take away any possibility of coverage under the Home policy, the extensive discovery in the Underlying Lawsuits and coverage suit would have uncovered this evidence.<sup>11</sup> Thus, based on the allegations in the Underlying Lawsuits, both with explicit dates and bare allegations, the duty to defend was triggered and Home's pro rata share is approximately \$2.62 million. Furthermore, Alabama law imposing joint and several liability on Flexible for any judgment entered in those lawsuits dictated that Flexible would potentially be liable for injury resulting from exposure to its co-defendants' isocyanate-containing products—even those that were manufactured before Flexible's products were in fact used in underground mines—thus providing an additional trigger for Home's duty to defend.

**B. Home Cannot Sustain a Late Notice Defense to Coverage**

To the extent that Home attempts to raise a late notice defense in its effort to avoid coverage, any such defense is unsustainable. It is well-established law in New Hampshire that, when considering a late notice defense, a court will consider the reasons for the delayed notice and whether the insurer suffered prejudice as a result. *See Wilson v. Progressive N. Ins. Co.*, 151 N.H. 782, 785 (2005) (citations omitted) (“whether there has been a breach of the policy provisions requiring notice to be given ‘as soon as practicable’ does not depend on the length of

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<sup>11</sup> Indeed, the only invoices relating to Flexible's sale of its product produced in the Underlying Lawsuits were by third parties because, under Flexible's document retention policies, Flexible did not retain invoices dating back to the 1980s.

the delay alone but also upon the reasons for the delay and whether the delay resulted in prejudice to the insurer.”). Here, Flexible’s reasons for giving Home notice of the Underlying Lawsuits in 2005 were reasonable, and Home did not suffer prejudice as a result of any alleged late notice. Thus, Home may not rely on a late notice defense to disclaim coverage.

Under New Hampshire law, an insurer must show a “material and substantial breach” of a notice provision in order to disclaim coverage. *See Sutton Mut. Ins. Co. v. Notre Dame Arena*, 108 N.H. 437, 439 (1968); *see also Abington Mut. Fire Ins. Co. v. Drew*, 109 N.H. 464, 466 (1969) (“The insured should not forfeit the protection [it] has paid for in the absence of a substantial breach.”).

**1. Flexible’s Reasons for Timing of its Notice Were Reasonable**

As discussed above, the insurance information CRM received from Flexible after its acquisition by Dow was incomplete and did not indicate that Home had ever been a liability insurer of Flexible. (See Exhibit 5 (representative excerpts of historic insurance information provided to Dow and Dow’s internal analysis of same).) Even after investigating internally at Dow and Flexible, and numerous communications with Flexible’s broker, the insurance information CRM obtained did not identify Home as an historic liability insurer of Flexible. Indeed, CRM was not aware that Flexible had an insurance policy with Home until 2004, well after Home was already in liquidation proceedings. Given that CRM was prudent, yet unsuccessful, in attempts to identify its historic coverage, it was reasonable that Flexible did not provide notice to Home before it discovered the misplaced Home Policies in 2004. *See Liberty Mut. Ins. Co. v. Consolidated Milk Producers’ Assoc.*, 354 F. Supp. 879, 886 (D.N.H. 1973) (“applying the standard of a reasonable prudent [insured] under these circumstances.”).

New Hampshire courts have excused delayed notice in similar circumstances when an insured was under the mistaken belief that its policy did not cover the insured's losses. *Cf. id.* at 886; *see also Mill Steel Supply Corp. v. Acadia Ins. Co.*, No. 01-C-100, 2002 WL 31059220, at \*6 (N.H. Super. Ct. Mar. 7, 2002) (citations omitted) ("An insured may be excused for a delay or failure to give the required notice where it appeared that he believed, acting as a reasonably prudent person, that the . . . injury was not covered by the liability policy.").

Furthermore, courts in other jurisdictions have found that lack of knowledge of the existence of the policy may excuse failure to give timely notice or provide an immediate proof of loss. *See Weiner v. Metro. Life Ins. Co.*, 416 F. Supp. 551, 556 (E.D. Pa. 1976) ("The failure to notify within the stated time may be excused where there is a lack of knowledge of the existence of the policies, and notice is given within a reasonable time after the discovery of such existence."); *Reed v. Mutual Ben. Health & Acci. Ass'n*, 76 N.W.2d 869, 870 (Mich. 1956) (citation omitted) (excusing the "[insured's] failure to give immediate notice" of her proof of loss because "[insured] had no knowledge of the existence of the policy or her rights under it."); *Clinard v. Security Life & Trust Co.*, 141 S.E.2d 271 (N.C. 1965). Similarly here, Flexible should not forfeit its rights under an insurance policy when it acted as a reasonably prudent insured but was simply unaware that Home was its historic insurer.

## **2. The Timing of Flexible's Notice Caused No Prejudice to Home**

Even if Home could show that the reasons for the delay in giving notice were unreasonable, which it cannot, it would also need to prove that it sustained prejudice in order to mount a late notice defense under New Hampshire law. *Bianco P.A. v. Home Ins. Co.*, 144 N.H. 288, 296 (1999); *see also Wilson*, 151 N.H. at 786 ("[P]rejudice is central to a determination of whether failure to report constitutes a material breach of an insurance contract."); *Bates v. Vt.*

*Mut. Ins. Co.*, 157 N.H. 391, 396 (2008) (“[I]f the policy is an ‘occurrence’ policy, the insurer must show prejudice in order to deny coverage to a party giving late notice.”).

Home bears the burden of establishing that it was prejudiced by Flexible’s alleged failure to provide notice “as soon as practicable.” See *Dover Mills Pshp. v. Comm. Union Ins. Cos.*, 144 N.H. 336, 339 (1999) (“It is appropriate to impose the burden on the insurance carrier to prove prejudice because the insurer is in the best position to establish facts demonstrating that prejudice exists.”). In order to show prejudice, an insurer “must at the very least provide the court with facts showing prejudice and not merely surmise that it may be prejudiced because certain events may have occurred in the abstract during the period of delay.” *Wilson*, 151 N.H. at 786 (citation omitted). Moreover, “[p]rejudice is generally a question of fact,” and New Hampshire courts “have never held that an insurer is *per se* prejudiced by an unexcused prolonged delay.” *Dover Mills*, 144 N.H. at 340 (citations omitted).

As an initial matter, by the time Flexible discovered it had coverage with Home, Home was already well into insolvency proceedings, which relieved Flexible of any obligations under the insurance contract. See *Macri v. Macri*, No. 01-464-JD, 2002 U.S. Dist. LEXIS 7956, at \*42 (D.N.H. 2002) (citation omitted) (“Where it becomes clear that one party will not live up to a contract, the aggrieved party is relieved from the performance of futile acts or conditions precedent.”). Home’s entry into liquidation proceedings rendered it incapable of fulfilling its duty to defend, thereby excusing Flexible from performing conditions such as providing notice. See Order of Liquidation at (n)(6), *In the Matter of the Rehabilitation of The Home Ins. Co.* (2003) (No. 03-E-0106) (“all persons are hereby permanently enjoined and restrained from . . . any act to collect, assess, or recover a claim against The Home, other than the filing of a proof of claim with the Liquidator.”). Notably, even after Home received notice of the Underlying

Lawsuits from Flexible via the Claim or otherwise, Home made no effort to participate in the claims process or settlement discussions or otherwise involve itself in Flexible's defense.

Home's complete lack of participation after receiving notice is evidence that it was not prejudiced by the timing of Flexible's notice.

Home has suggested that it suffered prejudice as a result of the timing of Flexible's notice because, if it had received notice in 2001, it could have withdrawn its defense before Flexible incurred considerable litigation expenses. (Cl. File at C, p. 7.) This argument necessarily fails. Even if Home had received notice of the Bice Lawsuit in 2001, it would have still had a duty to defend Flexible throughout the course of the Underlying Lawsuits because, as set forth in Section III.A above: (1) the underlying complaints alleged that plaintiffs were exposed during Home's Policy period, thus triggering Home's duty to defend; (2) Home cannot use extrinsic evidence to escape its duty to defend; and (3) regardless, there was no evidence that disproves the exposure allegations set forth in the complaints.

Nor did Home suffer prejudice because it lost its opportunity to investigate or otherwise defend the claim. *See St. Paul Fire & Marine Ins. Co. v. Petzold*, 418 F.2d 303, 305 (1st Cir. 1969) (stating that a purpose of the notice provision is to "enable the insurer to make a prompt investigation of the incident"). Flexible's Claim was made in June 2004, long before discovery in the Underlying Lawsuits was closed and before the heart of discovery in the Consolidated Bice Lawsuit, the largest of the Underlying Lawsuits, moved forward. As discussed earlier, the Bice Lawsuit was largely stayed until 2004; only after the Bice, Abernathy, and Acklin Lawsuits were consolidated in late 2004 did substantial discovery begin to move forward. Further, Hartford, Flexible's primary insurance carrier from 1996 to 2000, was actively involved in the defense of the Underlying Lawsuits since 2001; Flexible's other primary general liability



carriers, particularly Chartis, also were in communication with Flexible regarding the defense of the case and settlement discussions beginning in 2004. In both cases, the insurers involved were protecting all insurers' interests, including Home's. *See id.* at 306 (holding that an insurer did not suffer prejudice when another insurer had already sufficiently investigated the claim and offered its claim file to the other insurer).

Thus, there is no indication of any prejudice to Home's interests as a result of having received notice of the Underlying Lawsuits several years prior to the completion of the litigation.

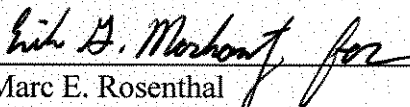
#### IV. Conclusion

The Referee should allow Flexible Products Company's claim for defense costs of approximately \$2.62 million because The Home Insurance Company in Liquidation had a duty to defend until such time as Home conclusively established no coverage. Neither extrinsic evidence to the complaints' allegations nor late notice can defeat Home's duty to defend.

Respectfully submitted,

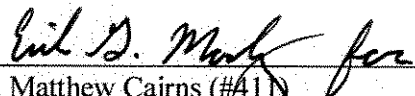
FLEXIBLE PRODUCTS COMPANY

By its Attorneys,

  
\_\_\_\_\_  
Marc E. Rosenthal  
Steven R. Gilford  
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Three First National Plaza  
70 West Madison, Suite 3800  
Chicago, IL 60602-4342  
312-962-3530  
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And

Date: April 5, 2013

  
R. Matthew Cairns (#411)  
Gallagher, Callahan & Gartrell  
Box 1415  
Concord, NH 03302-1415  
603-545-3622  
[cairns@gcglaw.com](mailto:cairns@gcglaw.com)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been filed with the Clerk ([help@hiciiclerk.org](mailto:help@hiciiclerk.org)) via email and a copy has been sent by email to:

Eric A. Smith, Esq.  
Rackemann, Sawyer & Brewster P.C.  
160 Federal Street  
Boston, Massachusetts 02110-1700  
Phone: 617-951-1127  
[esmith@rackemann.com](mailto:esmith@rackemann.com)

Date: April 5, 2013

  
R. Matthew Cairns

**BEFORE THE COURT-APPOINTED REFEREE  
IN THE MATTER OF THE LIQUIDATION OF  
THE HOME INSURANCE COMPANY  
DISPUTED CLAIMS DOCKET**

**In Re Liquidation Number: 2013-HICIL-56  
Claimant: Flexible Products Company  
Proof of Claim Number: INSU389339-001**

**EXHIBITS TO FLEXIBLE PRODUCTS COMPANY'S MANDATORY DISCLOSURES**

EX. NO.	DESCRIPTION
1	The Home Insurance Company, Policy # GL-1 42 52 06, May 31, 1983-May 31, 1984
2	Tanner Class Action Complaint filed November 15, 2005
3	Abbott Amended Complaint filed June 23, 2008
4	Abernathy Complaint filed October 22, 2001
5	Historic Insurance Information provided to Dow CRM during due diligence review
6	June 24, 2005 Letter from J. Hopson to T. Edwards-Belcher
7	December 30, 2005 Letter from J. Hopson to T. Edwards-Belcher
8	December 14, 2008 Letter from J. Hopson to T. Edwards-Belcher
9	Excerpt from Thomas A. Rowe Deposition Transcript
Cl. File	
	A – Notice of Disputed Claim Proceeding
	B – Proof of Claim
	C – Emails between Claimant and Liquidator
	D – Policy Declaration Pages
	E – Letter dated February 17, 2004
	F – Acklin First Amended Complaint filed July 15, 2004
	G – Bice Second Amended Complaint filed May 20, 2004
	H – Notice of Determination
	I – Objection

# EXHIBIT 1

**J & H** JOHNSON & HIGGINS  
OF GEORGIA, INC.

SEVENTEENTH FLOOR  
1700 TRUST COMPANY OF GEORGIA BUILDING  
P.O. BOX 1111, ATLANTA, GEORGIA 30371  
TEL. 658-1330 AREA CODE 404

*Insurance Binder*

May 31, 19 83

Insurance is hereby made binding of the kind and for the limit(s) and in the Company(ies) as shown and enumerated below in the favor of Insured. Flexible Products Company

from 12:01am of the 31st day of May, 1983 to issuance of policy  
~~XXXXXXXXXXXXXXXXXXXX~~  
(and unless replaced by regular policy)

**PARTICULARS OF INSURANCE**

NAME OF INSURANCE COMPANY The Home Indemnity Company

TYPE OF COVERAGE: General Liability

All limits, terms and conditions per the attached.

*It is a condition of this binder that liability hereunder shall terminate with the issuance of the policy. It is understood and agreed that all terms and conditions of the policy regularly issued by the Company covering the insured exposure, which terms and conditions are not inconsistent with the provisions of this binder, are made a part hereof to the same extent as if fully set forth herein.*

*In event of loss or claims before the expiration of this binder a premium charge will be made for the exposure insured.*

*It is further understood and agreed that a premium charge will be made for this BINDER if the policy when and as issued is not accepted by the insured.*

JOHNSON & HIGGINS OF GA, INC.

BY: David W. Langman

**COMPREHENSIVE GENERAL LIABILITY**

**(Provisions/Conditions)**

**Limit of Liability:** \$1,000,000 Combined Single Limit  
Bodily Injury and Property Damage  
Each Occurrence/Aggregate  
(where applicable)

**Coverages Applicable:** Premises/Operations  
Products/Completed Operations  
Owners/Contractors Protective (OCP)  
Broad Form CGL Endorsement -  
Blanket Contractual - Oral and Written  
Personal Advertising Injury  
(1) Employees as Additional Insureds  
(2) Contractual Exclusion Removed  
(3) Delete Exclusion "C"  
Premises Medical - \$10,000  
Host Liquor Liability  
Fire Legal Liability - \$50,000 each  
occurrence  
Broad Form Property Damage  
Incidental Medical Malpractice  
Nonowned Watercraft  
Extended Bodily Injury  
Automatic Coverage - Newly Acquired  
Organizations (90 Days)  
Limited Worldwide Products Coverage  
(coverage to apply as primary for  
suits brought within the United  
States)

**Additional Provision:** Employee Benefits Liability  
(\$1,000 per claim deductible)

Broad Form Vendors Endorsement -  
Blanket Basis

**Cancellation:** 60 Days

COMPREHENSIVE GENERAL LIABILITY

Classifications and Exposures:

Premises/Operations

Plastic Materials and Non-Vulcanizable  
Elastomers Mfg. - 30792x  
\$365,000 Payroll

Ink Manufacturing - 39523  
\$500,000 Payroll

Products/Completed Operations

Plastic Materials and Non-Vulcanizable  
Elastomers Mfg. - 30792  
\$15,750,000 Sales

Ink Manufacturing - 28905x  
\$3,750,000 Sales

Annual Premium:

\$8,535.00

GL-1 42 52 06

Insurance is provided by the Stock Company designated by  and hereinafter called the Company.

CITY INSURANCE COMPANY  
Short Hills, N.J.

THE HOME INSURANCE COMPANY  
Manchester, N.H.



THE HOME INSURANCE COMPANY OF INDIANA  
Indianapolis, Ind.

THE HOME INDEMNITY COMPANY  
Manchester, N.H.

**DECLARATIONS**

PRODUCER

Item 1.  Flexible Products Company  
Named Insured and Address: 1007 Industrial Park Dr., N.E.  
Marietta, Ga. 30061

Johnson & Higgins of Ga., Inc.  
P O Box 1111  
Atlanta, Ga. 30301

Item 2. Policy Period:  
From 5-31-83 to 5-31-84  
12:01 A.M., standard time at the address of the named insured as stated herein.

65308 (6-21-83by) 571  
Producer No. OPC

The named insured is:

Individual  Partnership  Corporation  Joint Venture  Other: \_\_\_\_\_

Business of the named insured is: (ENTER BELOW)  
Plastic Mfg.

Audit Period: Annual, unless otherwise stated. (ENTER BELOW)

Item 3. The insurance afforded is only with respect to the Coverage Part(s) indicated below by specific premium charge(s) and attached to and forming a part of this policy.

Coverage Parts	Form Number	Advance Premiums
Comprehensive General Liability Insurance	H21013F	\$ 8523
Premises Medical Payments Insurance		\$
Contractual Liability Insurance		\$
Completed Operations and Products Liability Insurance		\$
Manufacturers' and Contractors' Liability Insurance		\$
Owners', Landlords' and Tenants' Liability Insurance		\$
Personal Injury Liability Insurance		\$
Owner's and Contractor's Protective Liability Insurance		\$
Storekeeper's Insurance		\$
Other		\$
If, Policy Period is more than one year premium is payable		
Effective Date††	1st Anniversary††	2nd Anniversary††
TOTAL ADVANCE PREMIUM		\$ 8523

Endorsements attached to policy H24059, H22300, L6312, L9235, H34912

Countersigned by \_\_\_\_\_ Authorized Representative

† The Policy Period is more than one year; †† The premiums shown for Fixed Exposure hazards are the full three year premiums. Any premiums shown for Subject-To-Audit hazards are the annual deposit premiums. ††† Any annual deposit premiums for Subject-To-Audit hazards are payable as of the effective date and each anniversary date, whether or not the remainder of premium is payable on installments.



# THE COMPANY DESIGNATED ON THE DECLARATIONS PAGE

(A stock insurance company, herein called the company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations made a part hereof and subject to all of the terms of this policy, agrees with the named insured as follows:

## DEFINITIONS

When used in this policy (including endorsements forming a part hereof):

"**automobile**" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto), but does not include mobile equipment;

"**bodily injury**" means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

"**collapse hazard**" includes "structural property damage" as defined herein and property damage to any other property at any time resulting therefrom. "Structural property damage" means the collapse of or structural injury to any building or structure due to (1) grading of land, excavating, borrowing, filling, back-filling, tunnelling, pile driving, cofferdam work or caisson work or (2) moving, shoring, underpinning, raising or demolition of any building or structure or removal or rebuilding of any structural support thereof. The collapse hazard does not include property damage (1) arising out of operations performed for the named insured by independent contractors, or (2) included within the completed operations hazard or the underground property damage hazard, or (3) for which liability is assumed by the insured under an incidental contract;

"**completed operations hazard**" includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the named insured. "Operations" include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (1) when all operations to be performed by or on behalf of the named insured under the contract have been completed,
- (2) when all operations to be performed by or on behalf of the named insured at the site of the operations have been completed, or
- (3) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of

- (a) operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof,
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials, or
- (c) operations for which the classification stated in the policy or in the company's manual specifies "including completed operations";

"**elevator**" means any hoisting or lowering device to connect floors or landings, whether or not in service, and all appliances thereof including any car, platform, shaft, hoistway, stairway, runway, power equipment and machinery; but does not include an automobile servicing hoist, or a hoist without a platform outside a building if without mechanical power or if not attached to building walls, or a hod or material hoist used in alteration, construction or demolition operations, or an inclined conveyor used exclusively for carrying property or a dumbwaiter used exclusively for carrying property and having a compartment height not exceeding four feet;

"**explosion hazard**" includes property damage arising out of blasting or explosion. The explosion hazard does not include property damage (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the named insured by independent contractors, or (3) included within the com-

pleted operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the insured under an incidental contract;

"**incidental contract**" means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) side-track agreement, or (5) elevator maintenance agreement;

"**insured**" means any person or organization qualifying as an insured in the "Persons Insured" provision of the applicable insurance coverage. The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability;

"**mobile equipment**" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the named insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in-transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

"**named insured**" means the person or organization named in Item 1. of the declarations of this policy;

"**named insured's products**" means goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof (other than a vehicle), but "named insured's products" shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

"**occurrence**" means an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;

"**policy territory**" means:

- (1) the United States of America, its territories or possessions, or Canada, or
- (2) international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
- (3) anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory;

"**products hazard**" includes bodily injury and property damage arising out of the named insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from premises owned by or rented to the named insured and after physical possession of such products has been relinquished to others;

"**property damage**" means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period;

"**underground property damage hazard**" includes underground property damage as defined herein and property damage to any other property at any time resulting therefrom. "Underground property damage" means property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. The underground property damage hazard does not include property damage (1) arising out of operations performed for the named insured by independent contractors, or (2) included within the completed operations hazard, or (3) for which liability is assumed by the insured under an incidental contract.

## SUPPLEMENTARY PAYMENTS

The company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the company, all costs taxed against the insured in any suit defended by the company and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required

of the insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed \$250 per bail bond, but the company shall have no obligation to apply for or furnish any such bonds;

- (c) expenses incurred by the insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;
- (d) reasonable expenses incurred by the insured at the company's request in assisting the company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$25 per day.

**CONDITIONS**

**1. Premium:** All premiums for this policy shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

Premium designated in this policy as "advance premium" is a deposit premium which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of the policy period) designated in the declarations as the audit period the earned premium shall be computed for such period and, upon notice thereof to the named insured, shall become due and payable. If the total earned premium for the policy period is less than the premium previously paid, the company shall return to the named insured the unearned portion paid by the named insured.

The named insured shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to the company at the end of the policy period and at such times during the policy period as the company may direct.

**2. Inspection and Audit:** The company shall be permitted but not obligated to inspect the named insured's property and operations at any time. Neither the company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The company may examine and audit the named insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

**3. Financial Responsibility Laws:** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

**4. Insured's Duties in the Event of Occurrence, Claim or Suit:**

(a) In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable.

(b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

(c) The insured shall cooperate with the company and, upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

**5. Action Against Company:** No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the declarations page by a duly authorized representative of the company.

**6. Other Insurance:** The insurance afforded by this policy is primary insurance, except when stated to be in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

(a) **Contribution by Equal Shares.** If all of such other valid and collectible insurance provides for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such insurer has paid its limit in full or the full amount of the loss is paid.

(b) **Contribution by Limits.** If any of such other insurance does not provide for contribution by equal shares, the company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

**7. Subrogation:** In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

**8. Changes:** Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

**9. Assignment:** Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, such insurance as is afforded by this policy shall apply (1) to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such, and (2) with respect to the property of the named insured, to the person having proper temporary custody thereof, as insured, but only until the appointment and qualification of the legal representative.

**10. Three Year Policy:** If this policy is issued for a period of three years any limit of the company's liability stated in this policy as "aggregate" shall apply separately to each consecutive annual period thereof.

**11. Cancellation:** This policy may be cancelled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the named insured at the address shown in this policy, written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

**12. Declarations:** By acceptance of this policy, the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

*Timothy P. Reames*

TIMOTHY P. REAMES Secretary

*Peter C. R. Huang*

PETER C. R. HUANG President  
of THE HOME INSURANCE COMPANY

*Henry P. Lenz*

HENRY P. LENZ President

of THE HOME INDEMNITY COMPANY  
CITY INSURANCE COMPANY  
THE HOME INSURANCE CO. OF INDIANA

**LEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT**  
**(BROAD FORM)**

This endorsement modifies the provisions of this policy relating to **ALL GENERAL LIABILITY AND MEDICAL PAYMENTS INSURANCE OTHER THAN COMPREHENSIVE PERSONAL AND FARMER'S COMPREHENSIVE PERSONAL INSURANCE.**

It is agreed that:

**I. This policy does not apply:**

**A. Under any Liability Coverage, to bodily injury or property damage**

- (1) with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**B. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.**

**C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if**

- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (b) has been discharged or dispersed therefrom;
- (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (3) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat.

**II. As used in this endorsement:**

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (b) resulting from the operation by any person or organization of any nuclear facility included under the first two paragraphs of the definition of nuclear facility;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.



**COVERAGE PART: Comprehensive, General Liability Insurance**

For attachment to policy No. **GL 1252 06** to complete said policy.

**ADDITIONAL DECLARATIONS**

Location of all premises owned by, rented to or controlled by the named insured (Enter name and address as shown in item 1 of declarations)  
Interest of named insured in such premises (Check one):  Owner  General Lessee  Tenant  Other

The following disclose all hazards insured hereunder known to exist at the effective date of this policy unless otherwise stated herein. The insurance afforded is only with respect to such of the following coverages as are indicated by specific premium charges or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

**SCHEDULE**

Description of Hazards and Subline	Term Code	Class Code	P. B. Code	Exposure Basis	Limits of Liability	
					Each Occurrence	Aggregate
<b>A - Bodily Injury Liability</b>				\$ 2,000,000	\$ 1,000,000	
<b>B - Property Damage Liability</b>				\$ 240,500	\$ 1,000,000	\$ 1,000,000
<b>Premises Operations</b>						
<b>Plastic Materials and Non-Vulcanizable Elastomers Mfg.</b>	999	30792x		See H22300	2200	878
<b>Escalators (Number at Premises)</b>						
<b>Excluded</b>						
<b>Independent Contractors - Subline 315</b>						
<b>Excluded</b>						
<b>Completed Operations - Products - Subline 316</b>						
<b>Ink Mfg.</b>	999	28905s		See H22300	3257	2184
<b>TOTALS</b>					\$ 5461	\$ 3062
<b>Total Advance Premium</b>					\$ 8529	

When used as a premium basis:

- "admissions" means the total number of persons, other than employees of the named insured, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes;
- "cost" means the total cost to the named insured with respect to operations performed for the named insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses, commissions, made, paid or due to subcontractors or other persons; and
- "receipts" means the gross amount of money charged by the named insured for such operations by the named insured or by others during the policy period and are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the named insured collects as a separate item and remits directly to a governmental division;
- "payroll" means the entire payroll earned during the policy period by proprietors and by all employees of the named insured, other than chauffeurs (except operators of mobile equipment) and air-craft pilots and co-pilots, subject to any overtime earnings or limitation of payroll rule applicable in accordance with the manuals in use by the company; and
- "sales" means the gross amount of money charged by the named insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing, or repair, and includes taxes, other than taxes which the named insured and such others collect as a separate item and remit directly to a governmental division.

**I. COVERAGE A—BODILY INJURY LIABILITY**  
**COVERAGE B—PROPERTY DAMAGE LIABILITY**

The company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of

**A. bodily injury or**  
**B. property damage**

to which this insurance applies, caused by an occurrence, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

**Exclusions**

This insurance does not apply:

- (a) to liability assumed by the Insured under any contract or agreement except an incidental contract; but this exclusion does not apply to a warranty of fitness or quality of the named insured's products or a warranty that work performed by or on behalf of the named insured will be done in a workmanlike manner;
- (b) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
  - (1) any automobile or aircraft owned or operated by or rented or loaned to any Insured, or
  - (2) any other automobile or aircraft operated by any person in the course of his employment by any Insured;but this exclusion does not apply to the parking of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any Insured;
- (c) to bodily injury or property damage arising out of (1) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity or (2) the operation or use of any snowmobile or trailer designed for use therewith;
- (d) to bodily injury or property damage arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to any Insured;
- (e) to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:
  - (1) any watercraft owned or operated by or rented or loaned to any Insured, or
  - (2) any other watercraft operated by any person in the course of his employment by any Insured;but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured;
- (f) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;
- (g) to bodily injury or property damage due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing, with respect to:
  - (1) liability assumed by the Insured under an incidental contract, or
  - (2) expenses for first aid under the Supplementary Payments provision;
- (h) to bodily injury or property damage for which the insured or his Indemnitee may be held liable:
  - (1) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or
  - (2) if not so engaged, as an owner or lessor of premises used for such purposes,if such liability is imposed:
  - (i) by, or because of the violation of, any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
  - (ii) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;but part (ii) of this exclusion does not apply with respect to liability of the insured or his Indemnitee as an owner or lessor described in (2) above;
- (i) to any obligation for which the Insured or any carrier as his Insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
- (j) to bodily injury to any employee of the insured arising out of and in the course of his employment by the Insured or to any obligation of the Insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the Insured under an incidental contract;
- (k) to property damage to:
  - (1) property owned or occupied by or rented to the Insured,
  - (2) property used by the Insured, or
  - (3) property in the care, custody or control of the Insured or as to which the Insured is for any purpose exercising physical control;but parts (2) and (3) of this exclusion do not apply with respect to liability under a written sidetrack agreement and part (3) of this exclusion does not apply with respect to property damage (other than to elevators) arising out of the use of an elevator at premises owned by, rented to or controlled by the named insured;
- (l) to property damage to premises alienated by the named Insured arising out of such premises or any part thereof;
- (m) to loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (1) a delay in or lack of performance by or on behalf of the named Insured of any contract or agreement, or
  - (2) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named Insured;but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the

named insured after such products or work have been put to use by any person or organization other than an insured;

- (n) to property damage to the named insured's products arising out of such products or any part of such products;
- (o) to property damage to work performed by or on behalf of the named Insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
- (p) to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named Insured or of any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (q) to property damage included within:
  - (1) the explosion hazard in connection with operations identified in this policy by a classification code number which includes the symbol "x",
  - (2) the collapse hazard in connection with operations identified in this policy by a classification code number which includes the symbol "c",
  - (3) the underground property damage hazard in connection with operations identified in this policy by a classification code number which includes the symbol "u".

**II. PERSONS INSURED**

Each of the following is an insured under this insurance to the extent set forth below:

- (a) if the named Insured is designated in the declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the named Insured with respect to the conduct of such a business;
- (b) if the named Insured is designated in the declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the named Insured is designated in the declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, director or stockholder thereof while acting within the scope of his duties as such;
- (d) any person (other than an employee of the named Insured) or organization while acting as real estate manager for the named Insured; and
- (e) with respect to the operation, for the purpose of locomotion upon a public highway, of mobile equipment registered under any motor vehicle registration law:
  - (i) an employee of the named Insured while operating any such equipment in the course of his employment, and
  - (ii) any other person while operating with the permission of the named Insured any such equipment registered in the name of the named Insured and any person or organization legally responsible for such operation, but only if there is no other valid and collectible insurance available, either on a primary or excess basis, to such person or organization,provided that no person or organization shall be an insured under this paragraph (e) with respect to:
  - (1) bodily injury to any fellow employee of such person injured in the course of his employment, or
  - (2) property damage to property owned by, rented to, in charge of or occupied by the named Insured or the employer of any person described in subparagraph (ii).

This insurance does not apply to bodily injury or property damage arising out of the conduct of any partnership or joint venture of which the Insured is a partner or member and which is not designated in this policy as a named Insured.

**III. LIMITS OF LIABILITY**

Regardless of the number of (1) Insureds under this policy, (2) persons or organizations who sustain bodily injury or property damage, or (3) claims made or suits brought on account of bodily injury or property damage, the company's liability is limited as follows:

**Coverage A**—The total liability of the company for all damages, including damages for care and loss of services, because of bodily injury sustained by one or more persons as the result of any one occurrence shall not exceed the limit of bodily injury liability stated in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of (1) all bodily injury included within the completed operations hazard and (2) all bodily injury included within the products hazard shall not exceed the limit of bodily injury liability stated in the schedule as "aggregate".

**Coverage B**—The total liability of the company for all damages because of all property damage sustained by one or more persons or organizations as the result of any one occurrence shall not exceed the limit of property damage liability stated in the schedule as applicable to "each occurrence".

Subject to the above provision respecting "each occurrence", the total liability of the company for all damages because of all property damage to which this coverage applies and described in any of the numbered subparagraphs below shall not exceed the limit of property damage liability stated in the schedule as "aggregate".

- (1) all property damage arising out of premises or operations rated on a remuneration basis or contractor's equipment rated on a receipts basis, including property damage for which liability is assumed under any incidental contract relating to such premises or operations, but excluding property damage included in subparagraph (2) below;
- (2) all property damage arising out of and occurring in the course of operations performed for the named Insured by independent contractors and general supervision thereof by the named Insured, including any such property damage for which liability is assumed under any incidental contract relating to such operations, but this subparagraph (2) does not include property damage arising out of maintenance or repairs at premises owned by or rented to the named Insured or structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
- (3) all property damage included within the products hazard and all property damage included within the completed operations hazard.

Such aggregate limit shall apply separately to the property damage described in subparagraphs (1), (2) and (3) above, and under subparagraphs (1) and (2), separately with respect to each project away from premises owned by or rented to the named Insured.

**Coverages A and B**—For the purpose of determining the limit of the company's liability, all bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

**IV. POLICY TERRITORY**

This insurance applies only to bodily injury or property damage which occurs within the policy territory:

LIABILITY

GL 04 04 (Ed. 07 76)

L 906  
(Ed. 7-7)

BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following designated insurance:  
COMPREHENSIVE GENERAL LIABILITY INSURANCE

This endorsement effective 12-31-83 (2001 Annual Renewal Date)

forms a part of policy No. GL 112 52 06

Issued to Flexible Products Company

by Johnson & Higgins of Ga., Inc

*Daniel W. Langner*

SCHEDULE

Personal Injury and Advertising Injury Liability	Aggregate Limit shall be the per occurrence bodily injury liability limit unless otherwise indicated hereinafter.
Limit of Liability - Aggregate	\$1,000,000
Limit of Liability - Premises Medical Payments Coverage	\$1,000 each Person unless otherwise indicated herein
Limit of Liability - Fire, Legal Liability Coverage	\$50,000 per occurrence unless otherwise indicated hereinafter
Advance Premium	10 % OF THE TOTAL COMPREHENSIVE GENERAL LIABILITY, BODILY INJURY AND PROPERTY DAMAGE PREMIUM AS OTHERWISE DETERMINED

**CONTRACTUAL LIABILITY COVERAGE**

(A) The definition of incidental contract is extended to include any contract or agreement relating to the conduct of the named insured's business.

(B) The insurance afforded with respect to liability assumed under an incidental contract is subject to the following additional exclusions:

- (1) to bodily injury or property damage for which the insured has assumed liability under any incidental contract; such injury or damage occurred prior to the execution of the incidental contract;
  - (2) if the insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of the rendering of professional services by such insured, including:
    - (a) the preparation or approval of the plans, drawings, specifications, reports, surveys, change orders, designs or specifications, and
    - (b) supervisory, inspection or engineering services;
  - (3) if the indemnitee of the insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees arising out of:
    - (a) the preparation or approval of the plans, drawings, specifications, reports, surveys, change orders, designs or specifications, or
    - (b) the giving or the failure to give directions or instructions by the indemnitee, his agents or employees provided such giving or failure to give is the primary cause of the bodily injury or property damage;
  - (4) to any obligation to which the insured may be held in an action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority, but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project;
  - (5) to bodily injury or property damage arising out of operations within 50 feet of any railroad, property, railroad, bridge or trestle, tracks, road beds, lines, underground crossing, but this exclusion does not apply to sidetrack agreements.
- (C) The following exclusions applicable to Coverage A (Bodily Injury) and B (Property Damage) do not apply to this Contractual Liability Coverage: (b), (c), (2), (4) and (5).
- (D) The following additional condition applies:
- Arbitration  
The company shall be entitled to exercise all of the insured's rights in the choice of arbitrators and, in the conduct of any arbitration proceeding.

- II. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE**
- (A) The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury or advertising injury to which this insurance applies, sustained by any person or organization and arising out of the conduct of the named insured's business within the policy territory and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such injury even if any of the allegations of the suit are groundless, false or fraudulent and may make such investigation and settlement of any claim or suit as it deems expedient; but the company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.
- (B) This insurance does not apply:
- (1) to liability assumed by the insured under any contract or agreement;
  - (2) to personal injury or advertising injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of the insured;
  - (3) to personal injury or advertising injury arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, in the first instance, publication or utterance of the same or similar material by or on behalf of the named insured was made prior to the effective date of this insurance;
  - (4) to personal injury or advertising injury arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization, or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the insured with knowledge of the falsity thereof;
  - (5) to personal injury or advertising injury arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in the declarations of the policy as a named insured;



**1. bodily injury**  
(1) Included within the completed operations hazard or the products hazard:  
(a) arising out of operations performed for the named insured by independent contractors, other than the named insured, on:  
(i) maintenance and repair of the insured premises or structural alterations at such premises which do not involve changing the size or moving buildings or other structures;  
(ii) resulting from the selling, serving, or giving of alcoholic beverages;  
(iii) in violation of any statute, ordinance or regulation;  
(iv) to a minor;  
(v) to a person under the influence of alcohol, or any other intoxicating substance, or to the intoxication of any person;  
(vi) if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, its owner or lessor or premises used for such purposes, but only part of this exclusion; (b) (3) applies when the named insured is such an owner or lessor;  
(4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to an act or condition incident to any of the foregoing.

**2. bodily injury**  
(1) to the named insured, any partner, any tenant or other person regularly employed by the named insured or any employee of any of the foregoing; (2) the bodily injury arises out of and in the course of his employment thereon; (3) to any other tenant if the bodily injury occurs on that part of the insured premises rented from the named insured or to any employee of such a tenant if the bodily injury occurs on the tenant's part of the insured premises; (4) if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, its owner or lessor or premises used for such purposes, but only part of this exclusion; (5) if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, its owner or lessor or premises used for such purposes, but only part of this exclusion; (6) if the named insured is a club, to any member of the named insured; (7) if the named insured is a hotel, motel, or tourist club, to any guest of the named insured; (8) to any medical expenses for services by the named insured, any employee, thereof or any person or organization under contract to the named insured to provide such services.

**3. OF LIABILITY**  
The limit of liability for Premises Medical Payments Coverage is \$1,000 per person unless otherwise stated in the schedule of this endorsement. The limit of liability applicable to each person is the limit of the company's liability for all medical expenses for bodily injury to any person as the result of any accident, but subject to the above limit, for each person, the total liability of the company or Premises Medical Payments Coverage for all medical expenses for bodily injury to two or more persons as the result of any one accident if it does not exceed the limit of bodily injury liability stated in the policy applicable to each occurrence.

**ADDITIONAL DEFINITIONS**  
As used herein, "accident" means an unexpected and unintended occurrence, the result of which causes bodily injury to the named insured with respect to which the named insured is afforded coverage for bodily injury liability under this policy, and includes the expenses immediately adjoining on time; "medical expenses" means expenses for necessary medical, surgical, dental, prosthetic, prosthetic devices, and necessary ambulance, hospital, professional nursing, and funeral services.

**ADDITIONAL CONDITIONS**  
The insured shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require. The company may pay the injured person or any person organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall constitute an admission of liability of any person or, except hereunder, of the company.

**LIQUOR, LAW LIABILITY COVERAGE**  
This exclusion does not apply with respect to liability of the insured or indemnitee arising out of the giving or serving of alcoholic beverages at functions incidental to the named insured's business; provided the named insured is not engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages.

**FIRE LEGAL LIABILITY COVERAGE - REAL PROPERTY**  
This coverage does not apply to liability assumed by the insured under any contract or agreement.

**BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (INCLUDING COMPLETED OPERATIONS)**  
The limit of property damage liability as respects this Fire Legal Liability Coverage is \$50,000 each occurrence unless otherwise stated in the schedule of this endorsement.

**EXCLUSIONS (k) AND (l) ARE REPLACED BY THE FOLLOWING:**  
(1) to property owned or occupied by or rented to the insured, or, except with respect to the use of elevator, to property held by

the insured for sale or entrusted to the insured for storage or safekeeping;  
(2) except with respect to liability under a written sidetrack agreement or the use of elevators:  
(a) to property while on premises owned by or rented to the insured for the purpose of having operations performed on such property by or on behalf of the insured;  
(b) to tops or equipment while being used by the insured in performing his operations;  
(c) to property in the custody of the insured which is to be installed, erected, or used in construction by the insured, or to that particular part of any property, not on premises owned by or rented to the insured;  
(d) upon which operations are being performed by or on behalf of the insured at the time of the property damage arising out of such operations;  
(e) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the insured;  
(3) with respect to the completed operations hazard and with respect to any classification stated in the policy or in the company's manual as including completed operations, to property damage to work performed by the named insured arising out of such work or any portion thereof or out of such materials, parts or equipment furnished in connection therewith.

**VII. INCIDENTAL MEDICAL MALPRACTICE LIABILITY COVERAGE**  
The definition of bodily injury is amended to include incidental Medical Malpractice Injury.

**EXCLUSIONS:**  
(A) medical services rendered in rendering service or treatment or the furnishing of food or beverages in connection therewith; or  
(B) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.  
This coverage does not apply to:  
(1) expenses incurred by the insured for first-aid to others at the time of an accident, and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition are amended accordingly;  
(2) any insured engaged in the business or occupation of providing any of the services described under VII (A) and (B) above;  
(3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under VII (A) and (B) above.

**VIII. NON-OWNED WATERCRAFT LIABILITY COVERAGE (UNDER 26 FEET IN LENGTH)**  
Exclusion (d) does not apply to any watercraft under 26 feet in length provided the watercraft is neither owned by the named insured nor being used to carry persons or property for a charge. Where the insured is, irrespective of this coverage, covered or protected against any loss or claim which would otherwise have been paid by the company under this endorsement, there shall be no contribution or participation by this company on the basis of excess, contribution, deficiency, concurrent, or double insurance or otherwise.

**IX. LIMITED WORLDWIDE LIABILITY COVERAGE**  
The definition of policy territory is amended to include the following:  
4. Anywhere in the world with respect to bodily injury, property damage, personal injury or advertising injury arising out of the activities of any insured permanently domiciled in the United States of America though temporarily outside the United States of America; its territories and possessions or Canada, provided the original suit for damages because of such injury or damage is brought within the United States of America, its territories or possessions or Canada.

**X. ADDITIONAL PERSONS INSURED**  
As respects bodily injury, property damage and advertising injury and personal injury coverages, under the provision "Persons Insured", the following are added as insureds:

- (1) Spouse—Partnership—If the named insured is a partnership, the spouse of a partner but only with respect to the conduct of the business of the named insured.
- (2) Employee—Any employee of the named insured while acting within the scope of his duties as such, but the insurance afforded to such employee does not apply:
  - (a) to bodily injury or personal injury to another employee of the named insured arising out of or in the course of his employment;
  - (b) to personal injury or advertising injury to the named insured or, if the named insured is a partnership or joint venture, any partner or member thereof, or the spouse of any of the foregoing;
  - (c) to property damage to property owned, occupied or used by, rented to, in the care, custody or control of or over which physical control is being exercised for any purpose by another employee of the named insured, or by the named insured or, if the named insured is a partnership or joint venture, any partner or member thereof or by the spouse of any of the foregoing.

**XI. EXTENDED BODILY INJURY COVERAGE**  
The definition of occurrence includes any intentional act by or at the direction of the insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

**XII. AUTOMATIC COVERAGE - NEWLY ACQUIRED ORGANIZATIONS (90 DAYS)**  
The word "insured" shall include as named insured any organization which is acquired or formed by the named insured and over which the named insured maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to bodily injury, property damage, personal injury and advertising injury with respect to which such new organization under this policy is also an insured under any other similar liability or indemnity policy or would be an insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the named insured.

# Non-Premium Endorsement

Date Prepared	Endorsement No.
---------------	-----------------

Issued by

The Home Insurance Company     City Insurance Company      
 The Home Indemnity Company     The Home Insurance Company of Indiana

Policy Number	Certificate Number	Named Insured	Producer No. - OPC
<p><b>"The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy."</b></p>			
Policy Period:	Inception (Month-Day-Year)	Expiration (Month-Day-Year)	Effective Date and Time of Endorsement

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

## COMPOSITE RATING PLAN PREMIUM ENDORSEMENT

It is agreed that the premium for the policy to which this endorsement is attached shall be computed upon a composite basis in accordance with the company's rules, rates, rating plans, premium and minimum premiums and the other terms of the policy not inconsistent herewith:

When used as a premium basis: Receipts - Per \$1000

Receipts: The word receipts means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repairs, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

Coverage	Receipts	Composite Rate		Premium	
		BI	PD	BI	PD
M & C	19500	.113	.045	2204	878
Products	19500	.167	.112	3257	2184

Nothing herein contained shall be held to waive, vary, alter, or extend any condition or provision of the policy other than as stated above.

\_\_\_\_\_  
Signature of Authorized Representative



**The Home Insurance Companies**





**SINGLE LIMIT OF LIABILITY**

ENDORSEMENT NO. \_\_\_\_\_

ISSUED BY - Type in Full Name of Insuring Company

POLICY NUMBER

NAME INSURED

EFFECTIVE DATE AND TIME OF ENDORSEMENT

DATE PREPARED

PRODUCER

PRODUCER NO. - OPC

**The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.**

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

**ALL LIABILITY INSURANCE, OTHER THAN COMPREHENSIVE PERSONAL INSURANCE, FARMER'S COMPREHENSIVE PERSONAL INSURANCE OR PERSONAL INJURY INSURANCE**

It is agreed that with respect to the insurance indicated below by

1. The total limit of the Company's liability for all damages as the result of any one occurrence is the amount stated below as applicable to "each occurrence". Item III, Limits of Liability is amended accordingly.

2. Any aggregate limit of liability, the amount of which is specifically stated below or in the declarations, shall nevertheless continue to apply in accordance with all the terms of the policy applicable thereto.

**COVERAGES**

**LIMITS OF LIABILITY**

All Liability Insurance

\$ 1,000,000 each occurrence

Products - Completed Operations

\$ \_\_\_\_\_ aggregate operations

Comprehensive Automobile Liability Insurance

\$ \_\_\_\_\_ aggregate protective

Comprehensive General Liability Insurance (Except Automobile)

\$ \_\_\_\_\_ aggregate contractual

\$ 1,000,000 aggregate products

It is further agreed that with respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province the limit of liability stated herein for "each occurrence" shall be applied to provide the separate limits required by such law for Bodily Injury Liability and Property Damage Liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the Company's liability.

SIGNATURE OF AUTHORIZED REPRESENTATIVE \_\_\_\_\_

# Non-Premium Endorsement

Date Prepared 8-8-83ra	Endorsement No. 1
---------------------------	----------------------

Issued by  
 The Home Insurance Company     City Insurance Company  
 The Home Indemnity Company     The Home Insurance Company of Indiana

Policy Number GA 1 42 52 06	Certificate Number	Named Insured Flexible Products Company	Producer No. - OPC 65308-571
Producer Johnson & Higgins of Ga., Inc.	Inception (Month-Day-Year) 5-31-83	Expiration (Month-Day-Year) 5-31-84	Effective Date and Time of Endorsement 5-31-83

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged. Form L9001 is to be included in the policy as per attached.

No premium adjustment necessary

*David W. Langman*

Signature of Authorized Representative



The Home Insurance Companies

# Non-Premium Endorsement

Date Prepared 8-8-83ra	Endorsement No. 2
---------------------------	----------------------

Issued by  
 The Home Insurance Company     City Insurance Company  
 The Home Indemnity Company     The Home Insurance Company of Indiana

Policy Number GL 1 42 52 06	Certificate Number	Named Insured Flexible Products Company
Producer Johnson & Higgins of Ga., Inc.		Producer No. - OPC 65308-571
Policy Period: Inception (Month-Day-Year) 5-31-83	Expiration (Month-Day-Year) 5-31-84	Effective Date and Time of Endorsement 5-31-83 12:01 am

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

In consideration of premium charged, Part VIII of endorsement L9001 (#1) Broad Form Comprehensive General Liability Endorsement, is amended to refer to Non-Owned Watercraft under 50 feet in length.

*David W. Langan*

Signature of Authorized Representative



The Home Insurance Companies

(The Attaching Endorsement need be completed only when this endorsement is issued subsequent to preparation of the policy.)

**LIABILITY**

GL-02 06 (Ed. 03 74)  
ISO G526

L 6312a  
(Ed. 3-74)

**AMENDMENT OF CANCELLATION CONDITION ENDORSEMENT  
(Georgia)**

This endorsement, effective \_\_\_\_\_, forms a part of policy No. \_\_\_\_\_  
(12:01 A.M., standard time)

issued to \_\_\_\_\_

by \_\_\_\_\_

-----  
Authorized Representative

It is agreed that the "Cancellation" Condition is replaced by the following:

This policy may be cancelled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective.

This policy may be cancelled by the company by mailing to the named insured at the last address of record, written notice stating when not less than thirty days thereafter such cancellation shall be effective; provided that, this policy may be cancelled by the company by mailing to the named insured at the last address of record, written notice stating:

1. when not less than fifteen days thereafter such cancellation shall be effective, if the policy insures a commercial or industrial concern, or
2. when not less than ten days thereafter such cancellation shall be effective, if the named insured fails to discharge when due any of his obligations in connection with the payment of premium for this policy or any installment thereof, whether payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit, or
3. when not less than ten days thereafter such cancellation shall be effective, if this policy has been in effect less than sixty days at the time notice of cancellation is mailed and this is not a renewal policy.

The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment shall be made within 15 days of notice of cancellation unless an audit or rate investigation is required in which case such premium adjustment shall be made as soon as practicable, but payment or tender of unearned premium is not a condition of cancellation.



(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

**LIABILITY**

L 9235  
(Ed. 7-78)

**GL 00 19 (Ed. 7-78)**  
**GENERAL LIABILITY**  
**AMENDATORY ENDORSEMENT—ADDITIONAL DEFINITION**

This endorsement, effective \_\_\_\_\_, forms a part of policy No. \_\_\_\_\_  
(12:01 A. M., standard time)

issued to \_\_\_\_\_

by \_\_\_\_\_

-----  
Authorized Representative

It is agreed that the following definition is added:

"loading or unloading", with respect to an automobile, means the handling of property after it is moved from the place where it is accepted for movement into or onto an automobile or while it is in or on an automobile or while it is being moved from an automobile to the place where it is finally delivered, but "loading or unloading" does not include the movement of property by means of a mechanical device (other than a hand truck) not attached to the automobile.



# Extra Strength<sup>SM</sup> Products Liability Insurance Endorsement

H 349121  
Ed. 11-82

It is agreed that:

1. Exclusion (n) does not apply to damages claimed for the repair or replacement of the **named insured's products** which are physically injured or destroyed as a result of an **occurrence** included within the **products hazard**.

2. The following coverage is added to the policy:

a) **Recall Coverage (including Extortion)**

The company will reimburse the **named insured** for **recall expenses** for the withdrawal of the **named insured's products** provided such withdrawal is required because of 1) a determination by a governmental entity, or by the **named insured** with the prior written consent of the company, during the policy period, that the use or consumption of the **named insured's products** could result in **bodily injury** or **property damage** or 2) an **extortion demand** during the policy period in which the **named insured's products** are involved.

b) **Limits of Liability**

Regardless of the number of 1) **insureds** hereunder, or 2) claims made for **recall expenses**, the total limit of the company's liability under this coverage for all **recall expenses** shall not exceed \$100,000.

c) **Additional Definitions**

**"Extortion demand"** means an event in which an extortionist demands money or other consideration in exchange for his agreement not to tamper with the **named insured's products** in a way that would otherwise cause **bodily injury** or **property damage** to third parties.

**"Recall expenses"** means the reasonable additional expenses (including, but not limited to, cost of correspondence, newspaper and magazine advertising, radio or television announcements and transportation cost), necessarily incurred in arranging for the return of products, but excluding costs of the replacement products and the cash value of the damaged products.

# Non-Premium Endorsement

Date Prepared  
11-21-83 p1

Endorsement No.  
4

Issued by

- The Home Insurance Company     City Insurance Company      
 The Home Indemnity Company     The Home Insurance Company of Indiana

Policy Number GL 1 42 52 06	Certificate Number	Named Insured Flexible Products Company	
Producer Johnson & Higgins of GA, Inc.		Producer No. - OPC 65308-571	
<b>Policy Period:</b>	Inception (Month-Day-Year) 5-31-83	Expiration (Month-Day-Year) 5-31-84	Effective Date and Time of Endorsement 5-31-83

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

The following forms are added to the policy:

L9113a

H24059F (Revised)

H22799F

*David W. [Signature]*

Signature of Authorized Representative



The Home Insurance Companies

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY

GL 20 15 (Ed. 07 66)  
G 113

L 9113a  
(Ed. 7-66)

**ADDITIONAL INSURED**  
(Vendors—Broad Form)

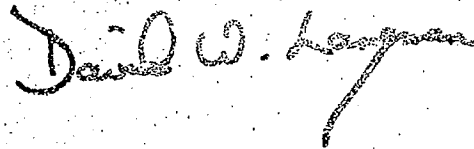
This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

**COMPREHENSIVE GENERAL LIABILITY INSURANCE**  
**COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE**

This endorsement, effective \_\_\_\_\_, forms a part of policy No. \_\_\_\_\_  
(12:01 A. M., standard time)

issued to \_\_\_\_\_

by \_\_\_\_\_



Authorized Representative

**SCHEDULE**

Name of Vendor(s)

Description of Product(s)

Plastic Mfg.

It is agreed that the "Persons Insured" provision is amended to include any person or organization designated above (herein referred to as "vendor"), as an insured, but only with respect to the distribution or sale in the regular course of the vendor's business of the named insured's products designated above subject to the following additional provisions:

1. The insurance with respect to the vendor does not apply to:
  - (a) any express warranty unauthorized by the named insured;
  - (b) bodily injury or property damage arising out of
    - (i) any physical or chemical change in the form of the product made intentionally by the vendor,
    - (ii) repacking, unless unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instruction from the manufacturer and then repacked in the original container,
    - (iii) demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product, or
    - (iv) products which after distribution or sale by the named insured have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.
2. The insurance does not apply to any person or organization, as insured, from whom the named insured has acquired such products or any ingredient, part or container, entering into, accompanying or containing such products.







REVISED

ENDORSEMENT NO.

**SINGLE LIMIT OF LIABILITY**

ISSUED BY - Type in Full Name of Insuring Company

POLICY NUMBER	NAME INSURED <b>"The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy."</b>
EFFECTIVE DATE AND TIME OF ENDORSEMENT	PRODUCER NO. - OPC
PRODUCER	PRODUCER NO. - OPC

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

**ALL LIABILITY INSURANCE, OTHER THAN COMPREHENSIVE PERSONAL INSURANCE, FARMER'S COMPREHENSIVE PERSONAL INSURANCE OR PERSONAL INJURY INSURANCE**

It is agreed that with respect to the insurance indicated below by

1. The total limit of the Company's liability for all damages as the result of any one occurrence is the amount stated below as applicable to "each occurrence". Item III, Limits of Liability is amended accordingly.
2. Any aggregate limit of liability, the amount of which is specifically stated below or in the declarations, shall nevertheless continue to apply in accordance with all the terms of the policy applicable thereto.

COVERAGES	LIMITS OF LIABILITY
<input type="checkbox"/> All Liability Insurance	\$ <u>1,000,000</u> each occurrence
Products-Completed Operations	\$ <u>1,000,000</u> aggregate operations
<input type="checkbox"/> Comprehensive Automobile Liability Insurance	\$ _____ aggregate protective
<input checked="" type="checkbox"/> Comprehensive General Liability Insurance (Except Automobile)	\$ <u>1,000,000</u> aggregate contractual
	\$ <u>1,000,000</u> aggregate products

It is further agreed that with respect to any occurrence for which notice of this policy is given in lieu of security or when this policy is certified as proof of financial responsibility under the provisions of the Motor Vehicle Financial Responsibility Law of any state or province the limit of liability stated herein for "each occurrence" shall be applied to provide the separate limits required by such law for Bodily Injury Liability and Property Damage Liability to the extent of the coverage required by such law, but the separate application of such limit shall not increase the total limit of the Company's liability.

*David W. Langman*

SIGNATURE OF AUTHORIZED REPRESENTATIVE



**ADDITIONAL DECLARATIONS  
EMPLOYEE BENEFITS LIABILITY ENDORSEMENT**

INSURED Flexible Products Company POLICY NO. GL 1 42 52 06

COVERAGE	LIMITS OF LIABILITY	DEDUCTIBLE
EMPLOYEE BENEFITS LIABILITY INSURANCE	\$ 500,000. Each Claim \$ 1,500,000 Aggregate	\$ 1,000 Each Claim
PREMIUM COMPUTATION		
ESTIMATED NUMBER OF EMPLOYEES	RATE PER EMPLOYEE	ADVANCE PREMIUM
	First \$5,000	\$
	Next 5,000	\$
	Over 10,000	\$
TOTAL ADVANCE PREMIUM*		\$ Incl

\*If coverage is provided subsequent to policy inception, attach to a change endorsement.

In consideration of the payment of the premium, this Company agrees with the Insured named in the Declarations to afford the coverage set forth herein and on pages 2 and 3. The other terms, conditions and limits of liability in other sections of the policy to which this endorsement is attached shall not apply to insurance afforded hereunder.

**INSURING AGREEMENTS**

- Employee Benefits Liability:**  
This Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of any claim made against the Insured due to any negligent act, error or omission of the Insured, or any other person for whose acts the Insured is legally liable, in the administration of the Insured's Employee Benefits Programs, as defined herein, and this Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such negligent act, error or omission, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient; but this Company shall not be obligated to defend any suit after the applicable limit of this Company's liability has been exhausted by payment of judgments or settlements.
- Supplementary Payments:** This Company will pay, in addition to the applicable limits of liability:
  - all expenses incurred by this Company, all costs taxed against the Insured in any suit defended by this Company and all interest on the entire amount of any judgment therein which accrues after the entry of judgment and before this Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of this Company's liability thereon;
  - premiums on appeal bonds required in any such suit and premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without any obligation to apply or furnish any such bonds;
  - reasonable expenses incurred by the Insured at this Company's request including actual loss of wages or salary (but not loss of other income) not to exceed \$25 per day because of his attendance at hearings or trials at such request.

**DEFINITIONS**

- Definition of "Insured":** With respect to the insurance afforded by this endorsement the unqualified word "Insured" includes the Named Insured; provided that (a) if the Named Insured is designated as an individual, the insurance applies only to the conduct of a business of which he is the sole proprietor and (b) the unqualified word "Insured" also includes the following:
  - if the Named Insured is or includes a partnership or joint venture, any partner or member thereof but only with respect to his liability as such;
  - any executive officer, director or stockholder of the Named Insured while acting within the scope of his duties as such;
  - any full-time, salaried employee, provided such employee is authorized to act in the administration of the Named Insured's Employee Benefits Programs.

**"Employee Benefits Programs":** The term "Employee Benefits Programs" means (a) group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workmen's compensation, unemployment insurance, social security benefits, disability benefits, and (b) any other similar employee benefits instituted after the effective date of this endorsement, provided this Company is notified within thirty days after the institution of such benefits.

**"Administration":** The unqualified word "administration" wherever used shall mean:

- (a) Interpreting the Employee Benefits Programs;
- (b) Handling of records in connection with the Employee Benefits Programs;
- (c) Effective enrollment, termination or cancellation of employees under the Employee Benefits Programs; provided all such acts are authorized by the Named Insured.

#### EXCLUSIONS

This endorsement does not apply to:

- (a) any claim based upon or attributable to any dishonest, fraudulent, criminal or malicious act, libel, slander, discrimination, or humiliation;
  - (b) bodily injury to or sickness, disease or death, of any person, or to injury to any tangible property, including the loss of use thereof;
  - (c) any claim for failure of performance of contract by an insurer;
  - (d) any claim based upon the Insured's failure to comply with any law concerning workmen's compensation, unemployment insurance, social security or disability benefits;
  - (e) any claim based upon:
    - (i) advice given by an Insured to an employee to participate or not to participate in any Employee Benefit Plans;
    - (ii) the appointment of, or the failure to appoint, any investment manager, administrator, trustee, actuary, advisor, counsel, accountant, custodian, or consultant;
    - (iii) any investment activity, including but not limited to, the management, administration or disposition of assets of any Employee Benefit Program.
2. This endorsement does not provide coverage for any claim to the extent that recovery could not have been attained upon such claim in an action at law prior to the effective date of the Employee Retirement Income Security Act of 1974 (ERISA).

#### CONDITIONS

1. **Application of this Endorsement:** This endorsement applies to damages which occur within the United States of America, its territories or possessions or Canada provided claim or suit is brought against the Insured during the endorsement period, and the Insured at the effective date of this endorsement had no knowledge or could not have reasonably foreseen any circumstances which might result in a claim or suit.
2. **Limits of Liability:** Regardless of the number of (a) Insureds under this policy (b) persons who sustain damage, or (c) claims made or suits brought for such damage; the limit of liability stated in the Additional Declarations as applicable to "each claim" is the limit of this Company's liability for all damages incurred on account of any claim covered hereunder; the limit of liability stated in the Additional Declarations as "aggregate" is, subject to the above provision respecting each claim, the total limit of this Company's liability for all claims covered hereunder and occurring during each annual period this endorsement is in force.
3. **Premium:** The premium stated in the Additional Declarations is an estimated premium only. Upon termination of each annual period of this endorsement the Insured, on request, will furnish this Company a statement of the total number of employees at the end of the period and the earned premium shall be computed on the average of the number of employees at the beginning and the end of such period in accordance with the rates specified in the Additional Declarations. If the earned premium thus computed exceeds the estimated premium paid, the Insured shall pay the excess to this Company; if less, this Company shall return to the Insured the unearned portion paid by such Insured.
4. **Insured's Duties in the Event of Occurrence, Claim or Suit:**
  - (a) In the event of an occurrence which may result in a claim, written notice containing particulars sufficient to identify the Insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, shall be given by or for the Insured to this Company or any of its authorized agents as soon as practicable.
  - (b) If claim is made or suit is brought against the Insured, the Insured shall immediately forward to this Company every demand, notice, summons or other process received by him or his representative.
  - (c) The Insured shall cooperate with this Company and, upon this Company's request, shall attend hearings and trials, assist in making settlements, in the conduct of suits, in securing and giving evidence and obtaining the attendance of witnesses. The Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.
5. **Deductible:** The deductible amount indicated in the Additional Declarations shall be subtracted from the total amount of all sums which this Company is obligated to pay or incur on behalf of the Insured on account of each claim. This Company shall be liable only for the difference between such deductible amount and the limit of this Company's liability for each claim as stated in the Additional Declarations. The terms of this endorsement including those with respect to notice of claim or suit and this Company's right to investigate and negotiate any such claim or suit, apply irrespective of the application of the deductible amount.

6. **Action Against Company:** No action shall lie against this Company, unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this endorsement, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.  
Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this endorsement to the extent of the insurance afforded by this endorsement. No person or organization shall have any right under this endorsement to join this Company as a party to any action against the Insured to determine the Insured's liability, nor shall this Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve this Company of any of its obligations hereunder.
7. **Subrogation:** In the event of any payment under this endorsement, this Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.
8. **Changes:** Notice to any agent or knowledge possessed by an agent or by another person shall not affect a waiver or a change in any part of this endorsement or estop this Company from asserting any right under the terms of this endorsement; nor shall the terms stated herein be waived or changed, except by endorsement issued to effect such change.
9. **Assignment:** Assignment of interest under this endorsement shall not bind this Company until its consent is endorsed hereon; if, however, the Named Insured shall die, this endorsement shall cover the Named Insured's legal representative as Named Insured; provided that notice of cancellation addressed to the Insured named in the Additional Declarations and mailed to the address shown in this endorsement shall be sufficient notice to effect cancellation of this endorsement.
10. **Other Insurance:** If the Insured has other insurance against a loss covered by this endorsement, this Company shall not be liable under this endorsement for a greater proportion of such loss than the limit of liability stated in the Additional Declarations bears to the total limit of liability of all valid and collectible insurance against such loss. However, with respect to negligent acts, errors or omissions which occur prior to the effective date of this endorsement, the insurance hereunder shall apply only as excess insurance over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limit of liability of this endorsement exceeds the sum of the applicable limits of liability of all such other insurance.
11. **Additional Declarations:** By acceptance of this endorsement the Insured agrees that the statements in the Additional Declarations are his agreements and representations; that this endorsement is issued in reliance upon the truth of such representations and that this endorsement embodies all agreements existing between himself and this Company or any of its agents relating to this insurance.
12. **Conformity with Statute:** Terms of this endorsement which are in conflict with the statutes of the State wherein this endorsement is issued are hereby amended to conform to such statutes.
13. **Cancellation:** This endorsement may be cancelled by the Named Insured by surrender thereof to this Company or any of its authorized agents or by mailing to this Company written notice stating when thereafter the cancellation shall be effective. This endorsement may be cancelled by this Company by mailing to the Named Insured at the address shown in the Additional Declarations written notice stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the endorsement period. Delivery of such written notice either by the Named Insured or by this Company shall be equivalent to mailing.

# Non-Premium Endorsement

Date Prepared 11-21-83pl	Endorsement No. 5
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Issued by

- The Home Insurance Company     City Insurance Company      
 The Home Indemnity Company     The Home Insurance Company of Indiana

Policy Number GL 1 42 52 06	Certificate Number	Named Insured Flexible Products Company	
Producer Johnson & Higgins of Ga., Inc.		Producer No. - OPC 65308-571	
<b>Policy Period:</b>	Inception (Month-Day-Year) 5-31-83	Expiration (Month-Day-Year) 5-31-84	Effective Date and Time of Endorsement 5-31-83

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

It is understood and agreed that the cancellation clause in the policy is amended to 60 days notice in lieu of 10 days except for non-payment of premium.

*David W. ...*

Signature of Authorized Representative



# EXHIBIT 2

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
EASTERN DIVISION

2005 NOV 15 PM 2:06

COURT

CIVIL ACTION NO.: CV-05-\_\_\_\_\_

CV-05-HGD-2341-E

REX TANNER; JOE NATHAN )  
SAXTON; RICHARD D. WOLINSKI; )  
ROBERT BRANDON PORTER; )  
WILLIAM KIASKI; TOM HOLLAND; )  
JIM MELLOTT; ROBERT WIGGINS; )  
JOSEPH CARNEY, SR.; JAMES A. )  
O'NEAL; TIMOTHY C. MILLER; )  
PAUL E. PERRINE, JR.; RANDY )  
HENRY; LONNIE BROWN; and )  
DONNIE LOWE, Individually and on )  
behalf of all others similarly situated, )

Plaintiffs, )

VS. )

INTERNATIONAL ISOCYANATE )  
INSTITUTE, INC.; AMERICAN )  
CHEMISTRY COUNSEL; MOBAY )  
CHEMICAL CORPORATION; )  
UPJOHN COMPANY; E. I. DuPONT de )  
NEMOURS & COMPANY; STEPAN )  
COMPANY; SHELL CHEMICAL LP; )  
SHELL OIL COMPANY; ~~LOWE~~ )  
~~FRANCOIS COMPANY; FLEXIBOND~~ )  
~~PRODUCERS COMPANY; OLIN~~ )  
CORPORATION; RUBICON, INC.; )  
BASF WYANDOTTE CORPORATION; )  
MONSANTO COMPANY; ~~ANTON~~ )  
~~CARBINE CORPORATION,~~ )  
CHEMTURA CORPORATION; )  
HUNTSMAN CORPORATION; )  
GENCORP, INC.; BASF )

*Price - 2/9/06 Trial D*

CORPORATION; BASF )  
 AKTIENGESELLSCHAFT; BAYER AG; )  
 BAYER MATERIAL SCIENCE LLC; )  
 BAYER CORPORATION; LANXESS )  
 CORPORATION; RHF FOAM SYSTEMS, )  
 INC.; ~~LANXESS FOAM PRODUCTS, INC.~~ )  
 GREEN MOUNTAIN INTERNATIONAL, )  
 INC.; SUB-TECHNICAL, INC.; and )  
 MICON, INC., )  
 )  
 )  
 Defendants. )

**CLASS ACTION COMPLAINT**

**NATURE OF THE CASE**

1. This action is brought by the Individual Plaintiffs on behalf of themselves and a class of similarly-situated coal miners seeking redress for personal injuries, declaratory and injunctive relief as a result of their exposure to multiple products containing the chemical isocyanate, Methylene Diphenyl Diisocyanate, more commonly referred to as "MDI".
2. MDI is commonly used in the coal mining industry where it is combined with other chemicals to create various polyurethane foam products with differing, but similar chemical and physical properties.
3. These MDI-containing polyurethane foam products are used in coalmines as rigid foam products that are used to aid in the sealing of ventilation controls and systems and stabilizing mine roofs and ribs (walls).



These MDI-containing polyurethane foam products have been widely used in the coal mining industry for decades and are presently in widespread use.

4. Generally, the MDI-containing polyurethane foam products pose no substantial health hazards in their final form. However, during the chemical reaction and/or application of these MDI-containing polyurethane foam products, MDI is often released into the mine air, or spilled or otherwise released in the mine, where it is then inhaled or comes in contact with the miners' skin.

5. Isocyanates, including MDI, are powerful irritants to the mucus membranes of the eyes, gastrointestinal tract and respiratory system. Inhalation and or skin exposure to isocyanates, including MDI, cause a variety of health conditions in humans including skin rashes and lesions, asthma, respiratory illness and even death.

6. Isocyanate exposure, including exposure to MDI, is also known to cause isocyanate sensitization, a condition whereby a person who is exposed to isocyanates, even in the most miniscule amounts, can be caused to suffer life-threatening asthma attacks, where the same exposure would have little or no effect on the average non-sensitized person.

7. Because of the prevalent use of MDI and its common release in coal mining activities, it is therefore imperative that all coal miners, who

have or may in the future be exposed to or use MDI or other isocyanates, who are already sensitized to MDI or other isocyanates, or who are at risk of becoming sensitized to MDI or other isocyanates, be adequately informed of the health risks associated with this exposure and receive appropriate medical attention.

8. Moreover, it is equally important that all coal miners who have been exposed and/or sensitized to MDI, be provided adequate medical treatment and medical monitoring for the physical injuries they have suffered or will likely suffer as a result of MDI exposure.

#### BACKGROUND

9. Since the 1970's, the manufacturers of isocyanates such as MDI have been members of trade associations such as the International Isocyanate Institution ("III"), American Chemistry Counsel ("ACC"), and the European Diisocyanate & Polyol Producers Association ("ISOPA"). While the stated purposes of these trade associations are the promotion of safe uses for isocyanates, the manufacturer members of these trade organizations have conspired among themselves to use these trade organizations to conceal the true health effects of isocyanate exposure caused by the use of their products in coal mining applications, and to downplay or otherwise obscure efforts by others to expose the potential

health risks associated with isocyanates. Although the manufacturers and members of these trade organization of isocyanates have known the dangers of isocyanate exposure for decades, they have nevertheless effectively used these trade organizations to conceal the hazards of isocyanate exposure from the general public and, in particular, the Plaintiffs and the members of the class, as to the use of their products in coal mining applications. The concealment of the health risks associated with isocyanate exposure in underground mining is part and parcel of an active conspiracy to both affirmatively misrepresent and to conceal these dangers in order to retain and increase the substantial profits these products generate for the members of the conspiracy.

10. In furtherance of the aforementioned conspiracy, the defendants have actively misrepresented the dangers of isocyanates in coal mining applications to government agencies, employers, the named Plaintiffs and members of the class. As a proximate result of this active conspiracy, the named Plaintiffs and the class members have not been adequately advised as to the dangers inherent with their daily contact with MDI-containing polyurethane products. Members of the class are currently unaware of the need to seek medical care or to otherwise protect themselves from future exposure to isocyanates and the harm that is virtually certain to occur. The

named Plaintiffs and the members of the class have been systematically deprived of crucial and vitally important information that will aid them in avoiding aggravation of their injury and in obtaining proper treatment.

11. Among the more disturbing components of this decades long conspiracy has been the concerted efforts by isocyanate manufacturers, III, ACC, ISOPA and others to fund and publish misleading scientific studies and papers which obscure or otherwise refute dangers from isocyanate exposure which the defendants know to be real. The ultimate effect of these studies and papers is to provide the manufacturers a basis to fight efforts to obtain meaningful protection for workers exposed to isocyanates and to preempt intervention by unions, state and federal regulatory agencies, other organizations and concerned individuals. Through the relationship between the manufacturers, suppliers and trade organizations such, Defendants to this action, have conspired to affirmatively misrepresent the dangers of isocyanates, including MDI.

12. Plaintiffs, on behalf of themselves and a class of similarly situated underground miners therefore bring this action in an effort to uncover the truths of isocyanate exposure known to the industry but concealed from the public; to obtain a declaration as to the true health risks associated with isocyanate exposure; to enjoin the isocyanate manufacturing industry from

continuing to conceal and/or obfuscate the health risks associated with isocyanate exposure; and to notify all class members and future miners and employers of the health risks of isocyanate exposure. Plaintiffs also bring this action on behalf of themselves and the class, seeking redress for injuries they have suffered as a result of isocyanate exposure; to obtain adequate medical treatment for said injuries and medical monitoring for injuries they have suffered or will likely suffer as a result of MDI exposure.

**PARTIES (PLAINTIFFS)**

13. Plaintiff Rex Tanner ("Tanner") was, until June of 2002 and for 26 years prior thereto, employed by United States Steel Mining Company ("USM") in USM's Oak Grove Mine. USM's Oak Grove Mine ("Oak Grove Mine") is an underground coal mine that is located in Jefferson County, Alabama. During his employment Tanner was topically exposed to MDI, and inhaled vapors present in the mine air that contained MDI. Tanner joins with Joe Nathan Saxton and Richard D. Wolinski and requests that this Court recognize him as one of the representatives of a class of underground coal miners who have not joined in any previously filed action that involves claims as to the health risks or injuries from isocyanates and who, since 1980, have worked in underground coal mines that are or were located in the

State of Alabama. Tanner is a resident of St. Clair County, Alabama.

Tanner, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory disease.

14. Plaintiff Joe Nathan Saxton ("Saxton") has been employed at the same mine where Tanner was employed ("Oak Grove Mine") since 1996. He is presently employed at said mine. He has been employed by USM and by PinnOak Resources, LLC ("PinnOak"). During his employment, Saxton was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. Saxton joins with Tanner and Wolinski in requesting that this Court recognize him as one of the representatives underground coal miners who have not joined in any previously filed action that involves claims as to the health risks or injuries from isocyanates, and who, since 1980, have worked in underground coal mines that are or were located in the State of Alabama. Saxton, due to his exposure to isocyanates, suffers from shortness of breath, respiratory distress, cardiovascular injury and skin rash.

15. Plaintiff Richard D. Wolinski ("Wolinski") has been employed at the same mine where Tanner and Saxton were employed ("Oak Grove Mine"), and where Saxton is presently employed, since 1995. Wolinski is presently employed at said mine. He has been employed by USM and by PinnOak Resources, LLC ("PinnOak"). Wolinski was employed by USM

from 1977 until 1994 at USM's Maple Creek Mine, located in the State of Pennsylvania. During his employment, Wolinski was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. Wolinski joins with Tamer and Saxton in requesting that this Court recognize him as one of the representatives of a class of underground coal miners who have not joined in any previously filed action that involves claims as to the health risks or injuries from isocyanates, and who, since 1980, have worked in underground coal mines that are or were located in the State of Alabama. Wolinski also requests that this Court recognize him as the representative of a class of persons who have, since 1980, worked in underground coal mines that are located in the State of Pennsylvania. Wolinski, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory problems. Wolinski also suffers from skin rashes.

16. Plaintiff William Kiaski ("Kiaski") is working in underground coal mines, located in the State of Ohio. He has worked in underground coal mines from a date that preceded 1980 until the present. During his employment, Kiaski was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiffs Wiggins, Holland and Mellott and requests that this Court recognize him as

a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Ohio. Kiaski, on or about the 5<sup>th</sup> day of April 2004, suffered an acute exposure to isocyanates. Kiaski became nauseous, dizzy and extremely short of breath. Since his exposure, Kiaski continues to suffer from shortness of breath and other respiratory diseases.

17. Plaintiff Tom Holland ("Holland") is working in underground coal mines, located in the State of Ohio. He has worked in underground coal mines from a date that preceded 1980 until the present. During his employment, Holland was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiffs Wiggins, Kiaski and Mellott and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Ohio. Holland, on or about the 5<sup>th</sup> day of April 2004, suffered an acute exposure to isocyanates. Holland became nauseous, dizzy and extremely short of breath. Since his exposure, Holland continues to suffer from shortness of breath and other respiratory diseases.



18. Plaintiff Jim Mellot ("Mellot") is working in underground coal mines, located in the State of Ohio. He has worked in underground coal mines from a date that preceded 1980 until the present. During his employment, Mellot was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiffs Wiggins, Kiaski and Holland and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Ohio. Mellot, on or about the 5<sup>th</sup> day of April 2004, suffered an acute exposure to isocyanates. Mellot became nauseous, dizzy and extremely short of breath. Since his exposure Mellot continues to suffer from shortness of breath and other respiratory diseases.

19. Plaintiff Robert Wiggins ("Wiggins") worked in underground coal mines, located in the State of Ohio, from a date that preceded 1980 until 2002. During his employment, Wiggins was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiffs Kiaski, Holland and Mellott and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Ohio.

Wiggins, due to his exposure to isocyanates, has been caused to suffer shortness of breath and other respiratory diseases. Wiggins also has suffered from skin irritations and rashes.

20. Plaintiff Robert Brannon Porter ("Porter") worked in underground coal mines, located in the State of West Virginia, from a date that preceded 1980 until February of 2005. During his employment, Porter was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiff Carney and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of West Virginia. Porter, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory diseases.

21. Plaintiff Joseph Carney, Sr. ("Carney") is working in underground coal mines, located in the State of West Virginia. He has worked in underground coal mines since a date that preceded 1980 until the present. During his employment, Carney was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiff Porter and requests that this Court recognize him as a representative of a class of persons, who since 1980, worked in underground coal mines

that are or were located in the State of West Virginia. Carney has been exposed and continues to be exposed to isocyanates and due to his exposure to isocyanates, may in the future become sensitized to isocyanates.

22. Plaintiff James A. O'Neal Sr. ("O'Neal") was, from a date that preceded 1980, employed in underground coal mines, including underground coal mines located in the State of Kentucky. He retired in 2002 while working in an underground coal mine that was located in the State of Kentucky. During his employment, O'Neal was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiff Miller in requesting that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Kentucky. O'Neal, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory diseases.

23. Plaintiff Timothy C. Miller. ("Miller") was, from a date that preceded 1980, employed in underground coal mines, including underground coal mines located in the State of Kentucky. He retired in 2002 while working in an underground coal mine that was located in the State of Kentucky. During his employment, Miller was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins

with Plaintiff O'Neal and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Kentucky. Miller, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory diseases.

24. Plaintiff Paul E. Perrine, Jr. ("Perrine") has, since a date that preceded 1980 been employed in underground coal mines, including underground coal mines located in the State of Illinois. He is presently working in the State of Illinois as an underground coal miner. During his employment, Perrine was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiff Henry and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Illinois. Perrine, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory diseases.

25. Plaintiff Randy Henry ("Henry") has, since a date that preceded 1980 been employed in underground coal mines, including underground coal mines located in the State of Illinois. He is presently working in the State of Illinois. During his employment, Henry was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with

Plaintiff Perrine and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Illinois. Henry, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory diseases.

26. Plaintiff Lonnie Brown ("Brown") has, since a date that preceded 1980 been employed in underground coal mines, including underground coal mines located in the State of Virginia. He is presently working in the State of Virginia. During his employment, Brown was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins with Plaintiff Lowe and requests that this Court recognize him as a representative of a class of persons who, since 1980, worked in underground coal mines that are or were located in the State of Illinois. Brown, due his exposure to isocyanates, suffers from shortness of breath and other respiratory diseases.

27. Plaintiff Donnie Lowe ("Lowe") has, since a date that preceded 1980 been employed in underground coal mines, including underground coal mines located in the State of Virginia. He is presently working in the State of Virginia. During his employment, Lowe was topically exposed to MDI and inhaled vapors present in the mine air that contained MDI. He joins

with Plaintiff Brown and requests that this Court recognize him as a representative of persons who, since 1980, worked in underground coal mines that are or were located in the State of Illinois. Lowe, due to his exposure to isocyanates, suffers from shortness of breath and other respiratory diseases.

**DEFENDANTS (TRADE ORGANIZATIONS)**

**INTERNATIONAL ISOCYANATE INSTITUTE**

28. The International Isocyanate Institute ("III") is a Corporation, organized under the laws of the State of New York as a "Non Profit Corporation". III's principal place of business, in the United States, is in Fort Wayne Indiana. III is a trade association whose members manufacture toluene diisocyanates ("TDI"), MDI and other isocyanate-containing products. Some, if not all, of III's members also distribute such products.

**AMERICAN CHEMISTRY COUNSEL**

29. The American Chemistry Counsel ("ACC") is a corporation organized under the laws of the State of New York with its principle place of business in Arlington, Virginia. The ACC is a trade association whose membership, through the American Chemistry Counsel Diisocyanate Panel, includes those who manufacture and distribute TDI, MDI and other isocyanate containing products.

**EUROPEAN DIISOCYANATE & POLYAL  
PRODUCERS ASSOCIATION**

30. The European Diisocyanate & Polyol Producers Association ("ISOPA") is a trade association of isocyanate producers. All of its members are members of III.

**DEFENDANTS (MANUFACTURERS, SELLERS  
AND DISTRIBUTORS)**

**BAYER**

31. The Plaintiffs are informed and believe that, through a series of corporate mergers and splits, Mobay Chemical Corporation ("Mobay") became a part of Bayer Corporation or Bayer AG and that the chemical operations of Bayer and Bayer AG, or of subsidiaries thereof, split from the parent and became Lanxess Corporation ("Lanxess"). Bayer AG is a German Corporation whose business organization and ownership interest in other Bayer Defendants cannot be easily determined by Plaintiffs. Several United States Corporations that used the name Bayer, or who appear to have been formed from reorganizations of corporations who once used the name Bayer, merged into Bayer Corporation. Bayer's United States Chemical Operations appear to have been split by Bayer into a corporation that is currently Lanxess. Bayer LLC appears to remain a separate entity. Lanxess is a corporation, organized under the laws of the State of Delaware, with its

principal place of business in the State of Pennsylvania, collective, and for the purposes of this lawsuit, Plaintiffs refer to these defendants as "Bayer" or the "Bayer defendants". At all times pertinent to this suit, the Bayer defendants manufactured and/or sold MDI that became a component part of polyurethane products used in underground coal mines. Bayer and/or Mobay and/or Lanxess is a member, or are members, of III, ACC and/or ISOPA and one or both of them, in concert with each other and/or other defendants, exercised control over the operations of these trade associations.

**UPJOHN, PHARUPJOHN, PFIZER**

32. Upjohn Company ("Upjohn") is a corporation organized under the laws of the State of Delaware. Monsanto Company ("Monsanto") is a corporation, organized under the laws of the State of Delaware. Monsanto merged into Pharmacia Corporation ("Pharmacia"). Upjohn merged into or with Pharmacia and formed PharUpJohn, a corporation organized under the laws of Delaware with its principal place of business in the State of Michigan. Pfizer, Inc. ("Pfizer") acquired PharUpJohn or its assets, in approximately 2004. At all times pertinent to this suit, Monsanto, Pharmacia, Upjohn and PharUpJohn have manufactured isocyanate compounds and/or MDI-containing polyurethane products used in underground mining, and were members of III. Plaintiffs are informed and



believe that Pfizer is continuing to operate the Upjohn and PharUpJohn facilities and that it continues to manufacture isocyanates. Pfizer is legally and equitably liable for the tort and contract liabilities of Upjohn and PharUpJohn. Upjohn, Monsanto, Pharmacia and PharUpJohn were members of III, ACC and/or ISOPA. Pfizer may be a member of III, ACC and/or ISOPA. Monsanto, Pharmacia, PharUpJohn, Pfizer and/or Upjohn, as members of III, ACC and/or ISOPA, in concert with each other and/or other Defendants exercised control over the operations of these trade associations.

#### DUPONT

33. E.I. DuPont Nemours & Company (DuPont<sup>™</sup>) is a Corporation, organized under the laws of the State of Delaware, with its principal place of business in the State of Delaware. At all times pertinent to this suit, DuPont has been engaged in the manufacture of isocyanate components and/or MDI-containing polyurethane products used in underground mining. DuPont is a member of III, ACC and/or ISOPA. As a member of III, ACC and/or ISOPA, DuPont has participated in concert with other Defendants and exercised control over the operations of these trade associations.

**STEPAN**

34. Stepan Company ("Stepan") is a corporation organized under the laws of the State of Delaware with its principle place of business in the United States in Northfield, Illinois. At all times pertinent to this suit, Stepan has manufactured isocyanate compounds and/or MDI-containing polyurethane products used in underground mining. It is a member of III, ACC and/or ISOPA, and it has, in concert with other Defendants, exercised control over the operations of these trade associations.

**SHELL**

35. Shell Chemical LP is a limited partnership organized under the laws of the State of Delaware with its principle place of business in Houston, Texas. Shell Chemical LP is, apparently, owned and controlled by Shell Oil Company (collectively "Shell") which is a corporation organized under the laws of the State of Delaware with its principal place of business in New York. At all times pertinent to this suit, Shell has manufactured and distributed isocyanate compounds and/or MDI-containing polyurethane products used in underground mining, and is a member of III, ACC and/or ISOPA. Shell has, in concert with other defendants, exercised control over the operations of these trade associations.

## DOW

36. Flexible Products Company ("Flexible") was, prior to 2000, a corporation organized under the laws of the State of Georgia, with its principal place of business in the State of Georgia. Flexible or its assets were, in early 2000, acquired by Dow Chemical Company ("Dow"). At all times pertinent to this suit, Flexible and/or Dow manufactured and distributed MDI-containing polyurethanes used in underground coal mining. Dow is a member of III, ACC and/or ISOPA. Flexible may have been a member of III and/or ACC. Dow and/or Flexible, as members of III, ACC and/or ISOPA, in concert with each other and/or other Defendants, has exercised control over the operations of these trade associations.

## OLIN

37. Olin Corporation ("Olin") is a Corporation, organized under the laws of the State of Virginia, with its principal place of business in the State of New York. At all times pertinent to this suit, Olin has manufactured isocyanate compounds and/or MDI-containing polyurethane products used in underground mining. Olin is a member of III, ACC and/or ISOPA. Olin has, in concert with other Defendants, participated with other Defendants and exercised control over the operations of these trade associations.

**RUBICON, HUNTSMAN/CHEMTURA**

38. Huntsman Corporation ("Huntsman") is a limited liability corporation, organized under the laws of the State of Delaware with its principal place of business in Belgium. Chemtura Corporation ("Chemtura") appears to be a corporation that is organized under the laws of the State of Connecticut, with its principal place of business in the State of Connecticut. Rubicon, Inc. ("Rubicon") holds itself out as a "Joint Venture" of Huntsman and Chemtura. At all times pertinent to this suit, Rubicon, Huntsman and/or Chemtura manufactured isocyanate compounds and/or MDI-containing polyurethane products used in under-ground mining. Rubicon, and thus Huntsman and Chemtura, are members of III, ACC and/or ISOPA. Rubicon, Huntsman and/or Chemtura, as members of III, ACC and/or ISOPA, in concert with each other and/or other Defendants, have exercised control over the operations of these trade associations.

**BASF**

39. BASF Aktiengesellschaft is an artificial business entity that is organized under the laws of the Republic of Germany, with its principal place of business in the Republic of Germany. BASF Aktiengesellschaft appears to own BASF Corporation, a corporation that is organized under the laws of the State of Delaware. BASF Wyandotte Corporation, a corporation

organized under the laws of Delaware, appears to have been a wholly owned subsidiary of BASF Aktiengesellschaft (collectively "BASF"). BASF Wyandotte appears to have merged, along with other wholly owned subsidiaries of BASF Aktiengesellschaft, into BASF Corporation. At all times pertinent to this suit, BASF manufactured isocyanates and/or MDI-containing polyurethane products used in underground mining. BASF, in one or more of its forms, is a member of IIL, ACC and/or ISOPA, and has, in concert with other Defendants, exercised control over the operations of these trade associations.

#### UNION CARBIDE

40. Union Carbide Corporation ("Union Carbide") is a corporation, organized under the laws of the State of New York, with its principal place of business in the State of New York. At all times pertinent to this suit, Union Carbide manufactured isocyanate compounds and/or MDI-containing polyurethane products used in underground mining. Union Carbide is a member of IIL, ACC and/or ISOPA. Union Carbide has, in concert with other Defendants, exercised control over the operations of these trade associations.

### GEN CORP

41. Gen Corp, Inc. ("GenCorp") is a corporation, organized under the laws of the State of Ohio, with its principal place of business in the State of Ohio. GenCorp is a member of IUI, ACC and/or ISOPA. At all times pertinent to this suit, GenCorp manufactured isocyanates and/or MDI-containing polyurethane products used in underground mining. GenCorp has, in concert with other Defendants, exercised control over the operations of these trade associations.

### RHH

42. RHH Foam Systems, Inc. ("RHH") is a name under which an entity that has not been identified by the Plaintiffs does business. At all times pertinent to this suit, RHH sold and distributed polyurethane products containing MDI for use in underground coal mines. RHH, in concert with one or more of the other Defendants, exercised control over these trade associations.

### INSTA-FOAM

43. Insta-Foam Products, Inc. ("Insta-Foam") appears to be a corporation that is organized under the laws of the State of Illinois with its principal place of business in the State of Illinois. At all times pertinent to this suit, Insta-Foam sold and distributed polyurethane products containing

MDI for use in underground mining. Insta-Foam, in concert with one or more of the other Defendants, exercised control over these trade associations.

#### GREEN MOUNTAIN

44. Green Mountain International, Inc. ("Green Mountain") is a corporation, organized under the laws of the State of North Carolina, with its principal place of business in the State of Illinois. At all times pertinent to this suit, Green Mountain sold and distributed polyurethane products containing MDI for use in underground mining. Green Mountain is a member of IUI, ACC and/or ISOPA. Green Mountain has, in concert with other Defendants, exercised control over these trade associations.

#### SUB-TECH

45. Sub-Technical, Inc. ("Sub-Tech") is a corporation, organized under the laws of the State of Pennsylvania, with its principal place of business in the State of Pennsylvania. At all times pertinent to this suit, Sub-Tech acted as a contractor for mine operators and applied the polyurethane products containing MDI in underground coal mines.

#### MICON

46. Micon, Inc. ("Micon") is a corporation, organized under the laws of the State of Pennsylvania, with its principal place of business in the State

of Pennsylvania. At all times pertinent to this suit, Micon sold polyurethane products containing MDI to underground coal mining operators and applied polyurethane products containing MDI in underground coal mines. Micon is a member of III, ACC and/or ISOPA. Micon has, in concert with other Defendants, exercised control over these trade associations.

#### **JURISDICTION AND VENUE**

47. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) as this is an action brought pursuant to Rule 23 Fed. R. Civ. Procedure, the amount in controversy of the claims of the class members is more than the sum or value of five million dollars and pursuant to 28 U.S.C. § 1332(d)(2) there is diversity of citizenship among the parties. Venue in this action is appropriate pursuant to 28 U.S.C. § 1391.

#### **CLASS ACTION ALLEGATIONS**

48. The Plaintiffs referenced above appear on their own behalf and pursuant to Fed. R. Civ. P. 23(b)(1)(A), (b)(2) and/or (b)(3) as representatives of a class of plaintiffs defined as:

All persons who since 1980 have worked in under-ground coal mines and who have been or may be exposed to MDI as a result of the use of polyurethane products containing MDI in underground coal mines.



49. The Plaintiffs request that sub-classes be approved that are described as follows:

- a. **ALABAMA SUB-CLASS:** All individuals who have, since 1980, worked in underground coal mines that are or were located in the State of Alabama, who have not joined in any previously filed actions alleging MDI exposure. The Alabama Plaintiffs would show to the Court that approximately 3,000 coal miners have personally joined in several actions that are currently pending in the Bessemer Division of the Circuit Court for Jefferson County. They show that there are more than 3,000 coal miners who have not joined in that action and who have been exposed to MDI containing polyurethane products used in underground coal mines.
- b. **PENNSYLVANIA SUB-CLASS:** All individuals who have, since 1980, worked in underground coal mines that are or were located in the State of Pennsylvania, who are or have been exposed to MDI as a result of the use of MDI-containing polyurethane products in underground coal mines. The Pennsylvania Plaintiffs aver that more than 5,000 people fit into this sub-class. Plaintiffs are not aware of any individual actions pending in Pennsylvania that involve allegations of MDI exposure in underground coal mines. Plaintiffs have no knowledge of any claim for class treatment, pending in Pennsylvania that is similar to this action.

- c. **OHIO SUB-CLASS:** All individuals who have, since 1980, worked in underground coal mines that are or were located in the State of Ohio, who are or have been exposed to MDI as a result of the use of MDI-containing polyurethane products in underground coal mines. The Ohio Plaintiffs aver that more than 5,000 people fit into this sub-class. Plaintiffs are not aware of any individual actions pending in Ohio that involve allegations of MDI exposure in underground coal mines. Plaintiffs have no knowledge of any claim for class treatment, pending in Ohio that is similar to this action.
- d. **WEST VIRGINIA SUB-CLASS:** All individuals who have, since 1980, worked in underground coal mines that are or were located in the State of West Virginia, who are or have been exposed to MDI as a result of the use of MDI-containing polyurethane products in underground coal mines. The West Virginia Plaintiffs aver that more than 5,000 people fit into this sub-class. Plaintiffs are not aware of any individual actions pending in West Virginia that involve allegations of MDI exposure in underground coal mines. Plaintiffs have no knowledge of any claim for class treatment, pending in West Virginia that is similar to this action.
- e. **KENTUCKY SUB-CLASS:** All individuals who have, since 1980, worked in underground coal mines that are or were located in the State of Kentucky, who are or have been exposed to MDI as a result of the use of MDI-containing

polyurethane products in underground coal mines. The Kentucky Plaintiffs aver that more than 5,000 people fit into this sub-class. Plaintiffs are not aware of any individual actions pending in Pennsylvania that involve allegations of MDI exposure in underground coal mines. Plaintiffs have no knowledge of any claim for class treatment, pending in Kentucky that is similar to this action.

- f. **ILLINOIS SUB-CLASS:** All individuals who have, since 1980, worked in underground coal mines that are or were located in the State of Illinois, who are or have been exposed to MDI as a result of the use of MDI-containing polyurethane products in underground coal mines. The Illinois Plaintiffs aver that more than 5,000 people fit into this sub-class. Plaintiffs are not aware of any individual actions pending in Illinois that involve allegations of MDI exposure in underground coal mines. Plaintiffs have no knowledge of any claim for class treatment, pending in Illinois that is similar to this action.
- g. **VIRGINIA SUB-CLASS:** All individuals who have, since 1980, worked in underground coal mines that are or were located in the State of Virginia, who are or have been exposed to MDI as a result of the use of MDI-containing polyurethane products in underground coal mines. The Virginia Plaintiffs aver that more than 5,000 people fit into this sub-class. Plaintiffs are not aware of any individual actions pending in Virginia that involve allegations of MDI exposure in

underground coal mines. Plaintiffs have no knowledge of any claim for class treatment, pending in Virginia that is similar to this action.

**RULE 23(a)**

**TYPICALITY**

50. The named Plaintiffs and the members of the class and subclasses each and all have tangible and legally protectable interests at stake in this litigation.

51. The claims of Plaintiffs and the class and subclasses have a common origin and share a common basis. Their claims originate from exposure to the same chemical isocyanate, methylene diphenyl diisocyanate ("MDI"), from the same industry-wide practice to hide, conceal and/or obscure the hazardous nature of the use of MDI-containing polyurethane products in coal mining allegations, and from the same conspiratorial acts by Defendants to effect the concealment of the known hazards of these products in their intended use.

52. The individual Plaintiffs state claims for relief which is typical of the claims of the absent class and subclass members. If brought and prosecuted individually, the claims of each class and subclass member would necessarily require proof of the same material and substantive facts, rely on the same remedial theories, and seek the same relief.

53. The claims and remedial theories pursued by the named class representatives are sufficiently aligned with the interests of absent class and subclass members to ensure that the universal claims of the class and subclass will be prosecuted with diligence and care by the Plaintiffs as representatives of the class and subclasses.

#### NUMEROSITY

54. The members of the class and subclass are so numerous that joining all potential plaintiffs in individual actions is impractical. The class and subclasses have over 30,000 members. The class and subclasses are, however, ascertainable as the names and addresses of all class and subclass members can be identified through business records memorialized by mining operations which use or have used MDI-containing products.

#### COMMONALITY

55. The Plaintiffs aver that questions of law or fact common to the members of the class include, inter alia,

- a. Whether the Defendants have failed to warn all of the members of the class of associated risk of exposure to MDI and whether they have failed to advise the members of the need for medical diagnosis to determine how injuries received as a result of MDI exposure should be treated;

- b. Whether Defendants have made representations to the class members that MDI-containing polyurethane products used in underground coal mines do not present risk of injury to persons exposed;
- c. Whether Defendants were under a duty to disclose facts known to them, concerning dangers present by exposure of persons to MDI containing polyurethane products used in underground coal mines;
- d. Whether Defendants fraudulently suppressed information about MDI containing polyurethane products used in underground coal mines that they were under a duty to disclose;
- e. Whether Defendants conspired among themselves to deceive by placing the dangers of isocyanates in a false and misleading light to coal operators, governmental officials, governmental regulatory agencies and/or the medical and scientific community.

**RULE 23(b)(1)(a) AND (B)**

56. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action, or could substantially impair or impede their ability to protect their interests.

57. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class. Such incompatible standards and inconsistent or varying adjudications, on what would necessarily be the same essential facts, proof and legal theories, would also create and allow to exist inconsistent and incompatible rights within the plaintiff class.

**RULE 23(b)(2)**

58. The Defendants have acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

**RULE 23(b)(3)(2)**

59. The questions of law and fact common to members of the class and subclasses predominate over any questions affecting only individual members.

60. A class action is superior to other available methods for the fair and efficient adjudication of the controversies herein in that:

- a. Individual claims by the class members are impractical as the costs of pursuit far exceed what any one plaintiff or class member has at stake.

- b. As a result, although multiple class actions have been filed, there has been very little individual litigation over the controversies herein, and individual members of the class have no interest in prosecuting and controlling separate actions.
- c. The proposed class action is manageable.

### **ALLEGATIONS OF FACT**

61. Plaintiffs, individually and on behalf of all persons similarly situated, adopt all of the foregoing paragraphs.

62. Plaintiffs aver that they, and the classes that they seek to represent, worked in underground mines where MDI is used and their skin has been exposed to MDI and they have been caused to breathe vapors that have been created when MDI has been exposed to the air in the mines where they have worked. MDI and other isocyanates have industrial utility because they are highly reactive and they combine with other substances to form plastic. When the combination is controlled, the type and form of plastic that is created is anticipated. MDI is used by mine operators, who operate in the states named in the sub-classes, for the following purposes:

- a. Roof Stability and Strength
- b. Air Current Control
- c. Dust Control
- d. Rib Stability and Strength
- e. Water Control



63. Isocyanates, when they come in contact with a person's skin, are metabolically absorbed. If a sufficient quantity of MDI is absorbed in this manner it will, to a medical certainty, cause injuries to people exposed. The quantity that different individuals can absorb without suffering medical symptoms varies. When isocyanates are used, they produce vapors. Isocyanate Vapors, to a medical certainty, cause injuries to people exposed. The injuries, caused by both types of exposure, are medically certain to include rashes, asthma like respiratory problems and isocyanate sensitization. Isocyanate sensitization is a medical condition that causes allergic reactions or reactions similar to allergic reactions such that even miniscule exposures to persons who are isocyanate sensitized can cause severe asthma attacks, respiratory distress and even death. There is a substantial risk that a person sensitized to isocyanates, in his/her ordinary daily activity, will be exposed to small concentrations of isocyanate fumes. For example, MDI, or similar diisocyanate compounds, is used to glue plywood and its vapors are released by the heat that is generated when plywood is cut with a power saw.

64. During normal industrial application of MDI in coal mining activities described herein, with the substances with which it is designed to react, vapors are released into the mine atmosphere which will in turn be

inhaled by anyone in the vicinity. Scientific documents have been generally available for over twenty years that recommend that isocyanate exposure be severely limited and that specific mask and specific clothing be used by workers who are using the product. These scientific documents have been known to Defendants that demonstrate that even extremely low levels of exposure to MDI below commonly used permissible workplace exposure levels causes injury. However, through a carefully crafted and organized effort, Defendants on their own and through their trade associations have effectively concealed information from the general public and in particular, Plaintiffs and the class and subclasses that MDI exposure is particularly likely to occur when their MDI-containing polyurethane products are put to use for their intended purposes in underground mines.

65. Because of the specific hazards associated with MDI-containing polyurethane products in underground mines, good mine workplace standards should always include requirements that workers who are not specially protected are to be up wind during the time MDI is being used and that a period of time expire between the time of application and the time that specially protected workers return to the area where MDI has been applied.

66. The Plaintiffs aver that Defendants Mobay, Lanxess, Bayer, Upohn, Monsanto, Pharmacia, PharUpJohn, Pfizer, DuPont, Stepan, Shell,

Dow, Flexible, and BASF manufactured and/or sold MDI that became a component part of polyurethane products that are used in underground coal mines; and/or conspired with manufacturers who are named as Defendants to mislead and suppress information concerning isocyanates.

67. The Plaintiffs aver that Mobay, Lanxess, Bayer, Upjohn, Monsanto, Pharmacia, PharUpJohn, Pfizer, DuPont, Stepan, Shell, Dow, Flexible and BASF, Olin, Huntsman, Chemtura, Rubicon, Union Carbide and GenCorp manufacture isocyanates and said Defendants have knowingly manufactured, sold and distributed isocyanates and products that contain isocyanates without adequately warning of the dangers and said Defendants have conspired with IIL, ACC and ISOPA to act with a degree of uniformity in the publishing of warnings and said conspirators have fraudulently concealed the dangers of isocyanates, including MDI; thereby, with substantial certainty, causing concerned mine operators to lack an adequate appreciation of the danger caused by exposure of miners to said chemicals and causing exposed coal miners to be uninformed and misinformed regarding the true danger created by MDI exposure.

68. The Plaintiffs aver that Mobay, Lanxess, Bayer, Upjohn, Monsanto, Pharmacia, PharUpJohn, Pfizer, DuPont, Stepan, Shell, Dow, Flexible, BASF, Olin, Huntsman, Chemtura, Rubicon, Union Carbide,

GenCorp, ISOPA, ACC and III have been involved in the international marketing of isocyanates and they have acquired knowledge concerning said products that is not known, and cannot be known, by the general scientific and medical community or by the people who operate and work in coal mines or regulate them, including MSHA. Said Defendants have undertaken studies and selectively used the studies to serve their marketing purpose. Because of said undertaking, said Defendants owe a duty to consumers to fully advise the scientific and medical community of their findings and to adequately warn all consumers of the dangers presented by isocyanate exposure. Said Defendants have fraudulently concealed their findings. Said actions by said Defendants have caused the Plaintiffs to be deprived of information that would have benefited them in avoiding MDI exposure and would have armed them with knowledge that would have facilitated them in obtaining treatment for MDI related injuries and diseases. The MDI exposure related injuries and diseases, from which the Plaintiffs suffer, is progressive and the knowledge possessed by said Defendants, and willfully and wrongfully suppressed, will aid the Plaintiffs in obtaining medical treatment that will likely minimize progression of their exposure to diseases. Said Defendants have selectively used their studies to create a false impression and they have used said false impression in a lobbying campaign

to influence MSHA to persuade employers and coal miners to apply relaxed standards regarding the use of MDI in coal mines.

69. Plaintiffs aver that Micon has willfully and with knowledge that it was causing injury, or recklessly without knowledge, applied products in manner that said Defendants, in the exercise of reasonable caution, should have known was causing injury. Micon and Sub-Tech have contracted with coal mine operators to use MDI containing polyurethane products used in underground coal mines in coal mines. Micon's and Sub-Tech's use of MDI in coal mines has intentionally, recklessly, wantonly or negligently caused personal injury to Plaintiffs and the class they seek to represent.

#### **COUNT ONE - FAILURE TO WARN**

70. Plaintiffs, individually and on behalf of all persons similarly situated, adopt all of the foregoing paragraphs.

71. Defendants, as manufacturers, sellers and/or distributors of MDI containing products, are under a duty to warn foreseeable users of these products, including plaintiffs and the class, of the hazardous properties and inherent dangers associated with use of said products in coal mining applications.

72. Defendants nevertheless through their negligent, wanton, reckless, willful and/or conspiratorial conduct have withheld, misrepresented

and suppressed material facts known to them as to the hazardous properties and dangers inherent in the use and application of MDI-containing products in coal mining applications.

73. Defendants' conduct constitutes a negligent, wanton, reckless and willful failure to provide adequate warnings to plaintiffs and the class of the hazardous properties and dangers associated with the use of MDI-containing products in coal mining applications.

74. As a proximate result of Defendants' failure to provide adequate warnings, plaintiffs and the class have suffered personal injuries as described above.

WHEREFORE, Plaintiffs and the class demand judgment against these defendants for injunctive and declaratory relief as described above, for damages for personal injuries suffered from exposure to Defendants' MDI containing products, and punitive damages as a jury will allow, and as available under law.

#### **COUNT TWO - STRICT PRODUCT LIABILITY**

75. Plaintiffs, individually and on behalf of all persons similarly situated, adopt all of the foregoing paragraphs.

76. Defendants are manufacturers, sellers and/or distributors of MDI-containing products, which are under law, defective and unreasonably dangerous when used in the manner intended by Defendants.

77. Defendants are therefore strictly liable to Plaintiffs and the class as they are reasonably foreseeable end-users of these MDI-containing products.

78. As a proximate result of Defendants' manufacture, distribution and/or sale of these MDI-containing products, it is reasonably foreseeable that Plaintiffs and the class would be exposed to MDI when MDI-containing products are put to their intended use in coal mining applications.

WHEREFORE, Plaintiffs and the class demand judgment against these defendants for injunctive and declaratory relief as described above, for damages for personal injuries suffered from exposure to Defendants' MDI containing products, and punitive damages as a jury will allow, and as available under law.

**COUNT THREE - ALABAMA EXTENDED MANUFACTURERS  
LIABILITY DOCTRINE (AEMLD)**

79. Plaintiffs, individually and on behalf of all persons similarly situated, adopt all of the foregoing paragraphs.

80. This count applies to the Alabama Subclass only.

81. Defendants are manufacturers, sellers and/or distributors of MDI-containing products, which are under law, defective and unreasonably dangerous when used in the manner intended by Defendants.

82. As a proximate result of Defendants' manufacture, distribution and/or sale of these MDI-containing products, it is reasonably foreseeable that Plaintiffs and the Alabama subclass would be exposed to MDI when MDI-containing products are put to their intended use in coal mining applications.

WHEREFORE, Plaintiffs and the class demand judgment against these defendants for injunctive and declaratory relief as described above, for damages for personal injuries suffered from exposure to Defendants' MDI containing products, and punitive damages as a jury will allow, and as available under law.

#### COUNT FOUR - BREACH OF WARRANTY

83. Plaintiffs, individually and on behalf of all persons similarly situated, adopt all of the foregoing paragraphs.

84. Defendants, as manufacturers, sellers and/or distributors of MDI-containing products, impliedly warrant these products are safe when put to their intended uses in coal mining applications.



85. Defendants breached this implied warranty in their manufacture, sale and/or distribution of MDI-containing products which they knew were hazardous and unreasonably dangerous when used as intended in coal mining applications.

86. As a proximate result of Defendants' breach of their warranties, Plaintiffs and the class have been caused to suffer from exposure to Defendants' MDI-containing products.

WHEREFORE, Plaintiffs and the class demand judgment against these defendants for injunctive and declaratory relief as described above, for damages for personal injuries suffered from exposure to Defendants' MDI containing products, and punitive damages as a jury will allow, and as available under law.

#### COUNT FIVE – CONSPIRACY

87. Plaintiffs, individually and on behalf of all persons similarly situated, adopt all of the foregoing paragraphs.

88. As alleged above, the Defendants to this action have conspired with one another, among themselves, and through the Defendant trade associations to misrepresent, obscure, hide, downplay and suppress information as to the health risks of their products when used in the manner in which they are intended in the coal mining industry.

89. Together and through the Defendant trade associations, Defendants have acted in concert to suppress and misrepresent the true health hazards of their products to Plaintiffs and the class.

90. As a proximate result of the conspiracy to misrepresent and suppress vital health risk information, Plaintiffs and the class have suffered personal injury or will in the future suffer personal injury as described above.

WHEREFORE, Plaintiffs and the class demand judgment against these defendants for injunctive and declaratory relief as described above, for damages for personal injuries suffered from exposure to Defendants' MDI containing products, and punitive damages as a jury will allow, and as available under law.

**COUNT SIX - PETITION FOR CLASS RELIEF**

91. The Plaintiffs Petition this Court for the following Class Relief:

- a. Upon a hearing on Class Certification, for an Order certifying the class and:
  - i. Providing for notice to the class members;
  - ii. Setting this case for a hearing on all issues that are common to the class; and

- iii. Providing a procedure for any class plaintiff to appear and support or refute the claims asserted herein.
- b. After a full evidentiary hearing on the issues common to the class, for an Order declaring that:
- i. isocyanates, including MDI, when used as intended in underground mining operations, poses a significant health risk of inhalation and topical exposure to a substance which is hazardous and highly dangerous to humans;
  - ii. exposure to isocyanates, including MDI through the use of isocyanate polyurethanes in underground coal mining has caused, and may cause personal injury, including death, and that progression of or aggravation of diseases resulting from injuries may be minimized by appropriate treatment and preventative measures, and
  - iii. requiring that each class member be advised of the Court's finding and providing a method for delivery of a copy of the Court's order to each class member.
- c. After a full evidentiary hearing on the issues common to the class, for an Order entering a permanent injunction to enjoin the sale of

isocyanate containing polyurethane products, including MDI, for use in coal mines without application of full, reasonable and adequate warnings regarding all risks of exposure and the necessary means that must be employed to prevent injury to coal miners who are exposed to the products including the need to seek periodic medical attention and that there is no "safe" level of exposure to MDI.

- d. After a full evidentiary hearing on the issues common to the class, for an Order establishing a medical monitoring fund and declaring the procedures for managing the fund and declaring that each member of the class or sub-classes entitled to participate in the medical monitoring fund program is provided notice of the fund and a description of its procedures.

**WHEREFORE**, Plaintiffs and the class demand judgment against each defendant, jointly and severally, for declaratory relief, injunctive relief as described above, compensatory and punitive damages as identified above, and other, general and further relief at law or in equity to which Plaintiffs and the class are entitled under the circumstances.

Respectfully Submitted,



Edward McF. Johnson

ASB-5848-O-59E

Dennis G. Pantazis

ASB-2216-A-59D

Attorneys for Plaintiffs

**OF COUNSEL:**  
**Wiggins, Childs, Quinn & Pantazis, LLC**  
**The Kress Building**  
**301 19<sup>th</sup> Street North**  
**Birmingham, AL 35203**  
**Phone: 205-314-0500**  
**Fax: 205-254-1500**

**JURY DEMAND**

**Plaintiffs demand a trial by jury.**

**SERVE DEFENDANTS BY CERTIFIED MAIL AT:**

International Isocyanate Institute, Inc.  
2805 E. DuPont Rd  
Fort Wayne, Indiana 46854

American Chemistry Counsel  
1300 Wilson Blvd  
Arlington, Virginia 22209

Mobay Chemical Corporation  
100 Bayer Road  
Pittsburg, Pennsylvania 15205

Upjohn Company  
7000 Portage Road  
Kalamazoo, Michigan 49001

E.I. Dupont De NEMOURS & COMPANY  
1007 Market Street  
Wilmington, Delaware 19898

Stepan Company  
22 W. Frontage Road  
Northfield, Illinois 60093

Shell Chemical LP  
Prentice Hall Corporation Systems Inc.  
150 South Perry Street  
Montgomery, Alabama 36104

Shell Oil Company  
C/O CSC-Lawyers Incorporating SVC, Inc  
57 Adams Avenue  
Montgomery, Alabama 36104-4045

Dow Chemical Company  
C/O The Corporation Company  
2000 Interstate Park Drive  
Suite 204  
Montgomery, Alabama 36109

Flexible Products Company  
1007 Industrial Park Drive  
Marietta, Georgia 30061

Olin Corporation  
C/O The Corporation Company  
2000 Interstate Park Drive  
Suite 204  
Montgomery, Alabama 36109

BASF Wyandotte Corporation  
C/O The Corporation Company  
615 Griswold  
Detroit, Michigan 48226

Monsanto Company  
c/o The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, Alabama 36109

Union Carbide Corporation  
c/o The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, Alabama 36109

Chemtura Corporation  
199 Benson Road  
Middlebury, Connecticut 06749

Huntsman Corporation  
500 Huntsman Way  
Salt Lake City, Utah 84108

Rubicon, Inc.  
9156 Highway 75  
Geismar, Louisiana 70734

GenCorp, Inc.  
P.O. Box 537012  
Sacramento, California 95853-7012

BASF Corporation  
100 Campus Drive North  
Florham Park, New Jersey 07932

BASF Aktiengesellschaft  
Carl-Bosch St. 38  
67056 Ludwigshafen, Germany

Bayer AG  
51368 Leverkusen  
Germany

Bayer Material Science, LLC  
100 Bayer Road  
Pittsburg, Pennsylvania 15205

Bayer Corporation  
C/O The Corporation Company  
2000 Interstate Park Drive  
Suite 204  
Montgomery, Alabama 36109

Lanxess Corporation  
C/O CSC Lawyers Incorporating SVC, Inc.  
150 South Perry Street  
Montgomery, Alabama 36104

RHH Foam Systems, Inc.  
PO BOX 100752  
Cudahy, Wisconsin 53110-6113



**Insta-Foam Products, Inc.**  
1500 Cedarwood Drive  
Joliet, Illinois 60435-3187

**Green Mountain International, Inc.**  
235 Pigeon Street  
Waynesville, North Carolina 28786

**Sub-Technical, Inc.**  
Post Office Box 1178  
Mars, Pennsylvania 16046

**Micon, Inc.**  
#25 Allegheny Square  
Glassport, Pennsylvania 15405-1649

# EXHIBIT 3

IN THE CIRCUIT COURT OF WYOMING COUNTY, WEST VIRGINIA

RICHARD D. ABBOTT, JESSE L. ADKINS,  
RANDY M. ADKINS, EUGENE F. ARMSTRONG,  
BILLY J. BAILEY, JIMMIE BANThER,  
BILLY R. BARKER, KENNETH D. BARKER,  
CLARENCE BARNETT, ERIC BELLER,  
D. SUE BELLER, as personal representative of the  
Estate of WILLIAM A. BELLER, GARY BISHOP,  
ROBERT D. BLETHEN, JOSEPH R. BLEVINS,  
DAVID A. BOHANNA, RONNIE BOOTHE,  
HAROLD D. BRADLEY, DANNY K. BREEDLOVE,  
JAMES P. BREEDLOVE, MICHAEL BROWNING,  
DARREL BUFFINGTON, ALAN E. BUSH, SR.,  
BILLY CADLE, JR., STEVE CAIN, PAT CANTERBURY,  
DARRELL J. CANTLEY, DANNY R. CARR, SR.,  
ROBERT B. CRAWFORD, DARRELL CRIDER,  
BRADEN B. DANIELS, WANNIS C. DANIELS,  
PRESTON E. DAVIS, DELBERT DOLIN,  
JAMES D. DOSS, LARRY M. DOTSON, CARL D. EGNOR,  
JAMES GIBSON, MICHAEL B. GORDON,  
GEORGE R. GORE, VERNON D. GREEN,  
JESSE C. HALSTEAD, JAMES C. HARLESS,  
JENNINGS HARRISON, JR., BARRY HARVEY, TONY W. HARVEY,  
WILLIAM H. HERN, JR., MICHAEL J. HOOSIER,  
BRUCE D. HORTON, GARY W. HUDSON, HARRISON JACKSON,  
PEARL M. JARRELL, EUGENE C. JARVINS,  
NORVAL R. JENKINS, STEVEN W. KINDER,  
RALPH E. LAMBERT, RONALD K. LAWRENCE,  
JAMES LOONEY, BRYAN E. LUSK, EDWIN H. LUSK,  
RALPH E. LUSK, CHARLES LYONS, KERRY L. MAYNOR,  
GEORGE E. MILLER, CHARLES E. MOORE,  
DAVID L. MOORE, HAROLD W. MOORE, LUTHER D. MOORE,  
ROBERT MOORE, DONALD L. NELSON, DALE O'NEAL,  
RONALD OSBORNE, JACK L. PAINTER, JR.,  
WALTER L. PAINTER, LARRY T. POWERS, SR.,  
ROBERT LEE REPASS, ISOM REYNOLDS, JR.,  
GREGORY S. RITCHIE, PHILLIP E. ROWE,  
KEITH A. SCHUMATE, HARRY L. SEBOK, JR.,  
FRANKIE J. SIGMON, ROY D. SIZEMORE,  
ERNESTINE I. SPURLIN, IRA L. STEELE, TOM STEELE, JR.,  
JAMES E. TAYLOR, JAMES M. TAYLOR, ROY A. TEDDER,  
RANDALL G. TILLEY, TEDDY TOLER, DOUGLAS S. TRULL,  
PAUL L. WEBB, TEX R. WHITE, CECIL WHITT, JR.,  
ERNEST A. WHITT, JR., HAROLD K. WILEY,

2008 JUN 23 PM 3 20  
FILED  
DAVID "BOB" STOVER  
CIRCUIT CLERK OF  
WYOMING COUNTY, WY

**ROBERT L. WILLIAMS, JR., FRANKIE J. WIX, AND  
RONALD D. WORKMAN,**

**Plaintiffs,**

**v.**

**Civil Action No.: 08-C-138  
Judge Hrko**

**EARTH SUPPORT SERVICES d/b/a MICON, INC.;  
MICON PRODUCTS, INC.; SAUER, INC., MICON SERVICES, INC.  
FLEXIBLE PRODUCTS COMPANY;  
SUB-TECHNICAL, INC; WILLIAM WAXTER; DAVE  
EDDY; A. WEBER, S.A.; F. WEBER USA, INCORPORATED;  
STRATA PRODUCTS WORLDWIDE, LLC; STRATA PRODUCTS USA, INC.;  
STRATA PRODUCTS USA, LLC; STRATA MINE  
SERVICES, INC.; MINOVA USA, INC.; PAUL D. DIALS,  
CARPENTER CO.; BASF CORPORATION; BASF CORPORATION, NAFTA;  
BASF WYANDOTTE CORP.; BASF  
AKTENGESSELLSCHAFT; RHH FOAM SYSTEMS, INC.;  
GREEN MOUNTAIN INTERNATIONAL, INC.;  
DOW CHEMICAL COMPANY; BAYER CHEMICAL  
CORPORATION; BAYER COPORATION; BAYER  
MATERIALSCIENCE, LLC; FARBENFABRIKEN  
BAYER GMBH; JAMES H. COVINGTON; HUNTSMAN  
POLYURETHANES; INTERNATIONAL ISOCYANATE INSTITUTE,  
CONVENIENCE PRODUCTS, LEE SUPPLY COMPANY, INC.,  
HEINTZMANN CORPORATION, ORICA LIMITED,  
LAD MINING VENTILATION SERVICES, INC., RUBICON, LLC,  
UNITED CENTRAL INDUSTRIAL SUPPLY COMPANY, LLC,  
HEITECH CORPORATION, and  
BOCHUMER EISENHUTTE HEINTZMANN,**

**Defendants.**

**AMENDED COMPLAINT**

Plaintiffs, in their Claim for Damages, amend their complaint to allege, upon information and belief, as follows:

**PARTIES**

**PLAINTIFFS**

FILED  
2008 JUN 23 PM 3 20  
DAVID "CJ" STOVER  
CIRCUIT CLERK OF  
WYOMING COUNTY, WV

1. The Plaintiffs are natural persons and residents of the State of West Virginia. The Plaintiffs work or have worked for one or more of the following:

ABC Coal Company, Allied Chemical, Amherst Coal Company, Appalachian Eagle Inc., ARMCO Steel, A.T. Massey Coal Company, Incorporated,(Massey), Bald Knob Coal Company, Bar-K Incorporated, Bear Run Coal Mine, Beckley Mining Company, Belva Mining Company, Bethlehem Mining Company, Big Boot Mining Incorporated, Big Mountain #1, Big Mountain # 8, Big Mountain #16, BJM Coal Company, Board Camp #16, Bold Knob, Brushy Gap, Burke Mountain Coal Company Incorporated, Camp Creek Mining Company, Candice #2, Carbon Fuel, Carrolton Coal Company, Cary Coal Company, Cedar Coal Company, Central Appalachian Coal Company, Century Energy, Chafin Coal Company, Chief Mining Company, Comont Mining Company, Delyn Coal Company, Double G Coal Company Incorporated, Eastern Association Coal Corporation (EACC), Elk Run Coal Company, Essential Fuel, Falcon Energy Incorporated, Grace #2, Harris #1, Harris #2, Harris #9, Hard Hat Coal Company, Hazel Ridge, Heritage Minerals Incorporated, Kessler Coal, Kopperston #1, L&D Incorporated, Lightfoot #1, Lightfoot #2, LMST, Long Branch Energy, M & J Coal Mine, Maben Energy, Madison Mine, Mahon Enterprise, Malton Enterprise, Maple Meadow, MarFork Coal Company, Marrow Bone, Mason Mining Company, Massey Energy, Mingo Logan Mountain, Mont Coal Mine, Mystic LLC, Old Ben Coal Mine, OMAR Mining Company, Patriot Coal Company(Patriot), Peabody Coal Company(Peabody), Peabody Energy, Performance Coal, Pin Coal Mine, Pine Ridge Coal(Pine Ridge), Pittson Coal, Raleigh Steel, RC Mining Corporation, Raleigh Coal Company, Ranger Fuel Mine, Rivers Edge Mining Inc., Roben #4, Robin Resources, Robin Hood #9, Rock Lick, Slab Fork Coal, Slab Fork

No-10, Southern Appalachian Coal Co., Southern Mining Coal, Still Run, Sundial #10 Mine, Teays Inc., TNT Mining Company, Tommy Creek, Tony Branch Coal Company, United Coal Company, Wells Complex Coal Company, Wharton #2, and Wharton #4 (collectively "the coal mines").

2. Each Plaintiff is named and identified as follows:

**Richard D. Abbott** is a resident of Seth, West Virginia and has been employed at the Pine Ridge coal mine since 1976.

**Jesse L. Adkins** is a resident of Orgas, West Virginia, and has been employed at the Pine Ridge coal mine since 1975.

**Randy M. Adkins** is a resident of Madison, West Virginia and has been employed at Harris #1, EACC, Lightfoot #1 and Peabody coal mines since 1978.

**Eugene F. Armstrong** is a resident of East Foster, West Virginia and was been employed at Harris #2, Lightfoot #2 and Harris #1 coal mines from 1987-2006.

**Billy J. Bailey** is a resident of Raven Cliff, West Virginia and was employed at EACC, Kopperston #1 and Peabody coal mines from 1973-1991.

**Jimmie Banther** is a resident of Oceana, West Virginia and has been employed at Mystic LLC, Brody, Century Energy Independence Coal and Marfork coal mines since 2001.

**Billy R. Barker** is a resident of Pecks Mill, West Virginia and has been employed at Amherst Coal, Bar- K Incorporated, Chafin Coal Company, L&D Incorporated, Old Ben coal mine, Pine Ridge, Robin Resources and TNT Mining coal mines since 1973.

**Kenneth D. Barker** is a resident of Pecks Mill, West Virginia and has been employed at the ABC coal mine, Amherst Coal Company, Bear Run, Belva Coal Company, Camp

Creek Mining, Cary Coal Company, Cedar Creek, Chafin Coal, Mason Mining Company, Pin Coal and Patriot coal mines since 1973.

Clarence Barnett is a resident of Danville, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.

Eric Beller is a resident of Creek Noma, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.

D. Sue Beller, as personal representative of the Estate of William A. Beller, now deceased, a resident of Whitesville, West Virginia who was employed during his life at Harris #9 and Peabody coal mines from 1976-2003.

Gary Bishop is a resident of Scott Depot, West Virginia and was employed at EACC, Peabody and Consolidated coal mines from 1976-2003.

Robert D. Blethen is a resident of Wharton, West Virginia and has been employed at Wharton #2, Wharton #4, Lightfoot #1, Lightfoot #2, Rivers Edge Mining, Harris #1 and Patriot coal mines since 1975.

Joseph R. Blevins is a resident of Van, West Virginia and has been employed at EACC, Wharton #4, Wells Complex Coal, Rock Lick Coal and Peabody coal mines since 1975.

David A. Bohanna is a resident of Smithers, West Virginia and has been employed at Central Appalachian and Peabody coal mines since 1975.

Ronnie Boothe is a resident of Cyclone, West Virginia and has been employed at Mystic LLC, LMST and Massey coal mines since 2000.

Harold D. Bradley is a resident of Mamet, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.

Danny K. Breedlove is a resident of Fork Alkol, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.

James P. Breedlove is a resident of Julian, West Virginia and was employed at Peabody, Lightfoot #1 and Harris #1 coal mines from 1987-1995.

Michael Browning is a resident of Wharton, West Virginia and has been employed at Kopperston #1, EACC and Peabody coal mines since 1973.

Darrel Buffington is a resident of Seth, West Virginia and has been employed at the Carrolton Coal, Pine Ridge Coal and Peabody coal mines since 1971.

Alan E. Bush, Sr. is a resident of Uneeda, West Virginia and was employed at the Pine Ridge and EACC coal mines from 1971-2005.

Billy Cadle, Jr. is a resident of Fairdale, West Virginia and has been employed at the Peabody, Harris #1 and EACC coal mines since 1975.

Steve Cain is a resident of Racine, West Virginia and was employed at Carbon Fuel, ARMCO Steel, Pine Ridge and Peabody coal mines from 1973-1999.

Pat Canterbury is a resident of Naoma, West Virginia and has been employed at Robinhood #9, Sundial #10, Hard Hat Coal and Pine Ridge coal mines since 1974.

Darrell J. Cantley is a resident of Beckley, West Virginia and has been employed at Harris #1, EACC and Peabody coal mines since 1974.

Danny R. Carr, Sr. is a resident of Bloomingrose, West Virginia and has been employed at Pine Ridge coal mine since 1975.

Robert B. Crawford is a resident of Wharton, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.



**Darrell Crider** is a resident of Cyclone, West Virginia and has been employed at Peabody Coal coal mine since 1980.

**Braden B. Daniels** is a resident of Cyclone, West Virginia and was employed at EACC and Peabody coal mines from 1978-1995.

**Wannis C. Daniels** is a resident of Cyclone, West Virginia and was employed at EACC and Harris #1 coal mines from 1970-2006.

**Preston E. Davis** is a resident of Seth, West Virginia and has been employed at Southern Appalachian, Pine Ridge coal mines since 1975.

**Delbert Dolin** is a resident of Comfort, West Virginia and has been employed at the Pine Ridge, Peabody, Big Mountain and EACC coal mines since 1969.

**James D. Doss** is a resident of Seth, West Virginia and has been employed at Peabody coal mine since 1980.

**Larry M. Dotson** is a resident of Otta, West Virginia and has been employed at the Patriot coal mines since 1973.

**Carl D. Egnor** is a resident of Yawkey, West Virginia and was employed at Peabody coal mine from 1971-2004.

**James Gibson** is a resident of Cyclone, West Virginia and has been employed at Peabody coal mine since 1975.

**Michael B. Gordon** is a resident of Whitesville, West Virginia and has been employed at Elk Run and Pine Ridge coal mines since 1977.

**George R. Gore** is a resident of Seth, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.

Vernon D. Green is a resident of Winifrede, West Virginia and has been employed at Cedar Coal, Rallie Coal, Pine Ridge, Peabody and Massey Energy coal mines since 1974.

Jesse C. Halstead is a resident of Foster, West Virginia and has been employed at Peabody, EACC, Patriot Coal, Lightfoot #1 and Harris #1 coal mines since 1973.

James C. Harless is a resident of Seth, West Virginia and was employed at Cedar Coal Company, Harris #1 and Peabody coal mines from 1976-1984 and 2001-2007.

Jennings Harrison, Jr. is a resident of Bim, West Virginia and has been employed at EACC, M&J Coal and Peabody coal mines since 1978.

Barry Harvey is a resident of Madison, West Virginia and was employed at EACC and Peabody coal mines from 1968-2006.

Tony W. Harvey is a resident of Wharton, West Virginia and has been employed at EACC and Peabody coal mines since 1970.

William H. Hern, Jr. is a resident of Oceana, West Virginia and was employed at Peabody Energy coal mine from 1974-2004.

Michael J. Hoosier is a resident of Cyclone, West Virginia and has been employed at EACC, Peabody and Island Creek coal mines since 1974.

Bruce D. Horton is a resident of Beckley, West Virginia and has been employed at Peabody, EACC, Harris #1 and Kopperston #1 coal mines since 1971.

Gary W. Hudson is a resident of Bloomingrose, West Virginia and has been employed at Peabody coal mine since 1972.

Harrison Jackson is a resident of Seth, West Virginia and has been employed at Pine Ridge coal mine since 1975.

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Pearl M. Jarrell is a resident of Whitesville, West Virginia and has been employed at Pine Ridge and Kessler coal mines since 1973.

Eugene C. Jarvins is a resident of Hollow, West Virginia and has been employed at Peabody and ARMCO coal mines since 1978.

Norval R. Jenkins is a resident of Seth, West Virginia and was employed at the Pine Ridge coal mine from 1972-2005.

Steven W. Kinder is a resident of Comfort, West Virginia and has been employed at Peabody, Pine Ridge, Madison Mining, Appalachian Mining, Big Mountain Coal and Kessler coal mines since 1980.

Ralph E. Lambert is a resident of Seth, West Virginia and was employed at Pine Ridge, Peabody, Big Mountain Coal, Kanawha Coal, Big Mountain Coal and Madison Company coal mines from 1974-2005.

Ronald K. Lawrence is a resident of Eskdale, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.

James Looney is a resident of Van, West Virginia and has been employed at the Pine Ridge coal mine since 1970.

Bryan E. Lusk is a resident of Herndon, West Virginia and was employed at Maben Energy, Tommy Creek, Essential Fuel, Brushy Gap Coal, Massey Energy, Hazy Ridge Mine, Still Run Coal, Century Energy, Performance Coal, Candice #2 and Mystic LLC coal mines from 1988-2006.

Edwin H. Lusk is a resident of Lester, West Virginia and was employed at EACC and Peabody coal mines from 1970-2005.

Ralph E. Lusk is a resident of Bramwell, West Virginia and has been employed at EACC, Double G Coal Company, Big Boot Mining, Burke Mountain Coal, RC Mining, Falcon Energy, Heritage Minerals Inc. and Peabody coal mines since 1968.

Charles Lyons is a resident of Crab Orchard, West Virginia and was employed in Harris #1, EACC and Peabody coal mines from 1968-2000.

Kerry L. Maynor is a resident of Naoma, West Virginia and has been employed at Rivers Edge Mining, Inc., Appalachian, Eagle, Inc., Raleigh Steel and Teays, Inc. coal mines since 1996.

George E. Miller is a resident of Naoma, West Virginia and has been employed at Pine Ridge, Peabody and Elk Run coal mines since 1986.

Charles E. Moore is a resident of Hershaw, West Virginia and has been employed at Pine Ridge coal mine since 1977.

David L. Moore is a resident of Bolt, West Virginia and was employed at Peabody and EACC coal mines from 1991-2003.

Harold W. Moore is a resident of Whitesville, West Virginia and was employed at Peabody and EACC coal mines from 1991-2003.

Luther D. Moore is a resident of Griffithsville, West Virginia and has been employed at the Pine Ridge coal mine since 1968.

Robert Moore is a resident of Seth, West Virginia and has been employed at the Pine Ridge coal mine since 1980.

Donald L. Nelson is a resident of Marmet, West Virginia and has been employed at Peabody coal mine since 1973.

Dale O'Neal is a resident of Winifrede, West Virginia and has been employed at Peabody and Pine Ridge coal mines since 1977.

Ronald Osborne is a resident of Cyclona, West Virginia and was employed at Long Branch Energy and Tony Branch coal mines from 1991-1998.

Jack L. Painter, Jr. is a resident of Dorothy, West Virginia and was employed at Peabody and MarFork coal mines from 1977-2006.

Walter L. Painter is a resident of Dorothy, West Virginia and was employed at the Pine Ridge coal mine from 1971-2006.

Larry T. Powers, Sr. is a resident of Ravencloff, West Virginia and was employed at Peabody, EACC and Kopperston #1 coal mines from 1971-2006.

Robert Lee Repass is a resident of Oceana, West Virginia and has been employed at Peabody, EACC and Harris #1 coal mines since 1976.

Isom Reynolds, Jr. is a resident of West Virginia and has been employed at Allied Chemical, ARMCO, Robin Hood #9, EACC, Peabody and Patriot Coal Company coal mines since 1976.

Gregory S. Ritchie is a resident of Sabine, West Virginia and has been employed at Peabody and EACC coal mines since 1976.

Phillip E. Rowe is a resident of Gordon, West Virginia and was employed at the Pine Ridge coal mine from 1970-2000.

Keith A. Schumate is a resident of Glen Fork, West Virginia and has been employed at Patriot Coal and Harris #1 coal mines since 1975.

Harry L. Sebok, Jr. is a resident of Seth, West Virginia and was employed at the Pine Ridge coal mine from 1976-2005.

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Frankie J. Sigmon is a resident of Wharton, West Virginia and has been employed at Lightfoot, Wharton and Patriot coal mines since 1964.

Roy D. Sizemore is a resident of Oceana, West Virginia and has been employed at Peabody, EACC, Rivers Edge Mining, Chief Mining and Comont Mining coal mines since 1981.

Ernestine I. Spurlin is a resident of Seth, West Virginia and was employed at the Peabody coal mine from 1991-2002.

Ira L. Steele is a resident of Charleston, West Virginia and was employed at Madison Mining Company, Armco Steel, Big Mountain #8, Peabody and Board Camp #16 coal mines from 1973-1996.

Tom Steele is a resident of Lynco, West Virginia and was employed at Peabody and EACC coal mines from 1972-2007.

James E. Taylor is a resident of Lester, West Virginia and has been employed at times relevant to this complaint in coal mines in West Virginia.

James M. Taylor is a resident of Bloomingrose, West Virginia and has been employed at the Peabody and Patriot coal mines since 1975.

Roy A. Tedder is a resident of Pecks Mill, West Virginia and was employed at Peabody and EACC coal mines from 1967-1999.

Randall G. Tilley is a resident of Oceana, West Virginia and was employed at Bald Knob, Harris #1, Peabody and Patriot coal mines from 1969-2003.

Teddy Toler is a resident of Oceana, West Virginia and has been employed at Peabody and EACC coal mines since 1974.

Douglas S. Trull is a resident of Beaver, West Virginia and has been employed at EACC and Peabody coal mines since 1973.

Paul L. Webb is a resident of Sylvester, West Virginia and has been employed at A.T. Massey, Omar Mining Company, Bethlehem Mining, ARMCO Steel, Big Mountain #1, Pine Ridge and Patriot coal mines since 1974.

Tex R. White is a resident of Gordon, West Virginia and was employed at Peabody and ARMCO coal mines from 1978-1999.

Cecil Whitt, Jr. is a resident of Belva, West Virginia and was employed at Pine Ridge, Cedar Coal Co. and Big Mountain coal mines from 1973-2006.

Ernest A. Whitt, Jr. is a resident of Mt. Carbon, West Virginia and has been employed at Carbon Fuel, Mont Coal Mine #7, Massey Energy, BJM Coal Co. and Pine Ridge coal mines since 1974.

Harold K. Wiley is a resident of Danville, West Virginia and was employed at Harris #1, EACC and Peabody coal mines from 1977-2003.

Robert L. Williams, Jr. is a resident of Danville, West Virginia and has been employed at Pine Ridge and Carbon Fuel coal mines since 1975.

Frankie J. Wix is a resident of Beckley, West Virginia and has been employed at ARMCO Steel, Beckley Mining, Delyn Coal, Malton Enterprise Coal, Marfork Coal, Pine Ridge, Pittson Coal, Slab Fork Coal and Southern Minge coal mines since 1974.

Ronald D. Workman is a resident of Cyclone, West Virginia and has been employed at Peabody and EACC coal mines since 1976.

### DEFENDANTS

3. **EARTH SUPPORT SERVICES d/b/a MICON, INC. ("Micon")** is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the State of Pennsylvania. Micon has sold and continues to sell products that contain isocyanates to the owners and/or operators of the mines in which the Plaintiffs have worked; has sold and continues to sell products to wholesalers that sell such products to said owners and/or operators; and under contract with Sauer Industries has continuously and regularly used isocyanate products in Micon Services, Inc. mines.

4. **MICON PRODUCTS, INC. ("Micon Products")** is a corporation organized under the laws of the State of Pennsylvania with its principal place of business in the State of Pennsylvania. Micon Products has sold and continues to sell products that contain isocyanates to the owners and/or operators of the mines in which the Plaintiffs have worked; has sold and continues to sell products to wholesalers that sell such products to said owners and/or operators; and under contracts with mine owners and/or operators has continuously and regularly used and continues to use isocyanate products in mines in which the Plaintiffs have worked.

5. **SAUER, INCORPORATED ("SAUER")** is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the State of Pennsylvania. Sauer has sold and continues to sell products that contain isocyanates to the owners and/or operators of the mines in which the Plaintiffs have worked; has sold and continues to sell products to wholesalers that sell such products to said owners and/or operators; and under contracts with mine owners and/or operators has continuously and



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regularly used and continues to use isocyanate products in mines in which the Plaintiffs have worked.

6. **MICON SERVICES, INC. ("MICON SERVICES")** is a corporation organized under the laws of the State of Louisiana, with its principal place of business in the State of Louisiana. Micon Services has sold and continues to sell products that contain isocyanates to the owners and/or operators of the mines in which the Plaintiffs have worked; has sold and continues to sell products to wholesalers that sell such products to said owners and/or operators; and under contracts with mine owners and/or operators has continuously and regularly used and continues to use isocyanate products in mines in which the Plaintiffs have worked.

7. **FLEXIBLE PRODUCTS COMPANY ("Flexible Products")** is a corporation organized under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia. Flexible Products has manufactured isocyanate products that have been used in mines in which the Plaintiffs have worked. Flexible Products has undertaken to instruct Plaintiffs and those for whom they have worked in the safe use of isocyanate products used in mines and have consulted with mine operators regarding the safe use of such products.

8. **SUB-TECHNICAL, INC. ("Sub-Tech")** is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the State of Pennsylvania. Sub-Tech, and under contracts with mine owners and/or operators has continuously and regularly used and continues to use isocyanate products in mines in which the Plaintiffs have worked.

9. **WILLIAM WAXTER** is an adult resident of West Virginia and a current or former employee of the above listed Sub-Tech who has applied isocyanate products in West Virginia coal mines, including, but not limited to, Harris No. 1 mine.

10. **DAVE EDDY** is an adult resident of West Virginia and a current or former employee of the above listed Sub-Tech who has applied isocyanate products in West Virginia coal mines, including, but not limited to, Harris No. 1 mine.

11. **A. WEBER, S.A.**, is a corporation organized under the laws of France with its principal place of business in France or the United States other than in the State of West Virginia. **A. Weber, S.A.**, is a manufacturer and/or distributor of isocyanate products used in underground coal mines.

12. **F. WEBER USA, INCORPORATED**, is a corporation organized under the laws of the State of West Virginia with its principal place of business in Maxwelton, West Virginia. **F. Weber USA, Incorporated**, is a manufacturer and/or distributor of isocyanate products used in underground coal mines. **A. Weber, S.A.**, and **F. Weber USA, Incorporated**, are hereinafter referred to collectively as "the Weber defendants."

13. **STRATA PRODUCTS WORLDWIDE, LLC**, is a corporation organized under the laws of the State of Delaware with its principal place of business in Atlanta, Georgia. **Strata Products Worldwide, LLC**, is a manufacturer and/or distributor of isocyanate products used in underground coal mines, and/or it provides application and/or training services regarding isocyanate products.

14. **STRATA PRODUCTS USA, INC.**, is a corporation organized under the laws of the State of Georgia with its principal place of business in Sutton, West Virginia. **Strata Products USA, Inc.**, is a manufacturer and/or distributor of isocyanate products used in

underground coal mines, and/or it provides application and/or training services regarding isocyanate products.

15. **STRATA PRODUCTS USA, LLC**, is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Sutton, West Virginia. Strata Products USA, LLC, is a manufacturer and/or distributor of isocyanate products used in underground coal mines, and/or it provides application and/or training services regarding isocyanate products.

16. **STRATA MINE SERVICES, INC.**, is a corporation organized under the laws of the State of Georgia with its principal place of business in Richlands, Virginia. Strata Mine Services, Inc., is a manufacturer and/or distributor of isocyanate products used in underground coal mines, and/or it provides application and/or training services regarding isocyanate products. Strata Products Worldwide, LLC; Strata Products USA, Inc.; Strata Products USA, LLC; and Strata Mine Services, Inc., are hereinafter referred to collectively as "the Strata defendants."

17. **MINOVA USA, INC.**, is a corporation organized under the laws of the State of Delaware with its principal place of business in Georgetown, Kentucky. Minova USA, Inc., is a manufacturer and/or distributor of isocyanate products used in underground coal mines. It was formerly organized and did business under the name Fosroc, Inc. It is owned by defendant **ORICA LIMITED**, a corporation organized under the laws of the country of Australia with its principal place of business in a place other than West Virginia. Orica Limited is a manufacturer and/or distributor of isocyanate products used in underground coal mines through its subsidiary, Minova USA, Inc. Orica Limited is

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included by reference at all places in this complaint where Minova USA, Inc., is referenced.

18. PAUL D. DIALS is an adult resident of West Virginia. He is presently, and has been at all or part of the times relevant to this complaint, general manager of the Minova USA, Inc., manufacturing plant in Bluefield, West Virginia. In this capacity, he has overseen the production and distribution into the stream of commerce of isocyanate products to which plaintiffs were exposed and disseminated misleading and inadequate information and/or warnings regarding isocyanates.

19. CARPENTER CO., is a corporation organized under the laws of the State of Virginia with its principal place of business in Richmond, Virginia. Carpenter Co. is a manufacturer and/or distributor of isocyanate products used in underground coal mines.

20. BASF CORPORATION, BASF CORPORATION, NAFTA, BASF WYANDOTTE CORPORATION, BASF AKTENGESSELLSCHAFT (collectively, the "BASF Entities") are corporations organized under the laws of Germany or under the laws of the United States having principal places of business in Germany and/or in states in the United States other than the State of West Virginia. The BASF Entities are manufacturers and/or distributors of isocyanate products used in mines, including mines in which the Plaintiffs have worked, and have conducted studies regarding the health effects of isocyanate exposure and disseminated, misleading and inadequate information and/or warnings regarding isocyanates.

21. RHH FOAM SYSTEMS, INC. ("RHH") is a corporation organized under the laws of a state other than the State of West Virginia, with its principal place of business

in the State of Wisconsin. RHH has sold in the stream of commerce isocyanate products to the owners and/or operators of mines in which the Plaintiffs have worked.

22. **GREEN MOUNTAIN INTERNATIONAL, INC.** ("Green Mountain") is a corporation organized under the laws of a state other than the State of West Virginia, with its principal place of business in the State of Illinois. Green Mountain has manufactured and/or sold in commerce isocyanate products that have been used in the mines in which the Plaintiffs have worked. Green Mountain, under contracts with mine owners and/or operators, has continuously and regularly used and continues to use isocyanate products in mines in which the Plaintiffs have worked.

23. **BAYER CHEMICAL CORPORATION, BAYER CORPORATION AND BAYER MATERIALSCIENCE, LLC** (collectively, "the Bayer entities") are business organizations organized under the laws of the states of Delaware, Indiana and Delaware, respectively. The Bayer entities have sold in the stream of commerce isocyanate products to which plaintiffs were exposed, conducted studies regarding the potential health effects of isocyanate exposure, and disseminated misleading and inadequate information and/or warnings regarding isocyanates.

24. **FARBENFABRIKEN BAYER GMBH** ("FFB") is a corporation organized under the laws of the country of Germany with its principal place of business in Germany. FFB has conducted studies regarding the potential health effects of isocyanate exposure, and disseminated misleading and inadequate information and/or warnings regarding isocyanates. This defendant is included in the collective reference, "the Bayer entities."

25. **JAMES H. COVINGTON** is an adult resident of West Virginia. He is presently, and has been at all or part of the times relevant to this complaint, general manager of the Bayer Materials Science, LLC, manufacturing plant in New Martinsville, West Virginia. In this capacity, he has overseen the production and distribution into the stream of commerce of isocyanate products to which plaintiffs were exposed, conducted studies regarding the potential health effects of isocyanate exposure, and disseminated misleading and inadequate information and/or warnings regarding isocyanates.

26. **DOW CHEMICAL COMPANY ("Dow")** is a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Michigan. Dow has sold in the stream of commerce isocyanate products to which plaintiffs were exposed, conducted studies regarding the potential health effects of isocyanate exposure, and disseminated misleading and inadequate information and/or warnings regarding isocyanates.

27. **HUNTSMAN POLYURETHANES ("HUNTSMAN")** is a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Utah. Huntsman is the successor in interest to ICI Polyurethanes, and has sold in the stream of commerce isocyanate products to which plaintiffs were exposed, conducted studies regarding the potential health effects of isocyanate exposure, and disseminated misleading and inadequate information and/or warnings regarding isocyanates. **RUBICON, LLC** is a business entity organized under the laws of the State of Utah with its principal place of business in Utah. Rubicon, LLC operates an isocyanate manufacturing facility on behalf of Huntsman, and Rubicon, LLC has placed in the stream of commerce isocyanate products to which plaintiffs were exposed,

conducted studies regarding the potential health effects of isocyanate exposure, and/or disseminated misleading and inadequate information and/or warnings regarding isocyanates. Rubicon, LLC is included hereafter in this complaint in any reference to Huntsman.

28. **THE INTERNATIONAL ISOCYANATE INSTITUTE** (the "III") is a non-profit corporation organized under the law of the state of New York, with its principal place of business in the State of New Jersey. The III is made up of twenty-two member companies -- including the BASF Entities, the Bayer entities, Dow and Huntsman -- engaged in the manufacture of toluene diisocyanate (TDI) and/or diphenylmethane diisocyanate (MDI). The purported purpose of the III "is to promote the safe handling of MDI and TDI, with respect to the workplace, the community and the environment" and, in conjunction with its' member companies, has conducted studies regarding the potential health effects of isocyanate exposure, and disseminated misleading and inadequate information and/or warnings regarding isocyanates.

29. **CONVENIENCE PRODUCTS INCORPORATED** is a corporation organized under the laws of the State of Missouri, with its principal place of business in the State of Missouri. Convenience Products Incorporated has manufactured and/or distributed in the stream of commerce isocyanate products in the mines in which the Plaintiffs have worked.

30. **LEE SUPPLY COMPANY, INC.** is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the State of Pennsylvania. Lee Supply Company, Inc. has sold in the stream of commerce isocyanate products that have been used in the mines in which the Plaintiffs have worked.

31. **HEINTZMANN CORPORATION** is a corporation organized under the laws of the State of Virginia, with its principal place of business in Cedar Bluff, Virginia. Heintzmann Corporation has manufactured and/or distributed in the stream of commerce isocyanate products that have been used in the mines in which the Plaintiffs have worked. Heintzmann Corporation is owned by defendant **BOCHUMER EISENHUTTE HEINTZMANN**, a corporation organized under the laws of the country of Germany with its principal place of business in a place other than West Virginia. Bochumer Eisenhutte Heintzmann is a manufacturer and/or distributor of isocyanate products used in underground coal mines through its subsidiary, Heintzmann Corporation. Bochumer Eisenhutte Heintzmann is included by reference at all places in this complaint where Heintzmann Corporation is referenced.

32. **UNITED CENTRAL INDUSTRIAL SUPPLY COMPANY, LLC** is a LLC organized under the laws of the State of Delaware with its principal place of business in Bristol, Virginia. United Central Industrial Supply Company, LLC has sold in the stream of commerce isocyanate products that have been used in the mines which the Plaintiffs have worked.

33. **LAD MINING VENTILATION SERVICES, INC.** is a corporation organized under the laws of the State of West Virginia, with its principal place of business in Charleston, West Virginia. Lad Mining Ventilation Services, Inc. has sold in the stream of commerce isocyanate products that have been used in mines in which the Plaintiffs have worked.

34. **HEITECH CORPORATION** is a corporation organized under the laws of the state of Virginia with its principal place of business in Cedar Bluff, Virginia. Heitech



Corporation is a manufacturer, and/or distributor of isocyanate products that have been used in the mines in which the Plaintiffs have worked; and has sold in the stream of commerce isocyanate products that have been used in mines in which the Plaintiffs have worked.

#### JURISDICTION

35. Jurisdiction is proper in this matter because some of the defendants are West Virginia corporations and/or have conducted business in Wyoming County, the amount in controversy satisfies the minimal jurisdictional amount and the claims do not arise under federal law. Plaintiffs seek no relief under any federal laws or regulations and their claims are brought solely under West Virginia common and statutory law.

#### VENUE

36. Venue is appropriate in Wyoming County because one or more of the defendants reside in Wyoming County, and/or a significant portion of the matters in controversy occurred in Wyoming County, and/or it is believed that all defendants conduct business in Wyoming County.

#### ALLEGATIONS OF FACT

37. Plaintiffs repeat and reallege Paragraphs 1-36 as if each were fully set forth herein.

38. Plaintiffs have worked in positions that placed them in underground coal mines operated by the coal mine operators.

39. Isocyanate products were manufactured, allegedly studied for safety effects by, among others, the III, marketed, and sold for use in the underground mines in which Plaintiffs worked and were, in fact, regularly used and continue to be used in the coal

mines for the purpose of supporting and stabilizing the roofs of the mines and ventilation control in the mines.

40. The application of the isocyanate products used to support and stabilize mine roofs involves the mixing of isocyanate in a solution, pumping the mixed compound to the injection area, and injecting the compound into the mine roof under pressure. During this process everyone at or around the mixing station, pumps, hoses, injection point, and anywhere downwind of these areas is exposed to and inhales isocyanate vapors and aerosols and/or comes in physical contact with the liquid isocyanate compound.

41. Isocyanate products used to control ventilation in the mines are sprayed onto the surface of the walls from close proximity. During the application process, everyone at, around, or downwind of the application area is exposed to isocyanate vapors and aerosols and/or comes into physical contact with the liquid isocyanate compound.

42. Since the introduction of isocyanate products for use in mines, Defendants have, throughout their manufacture, sale, distribution, and use of such products, each continually misrepresented to Plaintiffs, other distributors and suppliers, mine operators, mining labor unions, the mining community generally, and mining regulators that such products were safe for use in the mine environment, did not pose any health hazards to individuals working in or around areas in which such products were being used if Defendants' warnings were followed, and did not warrant being the subject of stricter safety regulation. Defendants also, in concert (often with the assistance of the III), conspired to, and did, conceal from Plaintiffs the dangers of isocyanate exposure and the proper safety precautions to be taken in connection with the use and handling of

isocyanates in a manner designed to cause Plaintiffs to believe that isocyanates were safe and did not place in danger, among others, persons (i) using said products; (ii) in mines where said products were used; or (iii) exposed outside of the mines to clothing and other materials that had become contaminated with isocyanate.

43. Plaintiffs relied on these representations and concealments in carrying out their work in the mines and being exposed to isocyanate products. Having made such representations and concealed such information, Defendants had an ongoing duty to inform Plaintiffs of any facts contrary to those representations or concealments or of the hazards or dangers not fully and completely revealed by such representations.

44. In fact, the isocyanate products manufactured, marketed, sold, and applied by Defendants posed a substantial health hazard in the mine environment and are particularly hazardous to those working in, around, and/or downwind of the areas in which such products are being used, or who come into contact with clothing or other materials contaminated with isocyanates.

45. Defendants knew or in the exercise of reasonable care should have known about the dangers posed by these products but never undertook to correct their misrepresentations and concealments regarding the safety of said products nor ceased their campaigns promoting the safety of such products.

46. As entities that have manufactured, conducted studies on health effects, distributed, sold, and applied isocyanate products, Defendants had and have a duty to warn about any dangers those products might pose to persons using, around, or otherwise exposed to such products.

47. Defendants knew, or in the exercise of reasonable care should have known, that the products were being used in the mines in a manner that placed Plaintiffs at risk.

48. Despite their duty to disclose dangers posed by isocyanate products they manufactured, sold, distributed, and used, Defendants each, individually and in concert, intentionally and recklessly failed to disclose, concealed, and misrepresented such dangers to Plaintiffs, their employers, mining unions, and mining regulators.

49. Despite the dangers posed by isocyanate exposure, Defendants, individually and in concert, have engaged in an ongoing campaign to misrepresent and conceal the true health hazards posed by the isocyanate products they manufacture, market and apply, and about which they provided instruction and training.

50. For example, as early as 1980, the IHL concluded, based on scientific studies that had been undertaken to evaluate the issue, that skin contact with isocyanate leads to respiratory injury. This fact was confirmed by additional published studies during the 1980s. Nonetheless, Defendants wholly failed to include any warnings in their isocyanate literature disclosing this fact until the early 1990s (and even then, not all Defendants included such information in their warnings and several defendants watered down the language in their warnings to downplay this significant risk). Defendants undertook this decision, jointly and deliberately, in order to protect their profits, at plaintiffs' expense. Certain defendants also subsequently withdrew even their inadequate, downplayed warnings regarding the risk of skin contact leading to respiratory injury in later warnings. As a result, plaintiffs and their employers purposely were

prevented from discovering and appreciating the risks posed to them by isocyanate skin contact, a regular occurrence in plaintiffs' mines.

51. Defendants also were aware of studies as early as the 1970s (including studies of their own employees or the employees of its' member companies) that showed that inhalation of isocyanate vapors and/or aerosols at levels below the regulatory Threshold Limit Value ("TLV") causes respiratory injury, yet failed to include such information in their warning materials, aggressively attacked those scientific findings and actively sought to influence government regulators not to lower the TLV for isocyanates. Defendants also have relied on studies that investigated isocyanate inhalation exposure levels and the adverse health effects of such exposure on persons exposed notwithstanding that Defendants knew that the monitoring methods used in such studies were unreliable. Defendants further used such studies to defraud regulatory agencies into deciding not to lower the TLV for isocyanates and to convince others that such exposure levels were safe. As a result, plaintiffs and their employers were prevented from discovering and appreciating the risks posed to them by low-level isocyanate inhalation and the need to protect themselves from such exposure.

52. Defendants also knew from scientific studies (often conducted under the auspices of the IHL) that air purifying cartridge respirators ("APRs") were (i) inadequate to protect end users, like plaintiffs, from isocyanate exposure, (ii) not approved by regulatory agencies for use with isocyanates, and (iii) not recommended by APR manufacturers for use with isocyanate exposure. Nonetheless, Defendants advised in their product literature that APRs may be used safely with isocyanates. Defendants did so because they knew that requiring the use of supplied air respirators ("SARs") would, in many applications,

particularly coal mining, make the use of their products impractical and, as a result, Defendants would lose business.

53. Defendants also knew from scientific studies (often conducted under the auspices of the III) that particular materials were required to be used for personal protective equipment (including gloves and other protective clothing) used to protect end users, including plaintiffs, from isocyanate exposure and that certain other materials were inadequate to protect against isocyanate exposure. Nonetheless, Defendants concealed this fact and issued warnings and product literature that omitted this information. As a result, plaintiffs and their employers were prevented by Defendants from discovering and understanding the necessary methods for protecting plaintiffs from exposure, and plaintiffs unnecessarily were exposed to and injured by defendants' products.

54. Defendants also knew from scientific studies (often conducted under the auspices of the III) that washing skin exposed to isocyanates with soap and water -- the skin decontamination method recommended by them -- was insufficient to remove isocyanate from the skin of persons exposed to it and that specific other methods of skin decontamination existed that were superior to washing with soap and water. Nonetheless, Defendants concealed this information and issued warnings and product literature that omitted this information. As a result, plaintiffs and their employers were prevented by Defendants from discovering and understanding the necessary methods for skin decontamination and protection from exposure, and plaintiffs unnecessarily were exposed to and injured by defendants' products.

55. Defendants also knew that, because of the dangers posed by isocyanate products, warnings on such products require particular "signal words," such as "DANGER" and "WARNING" to alert end users, such as plaintiffs, properly to the dangers attendant to isocyanate exposure and to bring proper attention to Defendants' warnings. However, Defendants further downplayed the dangers posed by their products and instead employed lesser signal words that caused plaintiffs not to notice or appreciate even the inadequate warnings Defendants provided with their isocyanate products.

56. Further, Defendants undertook the foregoing misrepresentations and concealments in a coordinated, collusive, concerted and conspiratorial manner. Defendants who belonged to the III, and some of their European corporate parents, agreed to control strictly the dissemination of hazard and safety information to downstream users of their products and conceal the foregoing facts from their warning materials in disregard of plaintiffs' rights and safety, coordinated their labeling and other literature in furtherance of that scheme and directed their subsidiaries and intermediary purchasers and suppliers to do likewise. Those intermediary purchaser manufacturers and suppliers furthered that conspiratorial scheme by concealing critical hazard and safety information from plaintiffs and actively misrepresenting the supposed safety of the isocyanate products to which plaintiffs were exposed.

57. Plaintiffs have been continually and regularly exposed to isocyanate products while working at the coal mines and that exposure has directly and proximately caused them to suffer physical injuries, diseases, and other damages, and/or aggravated diseases and physical conditions that are not directly related to isocyanate exposure. These

physical injuries and diseases, and aggravations of same, include, but are not limited to, the following:

- a) Asthmagenic and asthma-like sensitization, damage, and impairment, including the allergenic progression of same;
- b) Dermatological impairment, complication, irritation and related complications;
- c) Breathing and other respiratory impairment; and
- d) Allergy and allergy-like damage and impairment.

58. As a direct and proximate consequence of said physical injuries and damage, Plaintiffs have suffered, and/or will be caused to suffer, among other things, the following:

- a) Physical pain;
- b) Mental anguish;
- c) Medical expenses;
- d) Pharmaceutical expenses;
- e) Expenses for disability care;
- f) Expenses associated with providing care and comfort; and
- g) Loss of income.

59. As a direct result of Defendants' fraudulent and/or negligent campaign of misrepresentations, non-disclosures, and concealments regarding the true nature of the health risks posed by these isocyanate products, Plaintiffs have only recently come to



discover the true facts concerning the hazards of isocyanates and the effect that the exposure to isocyanates has had on their health and well-being.

60. As a result of Defendants' acts, Plaintiffs seek to recover damages sufficient to compensate them and fund medical monitoring for the above identified injuries as well as costs, attorney's fees, and punitive damages to deter Defendants from continuing to engage in the negligent, wanton, reckless, and fraudulent behavior that directly and proximately injured Plaintiffs.

#### COUNT ONE

(Strict Liability)

61. Plaintiffs repeat and reallege Paragraphs 1-60 as if each were fully set forth herein.

62. Defendants Micon, Micon Products, Micon Services, Flexible Products, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation manufacture and have manufactured, marketed, and sold isocyanate products in commerce for the purpose of supporting, stabilizing, and sealing mine roofs and walls. The mines in which the Plaintiffs are working and have worked have used said products for these purposes without causing any substantial changes in the condition of the products manufactured, marketed and sold by the Defendants.

63. Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation sold said products in the stream of commerce to the owners and/or operators of mines, among others, and under contracts with mine owners and/or operators have continuously and regularly used and continue to use isocyanate products in mines in which the Plaintiffs have worked.

64. Said products are defective in their manufacture, design, warnings and marketing and cause injuries to persons who inhale vapors from or come into physical contact with such products.

65. While working in the coal mines, Plaintiffs regularly and continuously have inhaled vapors from and come into physical contact with the isocyanate products manufactured and sold in commerce by said Defendants, and that exposure has directly and proximately caused and continues to cause injuries and damages to Plaintiffs.

66. Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation

are strictly liable for said defects in their isocyanate products and the injuries to plaintiffs resulting from said defects.

**WHEREFORE**, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

**COUNT TWO**

(Breach of Implied Warranty by Manufactures and Sellers)

67. Plaintiffs repeat and reallege Paragraphs 1-66 as if each were fully set forth herein.

68. Defendants Micon, Micon Products, Micon Services, Flexible Products, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation manufacture and have manufactured, marketed, and sold isocyanate products in the stream of commerce

for the purpose of supporting, stabilizing, and sealing mine roofs and walls. The mines in which the Plaintiffs are working and have worked have used said products for these purposes without causing any substantial changes in the condition of the products manufactured, marketed and sold by the Defendants.

69. Said products were unreasonably dangerous for their intended use when the manufacturer defendants manufactured them, as they cause injuries to persons who inhale vapors from or come into physical contact with such products.

70. Said products remained unreasonably dangerous for their intended use when the supplier defendants incorporated these products into their various products, the isocyanate products cause injuries to person who inhale vapors from or come into physical contact with such products.

71. While working in the coal mines, Plaintiffs regularly and continuously have inhaled vapors from and come into physical contact with the isocyanate products manufactured and sold in commerce by said Defendants, and that exposure has directly and proximately caused and continues to cause injuries and damages to Plaintiffs.

72. Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc. United Central Industrial Supply Company, LLC, and Heitech Corporation

are liable for breach of warranty because of said defects in their isocyanate products and the injuries to plaintiffs resulting from said defects.

**WHEREFORE**, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

**COUNT THREE**

(Negligence of Manufacturers and Sellers)

73. Plaintiffs repeat and reallege Paragraphs 1-72 as if each were fully set forth herein.

74. Defendants Flexible Products, the BASF entities, RHH, Green Mountain, Micon, Micon Products, Micon Services, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, Sub-Tech, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the III, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation study, manufacture, and have manufactured, products that contain isocyanate and sold said products in commerce. These Defendants, often with the participation of the III,

manufactured and marketed said products for their sale and use by mine operators for supporting, stabilizing, and sealing mines. Plaintiffs' employers are using and have used said products for these purposes. This use has caused Plaintiffs to be regularly and continuously exposed to isocyanates.

75. Said Defendants negligently marketed isocyanate products that were not reasonably safe for their intended uses.

76. Defendants knew, or should have known, that said isocyanate products were not reasonably safe and Defendants had a duty to plaintiffs to warn them of the dangers posed by exposure to such products.

77. Defendants negligently failed to warn of, and concealed and misrepresented, the hazard such products posed to persons working in, around, or downwind of the areas in which such products were prepared, transported, and/or applied.

78. Defendants negligently failed to study and determine the dangers presented by said isocyanate products and negligently disregarded their duty to communicate the dangers of such products to Plaintiffs and/or misrepresented to and concealed from Plaintiffs these dangers.

79. Defendants negligently misrepresented and concealed, and continue to misrepresent and conceal, the known facts regarding the health hazards posed by said isocyanate products.

WHEREFORE, each Plaintiff demands judgment against Defendants Flexible Products, the BASF entities, RHH, Green Mountain, Micon, Micon Products, Micon

Services, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, Sub-Tech, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the III, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

#### COUNT FOUR

(Wantonness of Manufacturers and Sellers)

80. Plaintiffs repeat and reallege Paragraphs 1-79 as if each were fully set forth herein.

81. Defendants Flexible Products, the BASF entities, RHH, Green Mountain, Micon, Micon Products, Micon Services, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, Sub-Tech, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the III, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation study, manufacture, and have manufactured, products that contain isocyanate and sold said products in commerce. These Defendants manufactured and marketed said products for their sale and use by mine operators for supporting, stabilizing, and sealing mines. Plaintiffs employers are using and have used said products for these purposes. This use has caused Plaintiffs to be regularly and continuously exposed to isocyanates.

82. Said Defendants wantonly marketed isocyanate products that were not reasonably safe for their intended uses.

83. Defendants knew, or should have known, that said isocyanate products were not reasonably safe and wantonly failed to warn of, and fraudulently concealed and misrepresented, the hazard such products posed to persons working in, around, or downwind of the areas in which such products were prepared, transported, and/or applied.

84. Defendants also wantonly failed to study and determine the dangers presented by said isocyanate products and wantonly disregarded their duty to communicate the dangers of such products to Plaintiffs and/or misrepresented to and concealed from Plaintiffs those dangers.

85. Defendants wantonly misrepresented and concealed, and continue to misrepresent and conceal, the known facts regarding the health hazards posed by said isocyanate products.

**WHEREFORE**, each Plaintiff demands judgment against Defendants Flexible Products, the BASF entities, RHH, Green Mountain, Micon, Micon Products, Micon Services, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, Sub-Tech, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the III, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation in an amount sufficient to



compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

**COUNT FIVE**

**(Negligence of Contractors)**

86. Plaintiffs repeat and reallege Paragraphs 1-85 as if each were fully set forth herein.

87. Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata defendants, William Waxter and Dave Eddy furnished documents, training and/or product application services on a continuous and ongoing basis regarding the use of isocyanate products in coal mines and, in so doing, said Defendants engaged in a continuous course of negligent action in which they, among other things:

- a) Furnished warnings and instructions that were not accurate;
- b) Failed to provide accurate warnings and instructions;
- c) Gave improper instruction;
- d) Failed to give proper instruction;
- e) Gave false instructions;
- f) Misrepresented, concealed, and/or ignored a duty to warn Plaintiffs of, the true nature of the hazards posed by said products.

88. Said Defendants negligently used, and continue to use, isocyanate products in the coal mines and negligently misrepresented, concealed, and ignored, and continue to misrepresent, conceal, and ignore, their duty to warn Plaintiffs of the true dangers of exposure to said products.

89. As a direct and proximate result of said Defendants' continuous negligent course of action, Plaintiffs were exposed to hazardous isocyanate products and have suffered injuries.

WHEREFORE, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata Defendants, William Waxter and Dave Eddy in an amount sufficient to compensate the Plaintiff for their damages, plus costs, attorney's fees, and punitive damages.

COUNT SIX

(Wantonness of Contractors)

90. Plaintiffs repeat and reallege Paragraphs 1-89 and as if each was fully set forth herein.

91. Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata defendants, William Waxter and Dave Eddy furnished documents, training and/or product application services on a continuous and ongoing basis regarding the use of isocyanate products in the coal mines and, in so doing, said Defendants engaged in a continuous course of wanton action in which they, among other things:

- a) Furnished warnings and instructions that were not accurate;
- b) Failed to provide accurate warnings and instructions;
- c) Gave improper instruction;
- d) Failed to give proper instruction;
- e) Gave false instructions;
- f) Misrepresented, concealed, and/or ignored a duty to warn Plaintiffs of, the true nature of the hazards posed by said products.

92. Said Defendants wantonly used, and continue to use, isocyanate products in the coal mines and misrepresented, concealed, and ignored, and continue to misrepresent, conceal, and ignore, a duty to warn Plaintiffs of the true dangers of said products.

93. As a direct and proximate result of said Defendants' continuous wanton course of action, Plaintiffs were exposed to hazardous isocyanate products and have suffered injuries.

WHEREFORE, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata defendants, William Waxter and Dave Eddy in an amount sufficient to compensate the Plaintiff for their damages, plus costs, attorney's fees, and punitive damages.

#### COUNT SEVEN

(Intentional Infliction of Emotional Distress By Manufacturers and Suppliers)

94. Plaintiffs repeat and reallege Paragraphs 1-93 as if each were fully set forth herein.

95. Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the ILL, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation have committed the tort of intentional infliction of emotional distress, proximately injuring Plaintiffs by engaging in a continuous course of conduct including, but not

limited to, manufacturing, producing, distributing, and selling in interstate commerce hazardous isocyanate products and misrepresenting and concealing the true dangers posed by exposure to those products.

96. The acts and conduct of these Defendants were outrageous in that they offended the generally accepted standards of decency and morality of the community.

97. As a proximate result of these Defendants' outrageous and intentional conduct, plaintiffs have suffered and continue to suffer severe emotional distress and otherwise have been damaged, as set forth above.

WHEREFORE, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the Ill, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

#### COUNT EIGHT

(Intentional Infliction of Emotional Distress by Contractors)

98. Plaintiffs repeat and reallege Paragraphs 1-97 as if each were fully set forth herein.

99. Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata defendants, William Waxter and Dave Eddy have committed the tort of intentional infliction of emotional distress, proximately injuring Plaintiffs by engaging in a continuous course of conduct including, but not limited to, manufacturing, producing, distributing, and selling in interstate commerce hazardous isocyanate products and misrepresenting and concealing the true dangers posed by exposure to those products.

100. The acts and conduct of these Defendants were outrageous in that they offended the generally accepted standards of decency and morality of the community.

101. As a proximate result of these Defendants' outrageous and intentional conduct, plaintiffs have suffered and continue to suffer severe emotional distress and otherwise have been damaged, as set forth above.

WHEREFORE, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata defendants, William Waxter and Dave Eddy in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

#### COUNT NINE

(Fraud, Misrepresentation, and Deceit By Manufacturers and Sellers)

102. Plaintiffs repeat and reallege Paragraphs 1-101 as if each were fully set forth herein.

103. Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H.

Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the III, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central Industrial Supply Company, LLC, and Heitech Corporation conducted a continuous campaign of misrepresenting and concealing the dangers posed by isocyanate products and such actions constitute fraud, misrepresentation, and deceit, both actual and constructive.

104. Said Defendants knew that their misrepresentations were false when made and that their concealment of critical information regarding the dangers posed by isocyanate exposure rendered their representations regarding their isocyanate products inaccurate and misleading.

105. Defendants intended that Plaintiffs rely on said misrepresentations and concealments, and Plaintiffs in fact relied on said misrepresentations and concealments in working with Defendants' isocyanate products without proper safety equipment and precautions and without understanding the dangers posed to them as a result. As a direct and proximate result, plaintiffs were injured and damaged.

**WHEREFORE**, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Flexible Products, Sub-Tech, the BASF entities, RHH, Green Mountain, Dow, the Bayer entities, James H. Covington, the Huntsman entities, Sauer, the Weber defendants, the Strata defendants, Minova USA, Inc., Paul D. Dials, Carpenter Co., the III, Convenience Products, Lee Supply Company, Inc., Heintzmann Corporation, Orica Limited, Lad Mining Ventilation Services, Inc., United Central

Industrial Supply Company, LLC, and Heitech Corporation in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

**COUNT TEN**

**(Fraud, Misrepresentation, and Deceit By Contractors)**

106. Plaintiffs repeat and reallege Paragraphs 1-105 as if each were fully set forth herein.

107. Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata defendants, William Waxter and Dave Eddy conducted a continuous campaign of misrepresenting and concealing the dangers posed by isocyanate products and such actions constitute fraud, misrepresentation, and deceit, both actual and constructive.

108. Said Defendants knew that their misrepresentations were false when made and that their concealment of critical information regarding the dangers posed by isocyanate exposure rendered their representations regarding their isocyanate products inaccurate and misleading.

109. Defendants intended that Plaintiffs rely on said misrepresentations and concealments, and Plaintiffs in fact relied on said misrepresentations and concealments in working with Defendants' isocyanate products without proper safety equipment and precautions and without understanding the dangers posed to them as a result. As a direct and proximate result, plaintiffs were injured and damaged.

WHEREFORE, each Plaintiff demands judgment against Defendants Micon, Micon Products, Micon Services, Sub-Tech, Green Mountain, the Strata defendants,

William Waxter and Dave Eddy in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.

**COUNT ELEVEN**

(Conspiracy)

110. Plaintiffs repeat and reallege Paragraphs 1-109 as if each were fully set forth herein.

111. Defendants combined, conspired, and agreed fraudulently and/or intentionally to misrepresent, conceal and/or suppress the dangers posed by isocyanate products. Notwithstanding Defendants' duty to disclose the dangers posed by isocyanate products to Plaintiffs, Defendants, in concert, affirmatively concealed such dangers from Plaintiffs. Defendants, individually and in concert, committed overt acts in furtherance of said conspiracy, including, but not limited to, knowingly and willfully manufacturing, marketing, selling, and using isocyanate products in mines in which Plaintiffs worked, and exposing Plaintiffs to health hazards posed by those products without informing Plaintiffs of the health hazards and effects posed by that exposure and misrepresented and concealed the dangers and effects of such exposure. As a direct and proximate result of said conspiracy, Plaintiffs have been injured and damaged.

WHEREFORE, each Plaintiff demands judgment against all of the Defendants in an amount sufficient to compensate the Plaintiffs for their damages, plus costs, attorney's fees, and punitive damages.



**COUNT TWELVE**

(Medical Monitoring)

112. Plaintiffs repeat and reallege Paragraphs 1-111 as if each were fully set forth herein.

113. Plaintiffs, relative to the general population, have been exposed significantly to isocyanate as a result of defendants' tortious conduct.

114. As a result of said significant isocyanate exposure, plaintiffs suffer from an increased risk of contracting serious latent diseases, including asthma, other respiratory diseases and dermatological injuries.

115. The increased risk of disease that plaintiffs face as a result of defendants' tortious conduct makes it reasonably necessary for plaintiffs to undergo periodic diagnostic medical examinations different and more extensive than what would be prescribed in the absence of the isocyanate exposure plaintiffs have experienced.


116. The periodic medical examinations that plaintiffs must undergo as a result of their isocyanate exposure exist and are available to plaintiffs.

**WHEREFORE**, plaintiffs seek judgment against all Defendants, jointly and severally, sufficient to cover the costs of a medical monitoring plan and the future costs of treatment for any diseases contracted by plaintiffs as a proximate result of their exposure to isocyanates and Defendants' tortious conduct.

**JURY DEMAND**

The Plaintiffs demand trial by jury on all counts.

**PLAINTIFFS,**  
By Counsel

  
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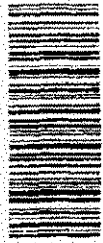
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# EXHIBIT 4

IN THE CIRCUIT COURT  
FOR JEFFERSON COUNTY ALABAMA  
BESSEMER DIVISION  
CIVIL ACTION NUMBER CV01-1341

RICHARD G. ABERNATHY, PAUL N. ALLEN, ROOSEVELT ALLEN, SIDNEY W. ATCHISON, CHARLIE JAMES AUGUSTUS, JOHN W. BAILEY, LARRY H. BANKS, GROVER BARNES, JR., MATTHEW BARNES, BARRY REID BATES, OCIE BATTLE, WILLIAM E. BEARDEN, LARRY F. BECK, RICHARD BELL, II, GEORGE BESTER, CHARLES EDWARD BEVELLE, EARL D. BEVELLE, JEROME BEVELLE, KENNETH G. BLACKMON, LEWIS R. BLAKE, PAUL D. BLANKINSHIP, CHARLES BLOCKER, CHARLIE BLOUNT, JR., MICHAEL R. BOLDEN, JIMMY E. BONNER, JAMES J. BOSTON, RICKEY BOTTOMLEE, FRANKLIN S. BOX, RICHARD EARL BOYD, EDWARD A. BOYKIN, RAYMOND C. BOOTHE, RILEY L. BOOTHE, LARRY BOWDEN, RICKY I. BRAGG, JAMES HENRY BRAND, JR., EARNEST E. BRESSEALE, SAM D. BROOKS, AMOS BROWN, CALVIN BROWN, JR., J.C. BROWN, JAMES O. BROWN, LEMUEL L. BRYANT, OSCAR L. BRYANT, JESSIE E. BUFFETT, WILLIE BULLARD, JR., JAMES C. BUNN, JR., ROBERT L. BUNT, JAMES EARL BURCHFIELD, CEDRIC D. BURROUGHS, ROBERT L. BURT, JOHNNIE M. BUSBY, RICHARD BUSH, JOSEPH CACIOPPO, JAMES C. CAIN, BENNY L. CAINE, JAMES L. CAMPBELL, SR., LARRY DALE CAMPBELL, WAYNE CANTERBURY, ALVIN CARLEE, CHALMERS CARNES, JOE CARROLL, ROBERT W. CARROLL, JR., WILLIE EDWARD CARSON, GARRY CATON, LEO CHAMBLIN, DONALD W. CHAPPELL, JERRY RAY CLEMENTS, MERVYN D. CLICK, LINDA R. COKER, JOHN THOMAS COLE, SYLVIA COLE, ROY JAMES COLLINS, FORRIS COLSTON, EDWARD COLVIN, WAYNE CANTERBURY, THOMAS R. CONNER, WILLIAM C. COOK, JR. WILLIAM EDWARD COOK, BRENDA COOPER, TERRY L. COTTINGHAM, JERIMIAH CREAR, W. HARRIS CUMMINGS, WAYNE CURTIS, HENRY L. DARDEN, JR., ARTHUR DAVIS, BYRON KEITH DAVIS, CHRISTOPHER DAVIS, LUKE DAVIS, RODERICK ORLANDO DAY, ROBERT DEMPSEY DICKEY, JIMMIE DILL, STONEY DILLASHAW, JAMES G. DIXON, WILLIARD LEE DODD, THOMAS STANLEY DOWNS, JAMES G. DIXON, WILLIAM DUBOSE, DON DUDCHOCK, JERRY DOUGLAS EADY, JR., JOHN R. EAST, RICKY EDGII, ARTHUR LEE EDWARDS, DENNIE WAYNE ELLIOT, KENNETH EMBRY, REGINA ETHERIDGE, B.G. EVANS, KEVIN LEE EVANS, JOHNNY S. FARLEY, GEORGE FELTMAN, DENNIS FELTMAN, GARY W. FIELDS, JAMES FILES, EDDIE R. FORD, JR., IVORY L. FOSTER, RONALD J. FOSTER, RUSSELL FOSTER, STANLEY JACKSON FOSTER, DONALD E. FRANKLIN, JACK A. FRANKLIN, JOHN M. FRANKLIN, MARTIN D. FRANKLIN, RALPH NEIL FRANKLIN, RICHARD S. FRANKLIN, HOWARD S. FREEMAN, BOBBY FRYE, RANDY L. GABLES, MELVIN CLAYTON GAMBLE, NORMAN GANN, HAROLD DENNIS GILBERT, JOHN CALVIN GILBERT, SR., ROBERT L. GILLIAND, LEROY GIVAN, ROBERT T. GLAZE, MICHAEL DALE GOGGINS, TRUMAN DANIEL GOINS, BILLY RANDALL GOSSETT, JULIAN C. GRAMMER, HOWARD GRAMMER, ARTHUR W. GREEN, MARION J. GREEN, WILLIAM C. GREEN, DOUG GRIFFIN, JERRY W. GROGGIN,

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RICKIE DEWAYNE GROOMS, BILL N. HALL, DANE HALL, III, GOLDEN M. HALL, JAMES HALL, JR., JOHN C. HALL, BILLY E. HALLMAN, JAMES R. HAMMOND, LUNNIE HAMMOND, JR., DONALD HANDLEY, EUGENE HANDY, LELTON E. HANDLEY, LYNN HARDING, MORRIS EUGENE HARE, CHARLES E. HARKINS, ELIZABETH FAYE HARKINS, GARY D. HARRIS, LEWIS HATCH, JR., JUANITA M. HATTEN, BILLY G. HAWKINS, TERRY LEE HEADLEY, BILLY R. HENDERSON, JOE NATHAN HENDERSON, GEORGE E. HENDRIX, LEWIS HENRY, CHARLES HENSON, BILLY R. HICKS, FRANKLIN W. HICKS, ROOSEVELT HICKS, JIMMY WAYNE HIGGINBOTHAM, KENNETH R. HILL, JAMES E. HICKS JOHN MICHAEL HILL, LUCY B. HILL, THOMAS HILL, CALVIN M. HILLIARD, FRED HILLIARD, HATTIE M. HILLIARD, WILLIAM H. HINTON, THOMAS C. HOBBS, R.L. HOBSON, JR., RONNIE HODGES, CHARLES W. HOGAN, HOWARD F. HOGGLE, LEE HOLIFIELD, LAWANDA HOLLYHAND, DONALD HOLSENBACK, R.L. HOLSER, CHARLES MICHAEL HOMAN, ROBERT OWEN HOOD, ALLEN HOPKINS, JAMES ALLEN HORN, TIMOTHY HORTON, GEORGE HOSEY, GROVER W. HOSMER, JAMES A. HOWARD, CATHERINE HOWELL, HENRY H. HUBBARD, EDWARD CHAS HUDSON, JIMMIE D. HUGHES, BENJAMIN F. HUMPHREYS, DANIEL G. HUMPHREYS, DENNIS HUMPHREYS, JAMES B. HUMPHREYS, JAMES KELLY HUMPHREYS, ROBERT STEVE HUMPHREYS, ROBERT S. HUMPHREYS, ROGER DALE ISBELL, DAVID JACKSON, HAROLD JAMES, JIMMIE JACKSON, JIMMY L. JACKSON, WILLIE E. JACKSON, ROY E. JAMES, BILLY R. JENKINS, GARY JOEL JETT, ALVIN D. JOHNSON, BILLY JOHNSON, GEORGE S. JOHNSON, JOHNNY JOHNSON, BILLY R. JONES, JAYE R. JONES, KENNETH LEE JONES, MICHAEL DUANE JONES, RICHARD ALLEN JONES, WILLIAM CECIL JONES, JR., HOMER E. JORDAN, JOHNNIE F. JUNKINS, LARRY KELLY, JAMES KELSER, JR., LEON KELSER, CARL B. KENNEDY, NOAH DEWAYNE KENNEDY, LINDA KIMBRELL, MOSES KINDRED, RANDY JAMES KING, MICHAEL KIRKLAND, JERRY R. KORNEGAY, WARREN WAYNE KURTZ, DAVID E. KUYKENDALL, SR., RICHARD E. LAMONS, KENNETH WAYNE LANGTON, SAMUEL R. LATHAM, JR., PEARLIE S. LAWHORNE, DEWEY LAWLEY, EUGENE LAWLEY, PAUL A. LAWRENCE, ODIS D. LEATHERWOOD, WILLIE LENOIR, ANDREW JACKSON LEWIS, RICHARD MICHAEL LEWIS, WILLIAM L. LIGHTSEY, JOE W. LOGAN, NATHAN LOGAN, JR., CLARENCE LONG, CALLIE M. LOVE, JAMES W. LOWE, WILLIAM LYDE, MARK S. LYNN, HERMAN McCLAIN, JUDY S. McCLURE, DANNY McCOY, LARRY McCREE, JAMES E. McDONALD, ROBERT McDONALD, WILLIE McLOYD, RICHARD THOMAS McREA, CHARLES MAIN, RICKEY EARL MAJORS, KENNETH M. MALLARD, LEE D. MANNING, RAYMOND MANUEL, JACK A. MARSHALL, FRANKLIN D. MARTIN, KELLY EUGENE MARTIN, LARRY RICHARD MARTIN, LEONARD MARTIN, ROY MARTIN, LOIE T. MASON, III, LEO LENNOX MATTHEWS, II., MELVIN MATTHEWS, EDDIE H. MAXWELL, QUILLIE MAYS, JR., CLIFFORD MAYNOR, JACKIE C. MAYS, JAMES RUSSEL MERRELL, JACK E. MILES, SR., CLIFFORD A. MILLER, ALFRED EARL MILLS, CRAIG MILTON, JR., ARTHUR CHARLES MITCHELL, SR., DENNIS R. MOBLEY, TONY C. MONTABANA, WILLIE F. MONTGOMERY, JAMES R. MOORE, LAMARSE MOORE, V.H. MOORE, RICKY D. MORGAN, STRPHEN M. MORROW, JOHN E.

MORSE, RONALD ALLEN MULLINAX, JOHNNY C. MURPHY, WILLIAM L. MYLES, JULIUS E. NELSON, WILLIAM LARRY NEUGENET, THOMAS E. NEWTON, RANDLE A. NORRIS, JOHN ODOM, JIMMY RAY OGLESBY, CHARLIE OGLETREE, LEROY OLIVER, JOHN OSBORNE, JR., DEBRA OWENS, ROWLAND PALMER, BOBBIE PARKER, DONALD C. PARKER, GARY A. PARRA, ERNES PARRISH, GARY PARSON, LARRY A. PARSONS, RICKY L. PATE, ALVIN E. PATTERSON, JOHN C. PEAK, EDWARD LOUIS PERKINS, ROGER HERNDON PERKINS, LULA B. PETERSON, JAMES H. PICKLE, STEVEN W. PICKLE, EDWARD P. PIERSON, GLEN E. PIERSON, SR., CARL W. POE, MICKY H. POLLARD, WILLIAM KEITH PRAYTOR, DENNIS W. PRITCHETT, JOHNNY L. RAGLAND, ANN S. RANDALL, JOHN E. REED, MARION E. REESE, LEHMAN S. REESE, WILLIAM F. RICHARDSON, WILLIE L. RICHARDSON, VONNIE L. RILES, JOHN P. ROBERTS, NOLAN A. ROBERTS, ERNEST ROBINSON, JR., JOHNNY B. ROGERS, MICHAEL E. ROGERS, TALMAGE E. ROGERS, RONALD S. ROSE, MICHAEL W. ROSS, RANDY R. ROSS, OGBURN ROSSER, LOUIS H. ROWE, JOHN E. RUSSELL, JR., WILLIE L. RUSSELL, DOUGLAS M. SARGENT, CLARENCE W. SCROGGINS, ROBERT D. SEALE, CLIFFORD SEALIE, JR., MARVIN L. SEALIE, JAMES E. SEBERT, JAMES W. SELLERS, LESLEY ROLLIE SHADWICK, CLIFTON P. SELAW, ROY G. SHERER, ROBERT MILTON SIMPSON, ARTHUR SINGLETON, JR., BOBBY G. SLOAN, ANTHONY SMITH, BENNARD SMITH, CARY W. SMITH, CECIL R. SMITH, CLEOPHUS SMITH, DELMA SMITH, JOHN SMITH, ROBERT W. SNELSON, RICKY G. SPROUSE, GLENDON STACKS, JERRY L. STANFORD, NORTHERN STEELE, CHARLES R. STEPHENS, HUBERT STEPHENS, ROGER D. STEPHENSON, GARY O. STEWART, TERRY LYNN STONE, TERRY L. SULLIVAN, KENNY LEE SULZMAN, WILBERT H. SYKES, LARRY E. TAFT, ROBERT L. TAYLOR, JR., S.O. TAYLOR, WILLIE TAYLOR, LARRY TEER, BOOKER THOMAS, BILL ALLEN THOMAS, JAMES ELLIE THOMAS, JAMES E. THOMAS, JIMMY THOMAS, LARRY C. THOMAS, MARTY J THOMAS, KENNETH W. THRASHER, JOEL TIMMONS, RANDY R. TINDLE, TIMOTHY TINGLE, CLAUDE ALLEN TOWNSEND, RONALD TOWNSEND, REGINALD TRAMMELL, DENNIE THOMAS TREVARTHEN, CHARLES S. TRIMBLE, RANDY R. TINDLE, HENRY THOMAS TUBBS, DONALD R. UNDERWOOD, BILLY UPTON, JAMES M. UPTON, JEFF VAUGHN, DAULTON RAY VICKERY, J. CARL VINSON, JR., PAUL WALDON, TOMMY R. WARD, JR., BILLY C. WARE, BOOKER T. WARE, JR., JOEL H. WATTS, ROBERT L. WATTERS, BRUCE CALVIN WELLS, THOMAS G. WEST, J.W. WHITLOW, JACKIE W. WHISENHUNT, BILLY S. WHITE, CHESTER WILKERSON, HAROLD J. WILKES, ANDREW WILLIAMS, EDDIE WILLIAMS, J.W. WILLIAMS, JIMMIE LEE WILLIAMS, WILLIAM DALE WILLIAMS, DONALD D. WILLIJS, LANCE P. WILSON, L.T. WOODARD, SAMMY D. ZUKOSKY

Plaintiffs,

v.

MICON, INC.; FLEXIBLE PRODUCTS COMPANY; BASF CORPORATION; BASF CORPORATION, NAFTA; BASF WYANDOTTE CORP.; BASF

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**AKTENGESSELLSCHAFT; RHH FOAM SYSTEMS, INC.; SUPPLY, INC.; CELOTEX CORPORATION; INSTA-FOAM PRODUCTS, INC.; COWIN & COMPANY, INC., MINING ENGINEERS and CONTRACTORS; COWIN & COMPANY, INC.; COWIN EQUIPMENT COMPANY, INC.; COWIN ACQUISITION CORPORATION; SANDVIK ROCK TOOLS, INC.; DEFENDANTS 1 through 100, entities that have used, manufactured, sold, distributed, or instructed in the use of products that contain isocyanate in the mines in which the Plaintiffs have worked, and entities that have used, sold manufactured, distributed or instructed in the use of products that contain isocyanate in the mines in which the Plaintiffs have worked that are otherwise unknown to the Plaintiffs and which will be properly named by amendment when their true names are ascertained; DEFENDANTS 101 through 200, entities that are providing or have provided safety counseling, instruction and/or advice to the operators and/or personnel of the mines in which the Plaintiffs have worked that are otherwise unknown to the Plaintiffs and which will be properly named by amendment when their true names are ascertained; DEFENDANTS 201 through 300, entities that have used, manufactured, sold, distributed, or instructed in the use of, safety masks that have been used or offered for use in the mines in which the Plaintiffs have worked that are otherwise unknown to the Plaintiffs and which will be properly named by amendment when their true names are ascertained; DEFENDANTS 301 through 400, entities that have contracted with the mine owners and/or operators of the mines in which the Plaintiffs have worked and have inspected the mines; selected products and machinery for use in the mines; performed engineering work and/or other design work related to the installation or removal of safety equipment, or the maintenance of safety equipment that is used or should be used in the mines; reviewed material, or are responsible for reviewing material, that is related to products and machinery that are used, or should be used, in the mines; reviewed material that is related to the safe use of products and machinery that are used in the mines; investigated the availability of safety devices for use in the mines; reviewed reports and other material that relate to the safety of the working conditions in the mines; are responsible, or have been responsible, for advising management of the mines and/or entities who exercise any degree of control over said mine owners and/or operators regarding the installation, servicing and repairing of safety equipment that is used, or that should be used, in the mines; installed safety equipment or safety devices in the mines; performed engineering or design work related to safety devices that are installed in the mines that are otherwise unknown to the Plaintiffs and which will be properly named by amendment when the true names are ascertained; DEFENDANTS 401-500, entities that manufactured or distributed products that were used in the mines in which the Plaintiffs have worked, including but not limited to safety masks, isocyanate products, dust control equipment, respiratory equipment, components of respiratory equipment, and other substances and equipment that are otherwise unknown to the Plaintiffs and which will be properly named by amendment when the true names are ascertained; DEFENDANTS 501 through 600, entities that have not been previously named or described and that participated in the design of the mines in which the Plaintiffs have worked; participated in the construction of the mines; participated in the planning or modification of the mines' designs; inspected the mines; knew of hazards associated with the use of chemicals or other products used in the mines; designed the sprinkler or ventilation systems used in the mines that are otherwise unknown to the Plaintiffs and which will be properly named by amendment when the true names are ascertained.**

Defendants.



COMPLAINT

The Plaintiffs, in their Claim for Damages, state as follows:

PARTIES

PLAINTIFFS

1. The Plaintiffs are natural persons and residents of the State of Alabama. The Plaintiffs work or have worked with Jim Walter Resources, Inc. ("JWR").
2. Each Plaintiff is named as follows:

Richard G. Abernathy, Paul N. Allen, Roosevelt Allen, Sidney W. Atchison, Charlie James Augustus, John W. Bailey, Larry H. Banks, Grover Barnes, Jr., Matthew Barnes, Barry Reid Bates, Ocie Battle, William E. Bearden, Larry F. Beck, Richard Bell, II, George Bester, Charles Edward Bevelle, Earl D. Bevelle, Jerome Bevelle, Kenneth G. Blackmon, Lewis R. Blake, Paul D. Blankinship, Charles Blocker, Charlie Blount, Jr., Michael R. Bolden, Jimmy E. Bonner, James J. Boston, Rickey Bottomlee, Franklin S. Box, Richard Earl Boyd, Edward A. Boykin, Raymond C. Boothe, Riley L. Boothe, Larry Bowden, Ricky L. Bragg, James Henry Brand, Jr., Earnest E. Bresscale, Sam D. Brooks, Amos Brown, Calvin Brown, Jr., J.C. Brown, James O. Brown, Lemuel L. Bryant, Oscar L. Bryant, Jessie E. Buffett, Willie Bullard, Jr., James C. Bunn, Jr., Robert L. Bunt, James Earl Burchfield, Cedric D. Burroughs, Robert L. Burt, Johnnie M. Busby, Richard Bush, Joseph Cacioppo, James C. Cain, Benny L. Caine, James L. Campbell, Sr., Larry Dale Campbell, Wayne Canterbury, Alvin Carlee, Chalmers Carnes, Joe Carroll, Robert W. Carroll, Jr., Willie Edward Carson, Garry Caton, Leo Chamblin, Donald W. Chappell, Jerry Ray Clements, Mervyn D. Click, Linda R. Coker, John Thomas Cole, Sylvia Cole, Roy James Collins, Forris Colston, Edward Colvin, Thomas R. Conner, William C. Cook, Jr., William Edward Cook, Brenda Cooper, Terry L. Cottingham, Jeremiah Crear, W. Harris Cummings, Wayne Curtis, Henry L. Darden, Jr., Arthur Davis, Byron Keith Davis, Christopher Davis, Luke Davis, Roderick Orlando Day, Robert Dempsey Dickey, Jimmie Dill, Stoncy Dillashaw, James G. Dixon, Willard Lee Dodd, Thomas Stanley Downs, James G. Dixon, William Dubose, Don Dudchock, Jerry Douglas Eady, Jr., John R. East, Ricky Edgil, Arthur Lee Edwards, Dennis Wayne Elliot, Kenneth Embry, Regina Etheridge, B.G. Evans, Kevin Lee Evans, Johnny S. Farley, George Feltman, Dennis Feltman, Gary W. Fields, James Files, Eddie R. Ford, Ivory L. Foster, Ronald J. Foster, Russell Foster, Stanley Jackson Foster, Donald E. Franklin, Jack A. Franklin, John M. Franklin, Martin D. Franklin, Ralph Neil Franklin, Richard S. Franklin, Howard S. Freeman, Bobby Frye, Randy L. Gables, Melvin Clayton Gamble, Norman Gann, Harold Dennis Gilbert, John Calvin Gilbert, Sr., Robert L. Gilliland, Leroy Givan, Robert T. Glaze, Michael Dale Goggins, Truman Daniel Goins, Billy Randall Gossett, Julian C. Grammer, Howard Grammer, Arthur W. Green, Marion J. Green, William C. Green, Doug Griffin, Jerry W. Groggin, Rickie Dewayne Groome, Bill N. Hall, Dan Hall, III, Golden M. Hall, James Hall, Jr., James Hall, Jr., John C. Hall, Billy E. Hallman, James R. Hammond, Linnie Hammond, Jr.,

Donald Handley, Eugene Handy, Lelton Handley, Lynn Harding, Morris Eugene Hare, Charles E. Harkins, Elizabeth Faye Harkins, Gary D. Harris, Lewis Hatch, Jr., Juanita M. Hatten, Billy G. Hawkins, Terry Lee Headley, Billy R. Henderson, Joe Nathan Henderson, George E. Hendrix, Lewis Henry, Charles Henson, Billy R. Hicks, Franklin W. Hicks, James E. Hicks, Roosevelt Hicks, Jimmy Wayne Higginbotham, Kenneth R. Hill, John Michael Hill, Lucy B. Hill, Thomas Hill, Calvin M. Hilliard, Fred Hilliard, Hattie M. Hilliard, William H. Hinton, Thomas C. Hobbs, R.L. Hobson, Jr., Ronnie Hodges, Charles W. Hogan, Howard F. Hoggie, Lee Holifield, Lawanda Hollyhand, Donald Holisenback, R.L. Holser, Charles Michael Horan, Robert Owen Hood, Allen Hopkins, James Allen Horn, Timothy Horton, George Hosey, Grover W. Hosmer, James A. Howard, Catherine Howell, Henry H. Hubbard, Edward Chas Hudson, Jimmie D. Hughes, Benjamin F. Humphreys, Daniel G. Humphreys, Dennis Humphreys, James B. Humphreys, James Kelly Humphreys, Robert Steve Humphreys, Robert S. Humphreys, Roger Dale Isbell, David Jackson, Harold James, Jimmie Jackson, Jimmy L. Jackson, Willie E. Jackson, Roy E. James, Billy R. Jenkins, Gary Joel Jett, Alvin D. Johnson, Billy Johnson, George S. Johnson, Johnny Johnson, Billy R. Jones, Jaye R. Jones, Kenneth Lee Jones, Michael Duane Jones, Richard Allen Jones, William Cecil Jones, Jr., Homer E. Jordan, Johnnie F. Junkins, Larry Kelly, James Kelsner, Jr., Leon Kelsner, Carl B. Kennedy, Noah Dewayne Kennedy, Linda Kimbrell, Moses Kindred, Randy James King, Michael Kirkland, Jerry R. Kornegay, Warren Wayne Kurtz, David E. Kuykendall, Sr., Richard E. Lamona, Kenneth Wayne Langton, Samuel R. Latham, Jr., Pearl S. Lawhorn, Dewey Lawley, Eugene Lawley, Paul A. Lawrence, Odis D. Leatherwood, Willie Lenoir, Andrew Jackson Lewis, Richard Michael Lewis, William L. Lightsey, Joe W. Logan, Nathan Logan, Jr., Clarence Long, Callie M. Love, James W. Lowe, William Lyde, Mark S. Lynn, Herman McClain, Judy S. McClure, Danny McCoy, Larry McCree, James E. McDonald, Robert McDonald, Willie McLoyd, Richard Thomas McRea, Charles Main, Rickey Earl Majors, Kenneth M. Mallard, Lee D. Mannings, Raymond Manuel, Jack A. Marshall, Franklin D. Martin, Kelly Eugene Martin, Larry Richard Martin, Leonard Martin, Roy Martin, Louie T. Mason, III, Leo Lennox Matthews, II, Melvin Matthews, Eddie H. Maxwell, Oullie Maya, Jr., Clifford Maynor, Jackie C. Mays, James Russell Merrill, Jack E. Miles, Clifford A. Miller, Alfred Earl Mills, Craig Milton, Jr., Arthur Charles Mitchell, Sr., Dennis R. Mobley, Tony C. Montabana, Willie F. Montgomery, James R. Moore, Lamarse Moore, V.H. Moore, Ricky D. Morgan, Stephen M. Morrow, John E. Morse, Ronald Allen Mullinax, Johnny C. Murphy, William L. Myles, Julius E. Nelson, William Larry Neugenet, Thomas E. Newton, Randic A. Norris, John Odom, Jimmy Ray Oglesby, Charlie Ogletree, Leroy Oliver, John Osborne, Jr., Debra Owens, Rowland Palmer, Bobbie Parker, Donald C. Parker, Gary A. Parra, Ernest Parrish, Gary Parsons, Larry A. Parsons, Ricky L. Pate, Alvin E. Patterson, John C. Peak, Edward Louis Perkins, Roger Herndon Perkins, Lula B. Peterson, James H. Pickle, Steven W. Pickle, Edward P. Pierson, Glen E. Pierson, Sr., Carl W. Poe, Micky H. Poffard, William Keith Praytor, Dennis W. Pritchett, Johnny L. Ragland, Ann S. Randall, John E. Reed, Marion E. Reese, Lehman S. Reese, William P. Richardson, Willie L. Richardson, Vennie L. Riles, John P. Roberts, Nolan A. Roberts, Ernest Robinson, Jr., Johnny B. Rogers, Michael E. Rogers, Talmage E. Rogers, Ronald S. Rose, Michael W. Ross, Randy R. Ross, Ogburn Rosser, Louis H. Rowe, John E. Russell, Jr., Willie L. Russell, Douglas M. Sargent, Clarence W. Scroggins, Robert D. Seale, Clifford Seale, Jr., Marvin L. Sealle, James E. Sebert, James W. Sellers, Lesley Rollie Shadwick, Clifton P. Shaw, Roy G. Sherer, Robert Milton Simpson, Arthur Singleton, Jr., Bobby G. Sloan, Anthony Smith, Bennard Smith, Cary W. Smith, Cecil R. Smith, Cleophas Smith, Delma Smith, John Smith, Robert W. Snelson, Ricky G. Sprouse, Glendon

Stacks, Jerry L. Stanford, Northern Steele, Charles R. Stephens, Hubert Stephens, Roger D. Stephenson, Gary O. Stewart, Terry Lynn Stone, Terry L. Sullivan, Kenny Lee Sulzman, Wilbert H. Sykes, Larry E. Taft, Robert L. Taylor, Jr., S.O. Taylor, Willie Taylor, Larry Teer, Booker Thomas, Bill Allen Thomas, James Ellis Thomas, James E. Thomas, Jimmy Thomas, Larry C. Thomas, Marty J. Thomas, Kenneth W. Thrasher, Joel Timmons, Randy R. Tindle, Timothy Tingle, Claude Allen Townsend, Ronald Townsend, Reginald Trammell, Donnie Thomas Trevarthen, Charles S. Trimble, Randy R. Tindle, Henry Thomas Tubbs, Donald R. Underwood, Billy Upton, James M. Upton, Jeff Vaughn, Daulton Ray Vickery, J. Carl Vinson, Jr., Paul Waldon, Tommy R. Ward, Jr., Billy Ware, Booker T. Ware, Jr., Joel H. Watts, Robert L. Watters, Bruce Calvin Wells, Thomas G. West, J.W. Whittow, Jackie W. Whisenhunt, Billy S. White, Chester Wilkerson, Harold J. Wilkes, Andrew Williams, Eddie Williams, J.W. Williams, Jimmie Lee Williams, William Dale Williams, Donald D. Willis, Lance P. Wilson, L.T. Woodard, Sammy D. Zukosky

DEFENDANTS

3. **MICON, INC.** ("Micon") is a corporation organized under the laws of the State of Pennsylvania, with its principal place of business in the State of Pennsylvania. Micon has sold and continues to sell products that contain isocyanates to the owners and/or operators of the mines in which the Plaintiffs have worked; and has sold and continues to sell products to wholesalers that sell such products to said owners and/or operators.
3. **FLEXIBLE PRODUCTS COMPANY** ("Flexible Products") is a corporation organized under the laws of the State of Georgia, with its principal place of business in Atlanta, Georgia. Flexible Products has manufactured isocyanate products that have been used in mines in which the Plaintiffs have worked. Flexible Products has undertaken to instruct Plaintiffs and those for whom they have worked in the safe use of isocyanate products used in mines and has consulted with mine operators regarding the safe use of such products.
5. **BASF CORPORATION, BASF CORPORATION, BASF CORP., NAFTA, BASF WYANDOTTE CORPORATION, BASF AKTENGESSELLSCHAFT** (collectively, the "BASF Entities") are corporations organized under the laws of Germany or under the laws of the United States having principal places of business in Germany and/or in states in the United States other than the State of Alabama. The BASF Entities are manufacturers and/or distributors of isocyanate products used in mines, including mines in which the Plaintiffs have worked.
6. **SUPPLY, INC.** is a corporation organized under the laws of the State of Florida, with its principal places of businesses in the states of Alabama and Florida. Supply, Inc. has sold in commerce isocyanate products to the owners and/or operators of JWR and other mines in which the Plaintiffs have worked.

7. **CELOTEX CORPORATION** ("Celotex") is a corporation organized under the laws of the State of Florida, with its principal place of business in the State of Florida. Celotex has manufactured and/or sold in commerce isocyanate products used in mines in which the Plaintiffs have worked. All claims against Celotex by plaintiffs are limited to those arising after May 30<sup>th</sup>, 1997.
8. **RHH FOAM SYSTEMS, INC.** ("RHH") is a corporation organized under the laws of a state other than the State of Alabama, with its principle place of business in the State of Wisconsin. RHH has sole in commerce isocyanate products to the owners and/or operators of mines in which the Plaintiffs have worked.
9. **INSTA-FOAM PRODUCTS, INC.** ("Insta-Foam") is a corporation organized under the laws of a state other than the State of Alabama, with its principal place of business in the State of Illinois. Insta-Foam has manufactured and/or sold in commerce isocyanate products that have been used in the mines in which the Plaintiffs have worked.
10. **COWIN & COMPANY, INC., MINING ENGINEERS, AND CONTRACTORS, COWIN & COMPANY, INC., COWIN EQUIPMENT COMPANY, INC. and COWIN ACQUISITION CORPORATION** are closely affiliate corporations that are incorporated under the laws of the State of Alabama and have their principal places of business in Jefferson County, Alabama. The Cowin Entities, under contracts with the owners and operators of the mines in which the Plaintiffs have worked, have constructed shafts, tunnels, and other sections of said mines, planned the construction of said sections, performed engineering work and directed construction and engineering work done by others in said sections. The Cowin Entities have used isocyanate products as part of this work and have planned for and/or directed the use of such products in said mines.
11. **SANDVIK ROCK TOOLS, INC.** ("Sandvik") is a corporation that is incorporated under the laws of Delaware with its principle place of business in a state other than Alabama. Sandvik manufactures and/or sells a product known as Mint Block Resin "Resin" used to support the roof of the mine. Resin contains Methylenedianiline (MDA) which is a component of isocyanates and other two-part glues.
12. Fictitious **DEFENDANTS 1 through 100** have manufactured, sold, distributed, used, or instructed in the use of isocyanate and other MDA products in the mines in which the Plaintiffs have worked.
13. Fictitious **DEFENDANTS 101 through 200** have provided safety counseling, instruction, and/or advice to the operators and/or employees of the mines in which the Plaintiffs have worked.

14. Fictitious DEFENDANTS 201 through 300 have manufactured and/or sold and distributed safety masks for use in the mines in which the Plaintiffs have worked with knowledge that the masks would be used in connection with the application of isocyanate and other MDA products and that the masks provided inadequate protection under those circumstances.
15. Fictitious DEFENDANTS 301 through 400 operated under contracts with the owners and/or operators of the mines in which the Plaintiffs have worked pursuant to which said Defendants have done or should have done one or more of the following:
  - a. Inspected the mines.
  - b. Inspected the mines with regard to safety.
  - c. Selected products and machinery for use in the mines.
  - d. Performed engineering work in the mines.
  - e. Performed engineering design and work and/or other design work related to the installation of safety equipment.
  - f. Advised and instructed on the use, maintenance, and operation of safety equipment.
  - g. Reviewed material related to products and machinery.
  - h. Reviewed material related to the safe use of products and machinery.
  - i. Investigated to determine the availability of safety devices.
  - j. Reviewed reports and other material that relate to safety and working conditions.
  - k. Advised operators and managers of the mines regarding the installation, servicing, and repairing of safety equipment and devices.
  - l. Installed safety equipment or safety devices in the mines.
  - m. Performed engineering or design work related to safety devices.
16. Fictitious DEFENDANTS 401-500 manufactured or distributed products that were used in the mines in which the Plaintiffs worked, including but not limited to safety mask products, dust control equipment, respiratory equipment, components of respiratory equipment, and other substances and equipment.
17. Fictitious DEFENDANTS 501 through 600 are entities that have not been previously named, or have been named by the use of names that are not their true names and are similar to their true names and/or names under which they do business and that:
  - a. Participated in the design of the mines in which the Plaintiffs are, or have been, employed.
  - b. Participated in the construction of said mines.
  - c. Participated in planning for modification of the design of said mines.
  - d. Participated in modifications of said mines.
  - e. Inspected said mines.
  - f. Were employed for safety counseling and advice.

- g. Knew, or should have known, of hazards associated with the use of chemicals or other products used in said mines.
- h. Designed the sprinkler and ventilation systems used in said mines.

#### ALLEGATIONS OF FACT

- 18. The Plaintiffs repeat and reallege Paragraphs 1-17 as if fully set forth herein.
- 19. The Plaintiffs have worked in positions that placed them in underground coal mines operated by JWR.
- 20. Isocyanate and other MDA products were manufactured, marketed, and sold for use in the underground mines in which Plaintiffs worked and were, in fact, regularly used and continue to be used in the JWR mines for the purpose of supporting and stabilizing the roofs of the mines and sealing mine walls from air and water flow.
- 21. The application of the isocyanate products used to support and stabilize mine roofs involves the mixing of isocyanate in a solution, pumping the mixed compound to the injection area, and injecting the compound into the mine roof under pressure. During this process everyone at or around the mixing station, pumps, hoses, injection point, and anywhere downwind of these areas is exposed to and inhales isocyanate vapors and/or comes in physical contact with the liquid isocyanate compound.
- 22. Isocyanate products used to seal mine walls from air and water flow are sprayed onto the surface of the walls from close proximity. During the application process, everyone at, around, or downwind of the application area is exposed to isocyanate vapors and/or comes into physical contact with the liquid isocyanate compound.
- 23. The application of other MDA products, including resin, involves the mixing of a capsule with another compound while injecting the two compounds into the roof of the mine with a roof bolting machine. During this process everyone at or around the roof bolting machine and anywhere downwind of these areas is exposed to and inhales vapors and/or comes in physical contact with the MDA compound.
- 24. Since the introduction of isocyanate and other MDA products for use in mines, Defendants have throughout their manufacture, sale, distribution, and use of such products each continually represented to Plaintiffs, mining labor unions, the mining community generally, and mining regulators that such products were safe for use in the mine environment, did not pose any health hazards to individuals working in or around areas in which such products were being used, and did not warrant being the subject of safety regulation. Indeed, Flexible Products represented on numerous occasions that the isocyanate products were "safe to

drink," and together with Micon and the other Defendants engaged in an ongoing and continuing campaign of similar representations designed to convince the mining community that isocyanate and other MDA products were safe and did not place in danger, among others, persons (i) using said products; (ii) being in mines where said products were used; or (iii) being exposed outside of the mines to clothing and other materials that had become contaminated with isocyanate and MDA.

25. Plaintiffs relied on these representations in carrying out their work in the mines when isocyanate and other MDA products were being applied. Having made such representations, the Defendants had an ongoing duty to inform Plaintiffs of any facts contrary to those representations or of hazards or dangers not fully and completely revealed by such representations.
26. In fact, the isocyanate and other MDA products manufactured, marketed, sold, and applied by the Defendants posed a substantial health hazard in the mine environment and are particularly hazardous to those working in, around, and downwind of the areas in which such products are being used, or who come in contact with clothing or other materials contaminated with isocyanates and MDA.
27. Defendants knew or in the exercise of reasonable due diligence should have known about the dangers posed by these products but never undertook to correct their incorrect representations regarding the safety of said products or ceased their campaigns promoting the safety of such products.
28. As entities that have manufactured, distributed, sold, and applied isocyanate and other MDA products, Defendants had and have a duty to warn about any dangers those products might pose to persons using, around, or otherwise exposed to such products.
29. Defendants knew or in the exercise of reasonable diligence should have known, the products were being used in the mines in a manner that placed the Plaintiffs at risk.
30. Despite their duty to disclose dangers posed by isocyanate and other MDA products they manufactured, sold, distributed, and used, Defendants each intentionally and recklessly failed to disclose, concealed, and misrepresented such dangers to the Plaintiffs, mining unions, and mining regulators.
31. Despite these hazards, Defendants have engaged in an ongoing campaign to misrepresent and conceal the true health hazards posed by the isocyanate and other MDA products they manufacture, market, apply, and provide instruction and training about.
32. The Plaintiffs have been continually and regularly exposed to isocyanate and other MDA products while working at the JWR mines and that exposure has



directly and proximately caused them to suffer within the last two years physical injuries, diseases, and other damages, and/or aggravated diseases and physical conditions that are not directly related to isocyanate and MDA exposure. These physical injuries and diseases and aggravations of same include, but are not limited to, the following:

- a. Asthmagenic and asthma-like sensitization, damage, and impairment, including the allergenic progression of same.
  - b. Dermatological, impairment, complication, irritation and related complications.
  - c. Breathing and other respiratory impairment.
  - d. Neurological impairment.
  - e. Immune system damage and impairment.
  - f. Reproductive system damage and impairment.
  - g. Allergy and allergy-like damage and impairment.
  - h. Cancers.
33. As a direct and proximate consequence of said physical injuries and damage, Plaintiffs have within the last two years suffered, and/or will be caused to suffer, among other things, the following:
- a. Physical pain.
  - b. Mental anguish.
  - c. Medical expenses.
  - d. Drug expenses.
  - e. Nursing expenses.
  - f. Hospital expenses.
  - g. Medical testing expenses.
  - h. Incidental medical and nursing expenses.
  - i. Medical monitoring expenses.
  - j. Incidental expenses for disability care.
  - k. Incidental expenses associated with providing care and comfort.
  - l. Loss of income.
34. As a direct result of Defendants' fraudulent campaign of misrepresentations, non-disclosures, and concealment regarding the true nature of the health risks posed by these isocyanate and other MDA products, the Plaintiffs have only within the last two years come to discovery the true facts concerning the hazards of isocyanates and MDA and the effect the exposure to isocyanates and MDA has had on their health and well-being.
35. As a result of Defendants' acts, Plaintiffs seek to recovery damages sufficient to compensate them for the above identified injuries as well as costs, attorney's fees, and punitive damages to deter Defendants from continuing to engaging in the wanton, reckless, and fraudulent behavior that directly and proximately injured Plaintiffs.



**COUNT ONE**  
(Implied Warranty of Merchantability)

36. The Plaintiffs repeat and reallege Paragraphs 1-35 as if each were fully set forth herein.
37. Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 manufactured, marketed, and/or sold in commerce isocyanate and other MDA products for use in coal mines to support, stabilize, and seal mine roofs and walls.
38. Said products, however, are not and were not reasonably safe for their intended use and are, instead, defective for that use because when used in the manner intended and instructed they cause physical injury to personnel working in, around, and downwind of the areas in which these products are being applied through the inhalation of isocyanate and MDA derived vapors and/or physical contact with isocyanate and MDA based compounds.
39. Said Defendants impliedly warranted to the purchasers and foreseeable users of said products that those products were reasonably safe for their intended use.
40. JWR is using and has used said products in their mines for the purpose of supporting, stabilizing, and sealing their mines, and these uses have continually exposed the Plaintiffs to isocyanates and MDA during the course of the regular performance of their work in the mines.
41. The exposures of Plaintiffs to isocyanates and MDA at the JWR mines have directly and proximately caused, and continue to cause, injuries and damage to the Plaintiffs and to others similarly situated.

WHEREFORE, each Plaintiff demands judgment against the Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 in the sum of Five Million Dollars and costs and attorney's fees.

**COUNT TWO**  
(Alabama Extended Manufacturer's Liability Doctrine)

42. The Plaintiffs repeat and reallege Paragraphs 1-41 as if each were fully set forth herein.
43. The Defendants Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 manufacture and have manufactured, marketed, and sold isocyanate and other MDA products in commerce for the purpose of supporting, stabilizing, and sealing mine roofs and

- walls. The mines in which the Plaintiffs are and have worked have used said products for these purposes without causing any substantial changes in the condition of the products manufactured, marketed, and sold by the Defendants.
44. The Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 sold said products in commerce to, among others, JWR and JWR has continuously and regularly used the products in the mines in which the Plaintiffs have worked.
  45. Said products are defective in their manufacture, design, and marketing and cause injuries to persons who breath vapors from or come into physical contact with the products.
  46. While working in the JWR mines, Plaintiffs have regularly and continuously inhaled vapors from and come in physical contact with the isocyanate and other MDA products manufactured and sold in commerce by said Defendants, and that exposure has directly and proximately caused and continues to cause injuries and damages in the Plaintiffs and others similarly situated.
  47. The Plaintiffs claim damages under the Alabama Extended Manufacturer's Doctrine.

WHEREFORE, each Plaintiff demands judgment against the Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Sandvik and Fictitious Defendants 1-100 in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT THREE**

(Negligence or Wantonness of Manufacturer and Seller)

48. The Plaintiffs repeat and rec allege Paragraphs 1-47 as if each were fully set forth herein.
49. The Defendants Flexible Products, BASF, Celotex, Insta-Foam, RHH, Sandvik and Fictitious Defendants 1-100 manufacture, and have manufactured, products that contain isocyanate and MDA. The Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, and Fictitious Defendants 1-100 sold said products in commerce. These Defendants manufactured and marketed said products for their sale and use by mine operators for supporting, stabilizing, and sealing mines. JWR is using and has used said products for these purposes. This use has caused the Plaintiffs to be regularly and continuously exposed to isocyanates and MDA.
50. The Plaintiffs aver that said Defendants negligently and wantonly marketed isocyanate and other MDA products that were not reasonably safe.

51. Defendants knew, or should have known, that said isocyanate and other MDA products were not reasonably safe and negligently and wantonly failed to warn of, and fraudulently concealed and misrepresented the hazard such products posed to, persons working in, around, or downwind of the areas in which such products were prepared, transported, and/or applied.
52. Defendants negligently or wantonly failed to study and determine the dangers presented by the said isocyanate and other MDA products and negligently or wantonly disregarded their duty to communicate the dangers of such products to the Plaintiffs and/or misrepresented to and concealed from the Plaintiffs those dangers.
53. Defendants negligently, wantonly, and fraudulently misrepresented and concealed and continue to misrepresent and conceal the known facts regarding the health hazards posed by said isocyanate and other MDA products.

WHEREFORE, each Plaintiff demands judgment against the Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT FOUR**  
(Negligence or Wantonness)

54. The Plaintiffs repeat and reallege Paragraphs 1-53 as if each were fully set forth herein.
55. The Defendants Micon, and Fictitious Defendants 101-200 and 301-400 and 501-600 furnished documents and/or furnished advise and/or training on a continuous and ongoing basis regarding the use of isocyanate products in JWR mines and, in doing so, said Defendants engaged in a continuous course of negligent or wanton action in which they, among other things, did the following:
  - a. Furnished documents that were not accurate.
  - b. Failed to furnish accurate documents.
  - c. Furnished documents that were not adequate.
  - d. Failed to furnish adequate documents.
  - e. Gave improper instruction.
  - f. Failed to give proper instruction.
  - g. Gave false instructions
  - h. Misrepresented, concealed, and ignored a duty to warn the Plaintiffs of the true nature of the hazards posed by said products.
56. As a direct and proximate result of Defendants' continuous negligent, wanton, and fraudulent course of action, the Plaintiffs were exposed to hazardous isocyanate products and caused to suffer injuries within the last two years.

**WHEREFORE**, each Plaintiff demands judgment against the Defendants Micon, and Fictitious Defendants 101-200 and 301-400 and 501-600 in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT FIVE**

(Negligence or Wantonness of Contractors)

57. The Plaintiffs repeat and reallege Paragraphs 1-56 as if each were fully set forth herein.
58. The Cowin Entities and Fictitious Defendants 501 through 600, under contracts with JWR, are constructing and have constructed shafts and other parts of JWR's mines and have, under said contracts, planned for the construction of said shafts and other parts of said mines, performed engineering work and directed that construction and other work be done by others.
59. In the course of performing said work, the Cowin Entities and Fictitious Defendants 501 through 600 have engaged in a continuous course of negligent, wanton, and fraudulent action in which they have, among other things, done the following:
  - a. Used products that contain isocyanates in the mines in which the Plaintiffs have been employed.
  - b. Drawn plans and specifications for use of isocyanates in the mines in which the Plaintiffs have been employed.
  - c. Directed that the Plaintiffs and others use isocyanate products in the mines in which the Plaintiffs have been employed.

**WHEREFORE**, each Plaintiff excluding those previously and exclusively employed by the Cowin Entities demands judgment against the Cowin Entities and Fictitious Defendants 501-600 in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT SIX**

(Outrage Against Manufacturer and Seller)

60. The Plaintiffs repeat and reallege Paragraphs 1-59 as if each were fully set forth herein.
61. Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., and Fictitious Defendants 1-100 have committed the tort of outrage, proximately injuring the Plaintiffs by engaging in a continuous course of conduct including but not limited to manufacturing, producing, distributing, and selling in interstate commerce hazardous isocyanate and other MDA products and misrepresenting and concealing the true dangers posed by exposure to those

products in such a manner that is beyond all bounds of human and corporate decency, is intolerable in this community and throughout our society, and is a direct and proximate cause of the Plaintiffs' injuries and damages.

**WHEREFORE**, each Plaintiff demands judgment against all said Defendants in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT SEVEN**  
(Outrage Against Contractors)

62. The Plaintiffs repeat and reallege Paragraphs 1-61 as if each were fully set forth herein.
63. The Cowin Entities and Fictitious Defendants 501 through 600, under contracts with JWR, committed the tort of outrage by constructing and having constructed shafts and other parts of said Defendants' mines and have, under said contracts, planned for the construction of said shafts and other parts of said mines, performed engineering work and directed that construction and other work be done by others, while, among other things, misrepresenting and concealing the true dangers posed by exposure to isocyanate products in such a manner that is beyond all bounds of human and corporate decency, is intolerable in this community and throughout our society, and is a direct and proximate cause of the Plaintiffs' injuries and damages.

**WHEREFORE**, each Plaintiff demands judgment against all said Defendants in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT EIGHT**  
(Breach of Duty to Warn Against Manufacturer and Seller)

64. The Plaintiffs repeat and reallege Paragraphs 1-63 as if each were fully set forth herein.
65. Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 have participated in a continuous course of conduct consisting of, among other things, the manufacture, creation, production, and distribution of isocyanate and other MDA products for use in mines while they knew or should have known that the use of such products in mines was hazardous to those working in, around, or downwind of any area in which such products were being used. Having created this continuing and repeated hazard to human health and the environment, said Defendants had and have had a continuing duty to warn the Plaintiffs of the inherent danger and effects of these products, and had superior knowledge about the risks posed by such products. The Defendants' failure to warn the Plaintiffs was and is negligent, willful, wanton, and in gross disregard for the safety, rights, and

property of the Plaintiffs and is a direct and proximate cause of injuries and damages to the Plaintiffs.

WHEREFORE, each Plaintiff demands judgment against said Defendants in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT NINE**

(Breach of Duty to Warn Against Contractors)

66. The Plaintiffs repeat and reallege Paragraphs 1-65 as if each were fully set forth herein.
67. Defendants Cowin Entities and Fictitious Defendants 501-600 are constructing and have constructed shafts and other parts of JWR mines and have planned for the construction of said shafts and other parts of said mines, performed engineering work and directed that construction and other work be done by others. In the course of that work, said Defendants have used isocyanate products, drawn up plans and specifications for the use of isocyanate products, and directed that the Plaintiffs and others use isocyanate products in the mines while said Defendants knew or should have known that the use of such products in mines was hazardous to those working in, around, or downwind of any area in which such products were being used. Having created this continuing and repeated hazard to human health and the environment, said Defendants have had a continuing duty to warn the Plaintiffs of the inherent danger and effects of these products, and had superior knowledge about the risks posed by such products. The Defendants' failure to warn the Plaintiffs was and is negligent, willful, wanton, and in gross disregard for the safety, rights, and property of the Plaintiffs and is a direct and proximate cause of injuries and damages to the Plaintiffs.

WHEREFORE, each Plaintiff excluding those previously and exclusively employed by the Cowin Entities demand judgment against the non-employer Defendants in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages

**COUNT TEN**

(Fraud, Misrepresentation, and Deceit Against Manufacturer And Seller)

68. The Plaintiffs repeat and reallege Paragraphs 1-67 as if each were fully set forth herein.
69. Defendants Micon, Flexible Products, BASF, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 conducted a continuous campaign of misrepresenting and concealing the dangers posed by isocyanate and other MDA products and such actions constitute fraud, misrepresentation, and deceit both actual and constructive, in violation of Ala. Code Sections 6-5-100-6-6-104. The Plaintiffs relied on said misrepresentations and concealment to their

detriment and such fraud, misrepresentation, and concealment is a direct and proximate cause of the injuries and damages to the Plaintiffs alleged above.

**WHEREFORE**, each Plaintiff demands judgment against said Defendants in the sum of Five Million Dollars and costs, attorney's fees and punitive damages.

**COUNT ELEVEN**

(Fraud, Misrepresentation, and Deceit Against Contractors)

70. The Plaintiffs repeat and reallege Paragraphs 1-70 as if each were fully set forth herein.
71. The Cowin Entities, and Fictitious Defendants 101-200, 301-400, and 501-600 conducted a continuous campaign of misrepresenting and concealing the dangers posed by isocyanate products and such actions constitute fraud, misrepresentation, and deceit both actual and constructive, in violation of Ala. Code Sections 6-5-100-6-6-104. The Plaintiffs relied on said misrepresentations and concealment to their detriment and such fraud, misrepresentation, and concealment is a direct and proximate cause of the injuries and damages to the Plaintiffs alleged above.

**WHEREFORE**, each Plaintiff demand judgment against said Defendants in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT TWELVE**

(Intentional Infliction of Emotional Harm Against Manufacturer and Seller)

72. The Plaintiffs repeat and reallege Paragraphs 1-72 as if each were fully set forth herein.
73. Defendants Micon, Flexible Products, BASF, RHH, Celotex, Insta-Foam, RHH, Supply, Inc., Sandvik and Fictitious Defendants 1-100 engaged in a continuous course of intentionally inflicting emotional distress upon the Plaintiffs by knowingly and willfully manufacturing, marketing, selling, and using isocyanate and other MDA products in mines in which the Plaintiffs worked and exposing Plaintiffs to health hazards posed by those products without informing Plaintiffs of the serious health hazards and effects posed by that exposure, and while misrepresenting and concealing the danger and effects of such exposure. Such continuing conduct has caused extreme emotional distress and mental anguish on the part of the Plaintiffs, and is a direct and proximate cause of injuries and damages to the Plaintiffs.

**WHEREFORE**, each Plaintiff demands judgment against said Defendants in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**COUNT THIRTEEN**

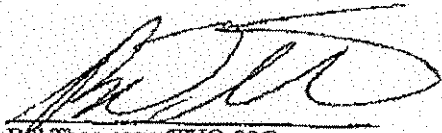
(Intentional Infliction of Emotional Harm Against Contractors)

74. The Plaintiffs repeat and realleges Paragraphs 1-73 as if each were fully set forth herein.
75. The Cowin Entities and Fictitious Defendants 501-600 engaged in a continuous course of intentionally inflicting emotional distress upon the Plaintiffs by knowingly and willfully manufacturing, marketing, selling, and using isocyanate products in mines in which the Plaintiffs worked and exposing Plaintiffs to health hazards posed by those products without informing Plaintiffs of the serious health hazards and effects posed by that exposure, and while misrepresenting and concealing the danger and effects of such exposure. Such continuing conduct has caused extreme emotional distress and mental anguish on the part of the Plaintiffs, and is a direct and proximate cause of injuries and damages to the Plaintiffs.

WHEREFORE, each Plaintiff demands judgment against said Defendants in the sum of Five Million Dollars and costs, attorney's fees, and punitive damages.

**JURY DEMAND**

The Plaintiff demands trial by jury.

  
Bill Thomason (THO-006)  
Post Office Box 627  
Bessemer, AL 35021  
Phone: 205-428-0702

Of Counsel: Thomason & Shores, LLC  
Post Office Box 627  
Bessemer, Alabama 35021  
Phone: 205-428-0702

Donald W. Stewart (STE-045)  
Post Office Box 2274  
Anniston, AL 36202-2274  
Phone: 256-237-9311

The Plaintiffs designated, as trial counsel, the following:

Donald W. Stewart  
Becky Thomason  
Bill Thomason



NOTE TO COURT CLERK: Please serve Defendants by certified mail as follows:

Micon  
#25 Allegheny Square  
Glassport, PA 15405-1649

Flexible Products Co.  
1007 Industrial Park Drive  
Marietta, GA 30061

BASF Corporation  
c/o The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, AL 36109

BASF Corp., NAFTA  
c/o The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, AL 36109

BASF Wyandotte Corporations  
C/o The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, AL 36109

BASF Corp., Aktengesellschaft  
c/o The Corporation Company  
2000 Interstate Park Drive, Ste 204  
Montgomery, AL 36109

RHH Foam Systems, Inc.  
PO BOX 100752  
Cudahy, WI 53110-6113

Supply, Inc.  
5539 Parkwood Circle  
Bessemer, AL 35022

Celotex Corporation  
c/o The Corporation Company  
2000 Interstate Park Drive STE 204  
Montgomery, AL 36109

Received 11/28/2001 01:38PM in 16:12 on line (17) for 40ALSTON \* Pg 24/24  
11-28-01 14:49 BAINBRIDGE MIMS ID=205+879+4388  
FILE No.787 11/27 '01 15:47 ID:THOMASON & SHORES, LLC FAX:205 428 7890

PHAC CO P.24

Insta-Foam Products, Inc.  
1500 Cedarwood Drive  
Joliet, IL 60435-3187

Cowin & Company, Inc., Mining Engineers and Contractors  
301 Industrial Drive  
Birmingham, AL 35211-4443

Cowin Equipment Company, Inc.  
c/o James P. Cowin  
2300 Pinson Valley Parkway  
Tarrant, AL 35217

Cowin Acquisition Corporation  
301 Industrial Drive  
Birmingham, AL 35211-4443

Sandvik Rock Tools, Inc.  
P.O. Box 639  
Bristol, VA 24203-0639

# EXHIBIT 5

**SHERWOOD PRELIMINARY DUE DILIGENCE REPORT**  
**COMMERCIAL INSURANCE / RISK MANAGEMENT**

11/22/99

**Executive Summary:**

Major Problem Issues:

- None noted, however, I have not received nor reviewed sufficient historical coverage information which for which a request is pending with Wayne R. York

Key Observations:

- Historic liability coverage is unknown prior to 1990. In the 1990's coverage appears to be adequate and is on a favorable policy form
- Current coverage appears to be adequate to more than adequate for this size and type of operation and is on a favorable policy form.
- Losses to date have not been significant. \$2 million wrongful death claim (6 deaths) was covered by insurance.
- Main suspected uninsured risk would be the roofing claims. They have maintained a \$750,000 accrual for deductibles for covered matters.
- Uncertain as to coverage for Y2K risks
- Current annual premiums approx. \$750,000 (currently on a short-term program for \$550,000 plus a variable annual accrual (uncertain as to the amount) for primarily product liability retentions.

Potential Synergies:

- Eventual combination into our programs could yield an estimated \$500,000 in savings from current insurance budget. The balance of \$250,000 of current annual costs, plus annual accrual for product liability retentions would most likely go to Dow Insurance Subsidiary
- There is no full-time insurance professional. Insurance is managed by Controller and one other individual on a part-time basis. Anticipate absorbing all administration of historic and future insurance matters in CRM-Midland.
- Anticipate canceling existing insurance programs upon closing.

Submitted by John C. Gorte

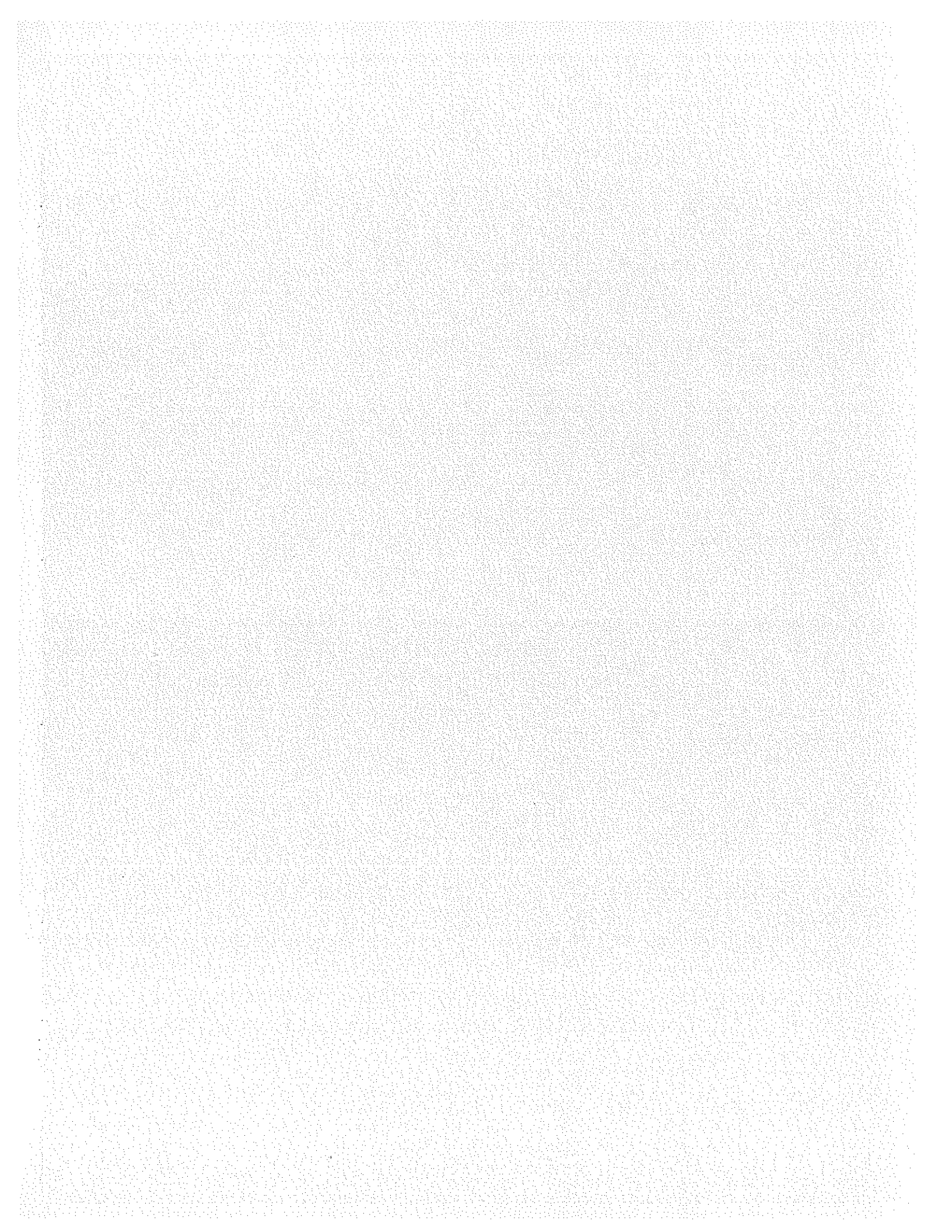
**CONFIDENTIAL**

**NONPTY-DOW0000519**

JCG  
11/24/99

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Dow Confidential



**Facsimile  
Transmittal  
Sheet**

Marsh USA Inc.  
191 Peachtree St., NE  
Suite 3400  
404 586 1572 Fax: 404 586 8208

**MARSH**  
An **MMC** Company

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**Date:** November 23, 1999      **Pages, with cover:** 9  
**To:** Mr. Wayne York      **Fax:** 770 428 9431  
**Company:** Flexible Products Company  
**From:** Nancy D. Kinser  
**Subject:** **Historical Information**

Dear Wayne,

Per our recent conversation, following you will find an updated Coverage Matrix to include the premium and retention/deductibles by line of coverage. Also, following you will find a Loss Summary and Retro Plan spreadsheet that reflect the Retro years. I will place a hard copy in today's mail.

As always, please don't hesitate to give me a call if you have any questions or if I can be of any assistance.

Sincerely,

*Nancy*

cc: Doug Payne

*The information contained in this facsimile message is confidential, may be privileged, and is intended for the use of the individual or entity named above. If you, the reader of this message, are not the intended recipient, the agent, or employee responsible for delivering this transmission to the intended recipient, you are expressly prohibited from copying, disseminating, distributing, or in any other way using any of the information contained in this facsimile message.*

As of 11/23/1999

### Flexible Products Company

#### Insurance Coverage Matrix

Policy Dates	Lines of Coverage	Carrier	Policy Number	Limit of Liability	Retentions	Premium
5/31/99 - 12/31/99	Property	Birmingham Fire (AIG)	ST2605270	\$81,702,500	\$25,000/B&M \$2,500	\$71,089
	General Liability	Hartford	20JENME9410	\$2,000,000	\$250,000/\$750,000 Agg.	\$89,967
	Commercial Automobile (AOS)	Hartford	20JENME9414	\$1,000,000	\$500 Comp/\$500 Collision	\$46,839
	Commercial Automobile (TX)	Hartford	20JENME9411	\$1,000,000	\$500 Comp/\$500 Collision	\$1,342
	Workers Compensation (AOS)	Hartford	20WNME9416	\$1,000,000	\$150,000/\$350,000 Agg	\$82,005
	Workers Compensation (FL, NJ, VA, WI)	Hartford	20WBME9413	\$1,000,000	\$150,000/\$350,000 Agg.	Incl.
	Foreign Package	Chubb	35271063	\$1,000,000	\$25,000	\$6,381
	Umbrella	National Union (AIG)	BE7012842	\$50,000,000	\$10,000/\$1,000,000 Pollution	\$67,390
	Excess Umbrella	American Alliance	EXC1804275	\$50,000,000	\$0	\$21,975
	Excess Umbrella	Zurch	EUO263290502	\$50,000,000	\$0	\$18,312
	Excess Umbrella	American National Fire Ins. Co	EXX988933603	\$50,000,000	\$0	\$14,650
	Excess Umbrella	Agricultural Insurance Co.	EXC3994728	\$50,000,000	\$0	\$14,650
	Crime	Chubb	81515940	\$3,000,000	\$20,000	\$3,836
	D&O, EPL, Fiduciary	Chubb	81515939	\$7,500,000	EPL \$75,000	\$31,219
5/31/98 - 5/31/99	Property	Birmingham Fire (AIG)	ST2605214	\$64,095,000	\$25,000/B&M \$2,500	\$120,520
	General Liability	Hartford	20JENME9410	\$2,000,000	\$250,000/\$750,000 Agg.	\$153,525
	Commercial Automobile (AOS)	Hartford	20JENME9414	\$1,000,000	\$500 Comp/\$500 Collision	\$69,506
	Commercial Automobile (TX)	Hartford	20JENME9411	\$1,000,000	\$500 Comp/\$500 Collision	\$9,822
	Workers Compensation (AOS)	Hartford	20WNME9416	\$1,000,000	\$150,000/\$350,000 Agg	\$145,462
	Workers Compensation (FL, NJ, VA, WI)	Hartford	20WBME9413	\$1,000,000	\$150,000/\$350,000 Agg	Incl.
	Foreign Package	Chubb	35271063	\$1,000,000	\$25,000	\$7,020
	Umbrella	National Union (AIG)	BE3572953	\$50,000,000	\$10,000/\$1,000,000 Pollution	\$115,000
	Excess Umbrella	American Alliance	EXC1804076	\$50,000,000	\$0	\$37,500
	Excess Umbrella	American Guaranty (Zurich)	EUO283290501	\$50,000,000	\$0	\$31,250
	Excess Umbrella	American National	EXX988933602	\$50,000,000	\$0	\$25,000
	Crime	Chubb	81515940	\$3,000,000	\$20,000	\$6,546
	D&O, EPL, Fiduciary	Chubb	81515939	\$5,000,000	EPL \$75,000	\$42,617

Marsh, Inc.

As of 11/23/1999

## Flexible Products Company

### Insurance Coverage Matrix

Policy Dates	Lines of Coverage	Carrier	Policy Number	Limit of Liability	Retentions	Premium
5/31/87 - 5/31/98	Property	National Union (AIG)	ST2604060	\$98,511,150	\$25,000	\$189,132
	Boiler & Machinery	Hartford Steam Boiler	942060024	\$25,000,000	\$5,000	\$7,987
	General Liability	Hartford	20UENME9410	\$2,000,000	\$250,000/\$750,000 Agg.	\$262,601
	Commercial Automobile (AOS)	Hartford	20UENME9414	\$1,000,000	\$500 Comp/\$500 Collision	\$83,628
	Commercial Automobile (TX)	Hartford	20UENME9411	\$1,000,000	\$500 Comp/\$500 Collision	\$24,739
	Commercial Automobile (MASS)	Hartford	20MCPME9415	\$1,000,000	\$500 Comp/\$500 Collision	\$2,276
	Workers Compensation (AOS)	Hartford	20WERME9412	\$1,000,000	\$150,000	\$319,940
	Workers Compensation (FL, NJ, VA, WI)	Hartford	20WERME9413	\$1,000,000	\$150,000	Incl.
	Workers Compensation (Uninsured Subcontractors)	Hartford	20WEDR4815	\$1,000,000	\$0	\$13,492
	Foreign Package	Chubb	35271063	\$1,000,000	\$25,000	\$19,890
	Umbrella	National Union (AIG)	BE9329109	\$10,000,000	\$10,000/\$1,000,000 Pollution	\$109,000
	Excess Umbrella	American Guaranty (Zurich)	EU02832905	\$15,000,000	\$0	\$22,500
	Excess Umbrella	Travelers	7FSJEX271T328A97	\$25,000,000	\$0	\$25,000
	Excess Umbrella	American National	EXX988933601	\$50,000,000	\$0	\$42,500
	Excess Umbrella	Firemans Fund	XXK00083033225	\$25,000,000	\$0	\$21,250
	Excess Umbrella	Twin City Fire (Hartford)	20XSSL5043	\$25,000,000	\$0	\$20,000
	Fiduciary Liability	Chubb	81340713	\$5,000,000	\$25,000	\$15,000
	Directors & Officers Liability	American Global (AIG)	4854757	\$3,000,000	\$50,000	\$15,375

Marsh, Inc.



As of 11/23/1999

**Flexible Products Company**  
Insurance Coverage Matrix

Policy Dates	Lines of Coverage	Carrier	Policy Number	Limit of Liability	Retentions	Premium
5/31/96 - 5/31/97	Property	National Union (AIG)	ST2604060	\$36,195,000	\$25,000	\$199,779
	Boiler & Machinery	Hartford Steam Boiler	FBP942060023	\$25,000,000	\$5,000	\$7,947
	General Liability	Hartford	20UENME9410	\$2,000,000	\$250,000/\$750,000 Agg. \$500 Comp/\$500 Collision	\$189,818
	Commercial Automobile (AOS)	Hartford	20UENME9414	\$1,000,000	\$500 Comp/\$500 Collision	\$83,542
	Commercial Automobile (TX)	Hartford	20UENME9411	\$1,000,000	\$500 Comp/\$500 Collision	\$2,458
	Workers Compensation (AOS)	Hartford	20WERME9412	\$1,000,000	\$150,000	\$333,218
	Workers Compensation (FL, NJ, VA, WI)	Hartford	20WBME9413	\$1,000,000	\$15,000	Incl
	Foreign Package	Chubb	35271063	\$1,000,000	\$25,000	\$23,400
	Umbrella	American Global (AIG)	BE9322849	\$10,000,000	\$10,000	\$114,741
	Excess Umbrella	US Fire Insurance Co.	5520056913	\$15,000,000	\$0	\$21,000
	Excess Umbrella	United National Insurance Co.	XTP46980	\$5,000,000	\$0	\$6,000
	Excess Umbrella	Aetna	08XN25559568SCA	\$10,000,000	\$0	\$10,000
	Excess Umbrella	First Specialty Insurance Co	HL1053ID	\$10,000,000	\$0	\$10,000
	Excess Umbrella	Firmans Fund	XXK00074081118	\$25,000,000	\$0	\$21,250
	Excess Umbrella	American National Fire	FXX9889336	\$25,000,000	\$0	\$21,250
	Excess Umbrella	Chubb	79477263	\$25,000,000	\$0	\$21,250
	Fiduciary Liability	Chubb	81340713	\$1,000,000	\$10,000	\$6,773
	D&O	American Global (AIG)	4832560	\$3,000,000	?	?

Marsh, Inc.

As of 11/23/1999

**Flexible Products Company**  
Insurance Coverage Matrix

Policy Dates	Lines of Coverage	Carrier	Policy Number	Limit of Liability	Retentions	Premium
5/31/95 - 5/31/96	Property	National Union (AIG)	ST2604060	\$73,418,700	\$25,000	\$163,376
	Boiler & Machinery	Hartford Steam Boiler	942060022	\$25,000,000	\$5,000	\$7,497
	General Liability	AIG	5909221	\$2,000,000	\$250,000/\$750,000 Agg	\$213,237
	Commercial Automobile (AOS)	AIG	CA1374125RA	\$1,000,000	\$500 Comp/\$500 Collision	\$107,000
	Commercial Automobile (TX)	AIG	CA1374126RA	\$1,000,000	\$500 Comp/\$500 Collision	Incl.
	Workers Compensation (AOS)	AIG	WC4063438	\$1,000,000	\$150,000	\$169,051
	Workers Compensation (FL, NJ, VA, WI)	AIG	WC4063437	\$1,000,000	\$150,000	Incl.
	Foreign Package	Chubb	35271063	\$1,000,000	\$1,000	\$22,050
	Umbrella	American Global (AIG)	BE3098815	\$10,000,000	\$10,000	\$120,780
	Excess Umbrella	Crum & Forster	5520039723	\$15,000,000	\$0	\$25,000
	Excess Umbrella	United National Insurance Co.	XTP44963	\$5,000,000	\$0	\$7,500
	Excess Umbrella	Firemans Fund	XXK00095388567	\$25,000,000	\$0	\$25,000
	Excess Umbrella	Aetna	08XN24914034	\$10,000,000	\$0	\$10,000
	Excess Umbrella	First Specialty Insurance Co.	HL10531C	\$10,000,000	\$0	\$10,000
	Excess Umbrella	Chubb	79477253	\$25,000,000	\$0	\$25,000
	Fiduciary Liability	Chubb	81340713	\$1,000,000	\$10,000	\$6,773
5/31/94 - 5/31/95	Property	National Union (AIG)	ST2603610	\$52,216,000	\$25,000	\$112,588
	Boiler & Machinery	Hartford Steam Boiler	942060020	\$25,000,000	\$2,500	\$7,140
	General Liability	AIG	GL5909140	\$2,000,000	\$250,000/\$750,000 Agg	\$199,950
	Commercial Automobile (AOS)	AIG	CA1189379RA	\$1,000,000	\$500 Comp/\$500 Collision	\$112,500
	Commercial Automobile (TX)	AIG	CA1189399RA	\$1,000,000	\$500 Comp/\$500 Collision	Incl.
	Workers Compensation (AOS)	AIG	WC1567944	\$1,000,000	\$150,000	?
	Workers Compensation (FL, NJ, VA, WI)	AIG	WC1567949RA	\$1,000,000	\$150,000	\$1,405
	Umbrella	National Union (AIG)	BE3095225	\$10,000,000	\$10,000	\$115,000
	Excess Umbrella	Crum & Forster	5520020913	\$15,000,000	\$0	\$25,000
	Excess Umbrella	United National Insurance Co.	XTP43516	\$5,000,000	\$0	\$7,500
	Excess Umbrella	Aetna	08XN24234816SCA	\$10,000,000	\$0	\$12,500
	Excess Umbrella	First Specialty Insurance Co.	HL081368	\$10,000,000	\$0	\$10,000
	Excess Umbrella	Chubb	79477253	\$25,000,000	\$0	\$25,000
	Fiduciary Liability (8/28/94 - 5/31/95)	Chubb	81340713	\$1,000	\$10,000	\$4,876

Marsh, Inc.

As of 11/23/1999

**Flexible Products Company**  
Insurance Coverage Matrix

Policy Dates	Lines of Coverage	Carrier	Policy Number	Limit of Liability	Retentions	Premium
5/31/93 - 5/31/94	Property	The Home	PCAF728015			\$112,000
	Boiler & Machinery	Hartford Steam Boiler	942060019	\$10,000,000		\$3,440
	General Liability	Wausau	142400082989	\$2,000,000		\$175,241
	Commercial Automobile (AOS)	Wausau	142402082989	\$1,000,000		?
	Commercial Automobile (TX)	Wausau	142404082989	\$1,000,000		?
	Workers Compensation (AOS)	Wausau	141400082989	\$1,000,000		\$341,207
	Umbrella	AIG	BE3089695	\$10,000,000		\$115,000
	Excess Umbrella	Crum & Forster	5220762219	\$15,000,000		\$25,000
	Excess Umbrella	United National Insurance Co.	XTP37035	\$5,000,000		\$7,500
	Excess Umbrella	Aetna	11XN23436263	\$10,000,000		\$12,500
	Excess Umbrella	First Specialty Insurance Co.	HL00575	\$10,000,000		\$10,000
5/31/92 - 5/31/93	Property	National Union (AIG)	ST2602669			
	Boiler & Machinery	Hartford Steam Boiler	942060018			
	General Liability	Wausau	142300082989			
	Commercial Automobile (AOS)	Wausau	142302082989			
	Commercial Automobile (TX)	Wausau	142304082989			
	Workers Compensation (AOS)	Wausau	141300082989			
	Umbrella	AIG	BE3085951			
	Excess Umbrella	Crum & Forster	5220726363			
	Excess Umbrella	United National Insurance Co.	XTP35595			
	Excess Umbrella	Aetna	11XN22205727SCA			

Marsh, Inc.

As of 11/23/1999

### Flexible Products Company

#### Insurance Coverage Matrix

Policy Dates	Lines of Coverage	Carrier	Policy Number	Limit of Liability	Retentions	Premium
5/31/91 - 5/31/92	Property	National Union (AIG)	ST2601033			
	Boiler & Machinery	Hartford Steam Boiler	A1942060016			
	General Liability	Wausau	142200082989			
	Commercial Automobile (AOS)	Wausau	142202082989			
	Commercial Automobile (TX)	Wausau	142204082989			
	Workers Compensation (AOS)	Wausau	141200082989			
	Umbrella	Wausau	143200082989			
	Excess Umbrella	Pacific Indemnity	7960757B			
	Excess Umbrella	United National Insurance Co.	XTP34946			
5/31/90 - 5/31/91	Property	National Union (AIG)	ST2600992			
	General Liability	Wausau	142100082989			
	Commercial Automobile (AOS)	Wausau	142102082989			
	Commercial Automobile (TX)	Wausau	142104082989			
	Workers Compensation (AOS)	Wausau	141100082989			
	Umbrella	Wausau	142103082989			
	Excess Umbrella	International Insurance Co.	5312032603			
	Excess Umbrella	United National Insurance Co.	XTP27712			
	Excess Umbrella	Pacific Indemnity	7960757B			

Marsh, Inc.

# EXHIBIT 6

**MARSH**

**James J. Hopson**  
Senior Vice President  
Claim Manager

Marsh USA Inc.  
600 Renaissance Center  
Suite 2100  
Detroit, MI 48243  
313 393 6770 Fax 313 393 6765  
[James.J.Hopson@Marsh.com](mailto:James.J.Hopson@Marsh.com)  
[www.marsh.com](http://www.marsh.com)

June 24, 2005

Ms. Tuana Edwards-Belcher  
AIG Technical Services, Inc.  
Excess Casualty Claims  
175 Water Street - 22<sup>nd</sup> Floor  
New York, NY 10038

Via FedEx

Re: Insured: Flexible Products Company  
Plaintiffs: 1. Robert W. Acklin, Jr., et al v. Micon, Inc.  
2. Randy Wade Bice, et al v. Micon, Inc.  
3. Richard G. Abernathy, et al v. Micon, Inc.  
Dow File Nos.: 1. 0202257  
2. 0102342  
3. 0200038  
Policy Nos.: See Attached  
Effective Dates: See Attached  
Limits: See Attached  
Our File No.: D11082 (B)

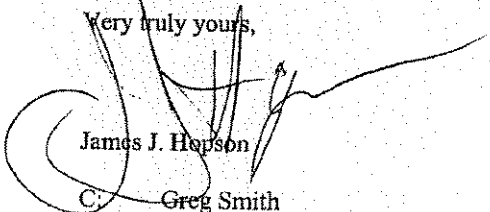
Dear Ms. Belcher:

So as to alert Flexible Products Excess/Umbrella Carriers to any potential exposure attendant with the captioned policies, enclosed please find a copy of Dow's February 17, 2004 correspondence, with complaint, regarding the captioned matter. Please be advised that Hartford is Flexible Products Primary General Liability Carrier.

Please be advised that this case is set for trial on August 1, 2005 in Jefferson County, Alabama.

The adjuster handling this matter for Hartford is Mr. David T. Walpole. He can be reached at (860) 547-8891.

Very truly yours,

  
James J. Hopson

C: Greg Smith  
Corporate Risk Management  
The Dow Chemical Company  
1320 Waldo Avenue, Suite 300  
Midland, MI 48642  
Via Fax to (989) 638-9739

 Marsh & McLennan Companies

MarshDetroit000211  
Confidential - Subject to Protective Order

Page Two

Ms. Karen Stubler  
Corporate Risk Management  
The Dow Chemical Company  
1320 Waldo Avenue, Suite 300  
Midland, MI 48642  
Via Fax to (989) 638-9739  
W/o Enclosure

Ms. Tuana Edwards-Belcher  
AIG Technical Services, Inc.  
Excess Casualty Claims  
175 Water Street - 22<sup>nd</sup> Floor  
New York, NY 10038

Via FedEx  
W/Enclosure

Policy Number

Effective Dates

BE 3085951	05/31/92 to 05/31/93
BE 3089695	05/31/93 to 05/31/94
BE 3095225	05/31/94 to 05/31/95
BE 3098815	05/31/95 to 05/31/96
BE 9322849	05/31/96 to 05/31/97
BE 9329109	05/31/97 to 05/31/98
BE 3572953	05/31/98 to 05/31/99
BE 7012842	05/31/99 to 12/31/99
Unknown	12/31/99 to 12/31/00

Ms. Cheryl A. Gartland  
Home Insurance Company  
C/o Risk Enterprise Mgmt  
59 Maiden Lane  
New York, NY 10038

Via FedEx  
W/Enclosure

Policy Number

Effective Dates

GA 9879289	05/31/79 to 05/31/80
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Ms. Donna Falzone  
Crum & Forster  
For United States Fire Insurance Company  
305 Madison Avenue  
Morristown, NJ 07960

Via FedEx  
W/Enclosure

Policy Number

Effective Dates

5230671687	05/31/80 to 05/31/81
5220726363	05/31/92 to 05/31/93
5220762219	05/31/93 to 05/31/94
5520020913	05/31/94 to 05/31/95
5520039723	05/31/95 to 05/31/96
5520056913	05/31/96 to 05/31/97

Page Three

Claim Supervisor  
Mission Insurance Company -- In Liquidation  
C/o Department of Conservation & Liquidation  
425 Market Street  
San Francisco, CA 94105  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
M879281	05/31/81 to 05/31/82
MN015346	05/31/82 to 05/31/83
MN015346	05/31/83 to 05/31/84
MN031585	05/31/84 to 05/31/85
MN045598	05/31/85 to 05/31/86

Mr. Terence P. Steck  
The Hartford  
For First State Insurance Company  
CCG Claims Asbestos/T-6-93  
Hartford Plaza  
Hartford, CT 06115  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
First State Policy Number 952596	05/31/85 to 05/31/86
Twin City Policy Number 20XSSL5043	05/31/97 to 05/31/98

Ms. Mary Ceko  
Excess Casualty Insurance Company  
Zurich American Insurance Company  
Zurich US  
For American Guarantee  
1400 American Lane  
Schaumburg, IL 60196-1056  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
CA-0391	05/31/86 to 05/31/87
EU02832905	05/31/97 to 05/31/98
EU0283290501	05/31/98 to 05/31/99
EU0283290502	05/31/99 to 12/31/99
Unknown	12/31/99 to 12/31/00

Claim Supervisor  
ACE-INA formally CIGNA  
One Beaver Valley Road  
Wilmington, DE 19803  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
Cigna Policy Number XCP G07332129	05/31/87 to 05/31/88
Pacific Policy Number 7960757B	05/31/90 to 05/31/91
Pacific Policy Number 7960757B	05/31/91 to 05/31/92



Page Four

Mr. James F. Beacham, Sr.  
Nationwide Indemnity  
For Wausau  
927 Burning Tree Court  
Westminster, MD 21158

Via FedEx  
W/Enclosure  
Policy Number  
142903082989  
142103082989  
143200082989

Effective Dates  
05/31/88 to 05/31/89  
05/31/90 to 05/31/91  
05/31/91 to 05/31/92

Mr. Charles Walkonis, Mgr.  
Chubb & Sons, Inc  
55 Water St.  
29th Floor  
New York, NY 10038

Via FedEx  
W/Enclosure  
Policy Number  
7960 75 57-A  
79477253  
79477253  
79477253

Effective Dates  
05/31/88 to 05/31/89  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97

Claim Supervisor  
United National Insurance Company  
Three Bala Plaza, East, Suite 300  
Bala Cynwyd, PA 19004

Via FedEx  
W/Enclosure  
Policy Number  
XTP-21081  
XTP-27712  
XTP-34946  
XTP35595  
XTP37035  
XTP43516  
XTP44963  
XTP46980

Effective Dates  
05/31/88 to 05/31/89  
05/31/90 to 05/31/91  
05/31/91 to 05/31/92  
05/31/92 to 05/31/93  
05/31/93 to 05/31/94  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97

Page Five

Ms. Stacie Simeone  
Assistant Account Executive  
Travelers Property Casualty  
St. Paul/Travelers Insurance Company  
Formally known as Aetna-Corporate Qtr  
One Tower Square-6MS  
Hartford, CT 06183-6016  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
11XN22205727SCA	05/31/92 to 05/31/93
11XN23436263	05/31/93 to 05/31/94
08XN24234816SCA	05/31/94 to 05/31/95
08XN24914034	05/31/95 to 05/31/96
08XN25559568SCA	05/31/96 to 05/31/97
Travelers Policy Number 7FSJEX271T328A97	05/31/97 to 05/31/98

Mr. David E. Forsman  
Litigation Specialist  
Fireman's Fund Insurance Companies  
777 San Marin Drive  
Novato, CA 94998-3400  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
XXK00095388567	05/31/95 to 05/31/96
XXK00074081118	05/31/96 to 05/31/97
XXK00083033225	05/31/97 to 05/31/98

Ms. Barbara Freund - Claims  
First Specialty Insurance Company  
5200 Metcalf Avenue  
Overland Park, KS 66202  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
HL 00575	05/31/93 to 05/31/94
HL 08136B	05/31/94 to 05/31/95
HL 10531C	05/31/95 to 05/31/96
HL 10531D	05/31/96 to 05/31/97

Page Six

Claim Supervisor  
Great American Insurance Company  
For American National Fire  
515 Main Street  
Cincinnati, OH 45202  
Via FedEx  
W/Enclosure

Policy Number

EXX9889336  
EXX988933601  
EXX988933602  
EXX988933603  
Unknown

Effective Dates

05/31/96 to 05/31/97  
05/31/97 to 05/31/98  
05/31/98 to 05/31/99  
05/31/99 to 12/31/99  
12/31/99 to 12/31/00

Claim Supervisor  
Great American Insurance Company  
For American Alliance  
49 East 4<sup>th</sup> Street – Suite 800  
Cincinnati, OH 45202  
Via FedEx  
W/Enclosure

Policy Number

EXC1804076  
EXC1804275  
Unknown  
Agricultural Policy Number EXC3994728

Effective Dates

05/31/98 to 05/31/99  
05/31/99 to 12/31/99  
12/31/99 to 12/31/00  
05/31/99 to 12/31/99

Claim Supervisor  
TIG Insurance Company  
For International Insurance Company  
5205 N. O'Connor Blvd.  
Irving, TX 75039  
Via FedEx  
W/Enclosure

Policy Number

CA-07939  
5312032803

CA 0739

Effective Dates

05/31/87 to 05/31/88  
05/31/90 to 05/31/91

Joy A. Stockmaster  
Marsh USA  
W/o Enclosure

JJH/cas

Enclosures

# EXHIBIT 7

**MARSH**

**James J. Hopson**  
Managing Director  
Upper Midwest Zonal Claim Manager

December 30, 2005

Marsh USA Inc.  
600 Renaissance Center  
Suite 2100  
Detroit, MI 48243  
313 393 6770 Fax 313 393 6765  
[James.J.Hopson@Marsh.com](mailto:James.J.Hopson@Marsh.com)  
[www.marsh.com](http://www.marsh.com)

Via FedEx

Ms. Tuana Edwards-Belcher  
AIG Technical Services, Inc.  
Excess Casualty Claims  
175 Water Street - 22<sup>nd</sup> Floor  
New York, NY 10038

**Re: Insured: Flexible Products Company**  
**Plaintiffs: Rex Tanner, et al v. International Isocyanate Institute, Inc. et al**  
**Policy Nos.: See Attached**  
**Effective Dates: See Attached**  
**Our File No.: D11173**

Dear Ms. Belcher:

So as to alert Flexible Products Excess/Umbrella Carriers to any potential exposure attendant with the captioned policies, enclosed please find two letters of December 5, 2005 from James R. Hankle of Sherrard, German & Kelly, P.C. with enclosed Civil Action No.: CV-05-HGD-2341-E filed In The United States District Court For The Northern District Of Alabama Eastern Division, regarding the captioned matter.

This matter is reported under any and all applicable policies whether or not cited herein.


You may utilize James R. Hankle of Sherrard, German & Kelly, P.C. as your primary contact. He can be reached at (412) 258-6712 (Direct Dial).

Very truly yours,

  
James J. Hopson

C: Mr. Greg Smith  
Corporate Risk Management  
The Dow Chemical Company  
1320 Waldo Avenue, Suite 300  
Midland, MI 48642  
Via Fax to (989) 638-9739  
W/o Enclosure

Ms. Amy Jones  
Corporate Risk Management  
Claims Coordinator  
The Dow Chemical Company  
1320 Waldo Avenue, Suite 300  
Midland, MI 48642  
Via Fax to (989) 638-9739  
W/o Enclosure

 Marsh & McLennan Companies

MarshDetroit002792  
Confidential - Subject to Protective Order

C: Mr. James R. Hankle  
Sherrard, German & Kelly, P.C.  
Attorneys At Law  
28<sup>th</sup> Floor, Two PNC Plaza  
620 Liberty Avenue  
Pittsburgh, PA 15222  
Via Fax to (412) 261-6221  
W/o Enclosure

Ms. Tuana Edwards-Belcher  
AIG Technical Services, Inc.  
Excess Casualty Claims  
175 Water Street - 22<sup>nd</sup> Floor  
New York, NY 10038  
Via FedEx  
W/Enclosure

Policy Number

BE 3085951  
BE 3089695  
BE 3095225  
BE 3098815  
BE 9322849  
BE 9329109  
BE 3572953  
BE 7012842  
Unknown

Effective Dates

05/31/92 to 05/31/93  
05/31/93 to 05/31/94  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97  
05/31/97 to 05/31/98  
05/31/98 to 05/31/99  
05/31/99 to 12/31/99  
12/31/99 to 12/31/00

Ms. Cheryl A. Gartland  
Home Insurance Company  
C/o Risk Enterprise Mgmt  
59 Maiden Lane  
New York, NY 10038  
Via FedEx  
W/Enclosure

Policy Number

GA 9879289

Effective Dates

05/31/79 to 05/31/80

Ms. Donna Falzone  
Crum & Forster  
For United States Fire Insurance Company  
305 Madison Avenue  
Morristown, NJ 07960  
Via FedEx  
W/Enclosure

Policy Number

5230671687  
5220726363  
5220762219  
5520020913  
5520039723  
5520056913

Effective Dates

05/31/80 to 05/31/81  
05/31/92 to 05/31/93  
05/31/93 to 05/31/94  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97

C: Claim Supervisor  
Mission Insurance Company - In Liquidation  
C/o Department of Conservation & Liquidation  
425 Market Street  
San Francisco, CA 94105

Via FedEx

W/Enclosure

Policy Number

M879281

MN015346

MN015346

MN031585

MN045598

Effective Dates

05/31/81 to 05/31/82

05/31/82 to 05/31/83

05/31/83 to 05/31/84

05/31/84 to 05/31/85

05/31/85 to 05/31/86

Mr. David T. Walpole

Senior Consultant

The Hartford

For First State Insurance Company

CCG Claims

Hartford Plaza, T-7-92

Hartford, CT 06115

Via FedEx

W/Enclosure

Policy Number

First State Policy Number 952596

Twin City Policy Number 20XSSL5043

Effective Dates

05/31/85 to 05/31/86

05/31/97 to 05/31/98

Ms. Mary Ceko

Excess Casualty Insurance Company

Zurich American Insurance Company

Zurich US

For American Guarantee

1400 American Lane

Schaumburg, IL 60196-1056

Via FedEx

W/Enclosure

Policy Number

CA-0391

EU02832905

EU0283290501

EU0283290502

Unknown

Effective Dates

05/31/86 to 05/31/87

05/31/97 to 05/31/98

05/31/98 to 05/31/99

05/31/99 to 12/31/99

12/31/99 to 12/31/00

Page Four

C: Claim Supervisor  
ACE-INA formally CIGNA  
One Beaver Valley Road  
Wilmington, DE 19803  
Via FedEx  
W/Enclosure  
Policy Number  
Cigna Policy Number XCP G07332129  
Pacific Policy Number 7960757B  
Pacific Policy Number 7960757B

Effective Dates  
05/31/87 to 05/31/88  
05/31/90 to 05/31/91  
05/31/91 to 05/31/92

Mr. James F. Beacham, Sr.  
Nationwide Indemnity  
For Wausau  
927 Burning Tree Court  
Westminster, MD 21158  
Via FedEx  
W/Enclosure  
Policy Number  
142903082989  
142103082989  
143200082989

Effective Dates  
05/31/88 to 05/31/89  
05/31/90 to 05/31/91  
05/31/91 to 05/31/92

Mr. Charles Walkonis, Mgr.  
Chubb & Sons, Inc  
55 Water St.  
29th Floor  
New York, NY 10038  
Via FedEx  
W/Enclosure  
Policy Number  
7960 75 57-A  
79477253  
79477253  
79477253

Effective Dates  
05/31/88 to 05/31/89  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97

Claim Supervisor  
United National Insurance Company  
Three Bala Plaza, East, Suite 300  
Bala Cynwyd, PA 19004  
Via FedEx  
W/Enclosure  
Policy Number  
XTP-21081  
XTP-27712  
XTP-34946  
XTP35595  
XTP37035  
XTP43516  
XTP44963  
XTP46980

Effective Dates  
05/31/88 to 05/31/89  
05/31/90 to 05/31/91  
05/31/91 to 05/31/92  
05/31/92 to 05/31/93  
05/31/93 to 05/31/94  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97



Page Five

C: Ms. Stacie Simeone  
Assistant Account Executive  
Travelers Property Casualty  
St. Paul/Travelers Insurance Company  
Formally known as Aetna-Corporate Qtr  
One Tower Square-6MS  
Hartford, CT 06183-6016  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
11XN22205727SCA	05/31/92 to 05/31/93
11XN23436263	05/31/93 to 05/31/94
08XN24234816SCA	05/31/94 to 05/31/95
08XN24914034	05/31/95 to 05/31/96
08XN25559568SCA	05/31/96 to 05/31/97
Travelers Policy Number 7FSJEX271T328A97	05/31/97 to 05/31/98

Mr. David E. Forsman  
Litigation Specialist  
Fireman's Fund Insurance Companies  
777 San Marin Drive  
Novato, CA 94998-3400  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
XXK00095388567	05/31/95 to 05/31/96
XXK00074081118	05/31/96 to 05/31/97
XXK00083033225	05/31/97 to 05/31/98

Ms. Barbara Freund - Claims  
First Specialty Insurance Company  
5200 Metcalf Avenue  
Overland Park, KS 66202  
Via FedEx  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
HL 00575	05/31/93 to 05/31/94
HL 08136B	05/31/94 to 05/31/95
HL 10531C	05/31/95 to 05/31/96
HL 10531D	05/31/96 to 05/31/97

Page Six

C: Claim Supervisor  
Great American Insurance Company  
For American National Fire  
515 Main Street  
Cincinnati, OH 45202  
Via FedEx

W/Enclosure

Policy Number

EXX9889336

EXX988933601

EXX988933602

EXX988933603

Unknown

Effective Dates

05/31/96 to 05/31/97

05/31/97 to 05/31/98

05/31/98 to 05/31/99

05/31/99 to 12/31/99

12/31/99 to 12/31/00

Claim Supervisor  
Great American Insurance Company  
For American Alliance  
49 East 4<sup>th</sup> Street - Suite 800  
Cincinnati, OH 45202  
Via FedEx

W/Enclosure

Policy Number

EXC1804076

EXC1804275

Unknown

Agricultural Policy Number EXC3994728

Effective Dates

05/31/98 to 05/31/99

05/31/99 to 12/31/99

12/31/99 to 12/31/00

05/31/99 to 12/31/99

Claim Supervisor  
TIG Insurance Company  
For International Insurance Company  
5205 N. O'Connor Blvd.  
Irving, TX 75039  
Via FedEx

W/Enclosure

Policy Number

CA-07939

5312032803

Effective Dates

05/31/87 to 05/31/88

05/31/90 to 05/31/91

Joy A. Stockmaster  
Marsh USA  
W/o Enclosure

JJH/cas

Enclosures

# EXHIBIT 8

**MARSH**



MARSH MERCER KROLL  
GUY CARPENTER OLIVER WYMAN

**James J. Hopson**  
Managing Director  
Midwest Zone Claim Manager

Marsh USA Inc.  
600 Renaissance Center  
Suite 2100  
Detroit, MI 48243  
313 393 6770 Fax 313 393 6765

James.J.Hopson@Marsh.com  
www.marsh.com

December 14, 2008

Ms. Tuana Edwards-Belcher  
AIG Technical Services, Inc.  
Excess Casualty Claims  
175 Water Street - 22<sup>nd</sup> Floor  
New York, NY 10038

**Re: Insured: Flexible Products Company**  
**Plaintiffs: Richard D. Abbott, et al v. Dow Chemical Company, et al**  
**Civil Action No. 08-C-138**  
**Policy Nos.: See Attached**  
**Effective Dates: See Attached**  
**Our File No.: D11657**

Dear Ms. Belcher:

Enclosed please find a copy of the Amended Complaint and Complaint filed In The Circuit Court Of Wyoming County, West Virginia, bearing Civil Action No.: 08-C-138 filed on behalf of Richard D. Abbott, et al v. The Dow Chemical Company, et al.

By copy we are providing this information to other interested insurers.

Very truly yours,

  
James J. Hopson

C: Mr. Greg Smith  
Corporate Risk Management  
The Dow Chemical Company  
1320 Waldo Avenue, Suite 300  
Midland, MI 48642  
Via Fax to (989) 638-9739  
W/o Enclosure  
Via E-mail to [gsmith@dow.com](mailto:gsmith@dow.com)

Ms. Amy C. Jones  
Corporate Risk Management  
The Dow Chemical Company  
1320 Waldo Avenue, Suite 300  
Midland, MI 48642  
Via Fax to (989) 638-9739  
W/o Enclosure  
Via E-mail to [acjones@dow.com](mailto:acjones@dow.com)

 Marsh & McLennan Companies

MarshDetroit002235  
Confidential - Subject to Protective Order

Page Two

Ms. Tuana Edwards-Belcher  
AIG Technical Services, Inc.  
Excess Casualty Claims  
175 Water Street - 22<sup>nd</sup> Floor  
New York, NY 10038

W/Enclosure

Policy Number

BE 3085951  
BE 3089695  
BE 3095225  
BE 3098815  
BE 9322849  
BE 9329109  
BE 3572953  
BE 7012842  
Unknown

Effective Dates

05/31/92 to 05/31/93  
05/31/93 to 05/31/94  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97  
05/31/97 to 05/31/98  
05/31/98 to 05/31/99  
05/31/99 to 12/31/99  
12/31/99 to 12/31/00

Ms. Cheryl A. Gartland  
Home Insurance Company  
C/o Risk Enterprise Mgmt  
59 Maiden Lane  
New York, NY 10038

W/Enclosure

Policy Number

GA 9879289

Effective Dates

05/31/79 to 05/31/80

Ms. Michelle Nicholson  
Latent Case Manager  
Riverstone Claims Management, LLC  
For Crum & Forster and United States Fire Insurance Company  
250 Commercial Street, Suite 5000  
Manchester, New Hampshire 03101

W/Enclosure

Policy Number

5230671687  
5220726363  
5220762219  
5520020913  
5520039723  
5520056913

Effective Dates

05/31/80 to 05/31/81  
05/31/92 to 05/31/93  
05/31/93 to 05/31/94  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97

Page Three

Ms. Christina M. Villano  
Claims Specialist  
Crum & Forster Latent/CD Claims  
412 Mt. Kemble Avenue, Suite 20  
P.O. Box 1904  
Morristown, New Jersey 07960

W/Enclosure  
Policy Number

5230671687  
5220726363  
5220762219  
5520020913  
5520039723  
5520056913

Effective Dates

05/31/80 to 05/31/81  
05/31/92 to 05/31/93  
05/31/93 to 05/31/94  
05/31/94 to 05/31/95  
05/31/95 to 05/31/96  
05/31/96 to 05/31/97

Claim Supervisor  
Mission Insurance Company - In Liquidation  
C/o Department of Conservation & Liquidation  
425 Market Street  
San Francisco, CA 94105

W/Enclosure  
Policy Number

M879281  
MN015346  
MN015346  
MN031585  
MN045598

Effective Dates

05/31/81 to 05/31/82  
05/31/82 to 05/31/83  
05/31/83 to 05/31/84  
05/31/84 to 05/31/85  
05/31/85 to 05/31/86

Mr. David T. Walpole  
Sr. Consultant  
For First State Insurance Company  
Complex Claim Group  
690 Asylum Avenue  
Mail Stop, T-7-92  
Hartford, CT 06115

W/Enclosure  
Policy Number

First State Policy Number 952596  
Twin City Policy Number 20XSSL5043

Effective Dates

05/31/85 to 05/31/86  
05/31/97 to 05/31/98

Page Four

Mr. John Tammes, Claim Specialist  
Zurich American Insurance Company/Steadfast  
Zurich US  
For American Guarantee  
1400 American Lane  
Schaumburg, IL 60196-1056  
W/Enclosure

Policy Number

CA-0391

EU02832905

EU0283290501

EU0283290502

Unknown

Effective Dates

05/31/86 to 05/31/87

05/31/97 to 05/31/98

05/31/98 to 05/31/99

05/31/99 to 12/31/99

12/31/99 to 12/31/00

Claim Supervisor  
ACE-INA formally CIGNA  
One Beaver Valley Road  
Wilmington, DE 19803  
W/Enclosure

Policy Number

Cigna Policy Number XCP G07332129

Pacific Policy Number 7960757B

Pacific Policy Number 7960757B

Effective Dates

05/31/87 to 05/31/88

05/31/90 to 05/31/91

05/31/91 to 05/31/92

Mr. Michael J. Carroll, Unit Director  
Complex and Emerging Risk Claims Dept.  
Liberty Mutual Insurance Company  
For Wausau  
100 Liberty Way  
Dover, NH 03822  
W/Enclosure

Policy Number

142903082989

142103082989

143200082989

Effective Dates

05/31/88 to 05/31/89

05/31/90 to 05/31/91

05/31/91 to 05/31/92

Page Five

Mr. Brian C. Davis  
Environmental Claims Examiner  
Chubb Group of Insurance Companies  
2001 Bryan Street, Suite 3400  
Dallas, TX 75201-3068

W/Enclosure

Policy Number

7960 75 57-A

79477253

79477253

79477253

Effective Dates

05/31/88 to 05/31/89

05/31/94 to 05/31/95

05/31/95 to 05/31/96

05/31/96 to 05/31/97

Joyce Romoff  
United National Insurance Company  
Three Bala Plaza, East, Suite 300  
Bala Cynwyd, PA 19004

W/Enclosure

Policy Number

XTP-21081

XTP-27712

XTP-34946

XTP35595

XTP37035

XTP43516

XTP44963

XTP46980

Effective Dates

05/31/88 to 05/31/89

05/31/90 to 05/31/91

05/31/91 to 05/31/92

05/31/92 to 05/31/93

05/31/93 to 05/31/94

05/31/94 to 05/31/95

05/31/95 to 05/31/96

05/31/96 to 05/31/97

Ms. Stacie Simeone  
Assistant Account Executive  
Travelers Property Casualty  
St. Paul/Travelers Insurance Company  
Formally known as Aetna-Corporate Qtr  
One Tower Square-6MS  
Hartford, CT 06183-6016

W/Enclosure

Policy Number

11XN22205727SCA

11XN23436263

08XN24234816SCA

08XN24914034

08XN25559568SCA

Travelers Policy Number 7FSJEX271T328A97

Effective Dates

05/31/92 to 05/31/93

05/31/93 to 05/31/94

05/31/94 to 05/31/95

05/31/95 to 05/31/96

05/31/96 to 05/31/97

05/31/97 to 05/31/98



Page Six

Mr. David E. Forsman  
Litigation Specialist  
Fireman's Fund Insurance Companies  
777 San Marin Drive  
Novato, CA 94998-3400

W/Enclosure

Policy Number

XXK00095388567

XXK00074081118

XXK00083033225

Effective Dates

05/31/95 to 05/31/96

05/31/96 to 05/31/97

05/31/97 to 05/31/98

Ms. Barbara Freund - Claims  
First Specialty Insurance Company  
5200 Metcalf Avenue  
Overland Park, KS 66202

W/Enclosure

Policy Number

HL 00575

HL 08136B

HL 10531C

HL 10531D

Effective Dates

05/31/93 to 05/31/94

05/31/94 to 05/31/95

05/31/95 to 05/31/96

05/31/96 to 05/31/97

Claim Supervisor  
Great American Insurance Company  
For American National Fire  
515 Main Street  
Cincinnati, OH 45202

W/Enclosure

Policy Number

EXX9889336

EXX988933601

EXX988933602

EXX988933603

Unknown

Effective Dates

05/31/96 to 05/31/97

05/31/97 to 05/31/98

05/31/98 to 05/31/99

05/31/99 to 12/31/99

12/31/99 to 12/31/00

Environmental Claims  
Great American Insurance Company  
For American Alliance  
P.O. Box 5450  
Cincinnati, OH 45201

W/Enclosure

Policy Number

EXC1804076

EXC1804275

Unknown

Agricultural Policy Number EXC3994728

Effective Dates

05/31/98 to 05/31/99

05/31/99 to 12/31/99

12/31/99 to 12/31/00

05/31/99 to 12/31/99

MarshDetroit002240

Confidential - Subject to Protective Order

Page Seven

James Danehy  
Assistant Vice President - Counsel  
Ohio Casualty Group  
For American Alliance  
9450 Seward Road  
Fairfield, OH 45014  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
EXC1804076	05/31/98 to 05/31/99
EXC1804275	05/31/99 to 12/31/99
Unknown	12/31/99 to 12/31/00
Agricultural Policy Number EXC3994728	05/31/99 to 12/31/99

Ms. Michelle Nicholson  
Latent Case Manager  
Riverstone Claims Management, LLC  
For TIG Insurance Company and International Insurance Company  
250 Commercial Street, Suite 5000  
Manchester, New Hampshire 03101  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
CA-07939	05/31/87 to 05/31/88
5312032803	05/31/90 to 05/31/91

Ms. Tamika Jones  
Resolute Management Inc.  
For ACE Insurance  
For TIG Insurance Company and International Insurance Company  
1601 Chestnut Street  
15<sup>th</sup> Floor, TL-15  
Philadelphia, PA 19103  
W/Enclosure

<u>Policy Number</u>	<u>Effective Dates</u>
CA-07939	05/31/87 to 05/31/88
5312032803	05/31/90 to 05/31/91

JJH/cas

Enclosures

# EXHIBIT 9

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA BESSEMER DIVISION</p> <p>RANDY WADE BICE, et al., Plaintiffs, ) VS. ) CIVIL ACTION NO: EARTH SUPPORT SERVICES, ) CV-01-1194 d/b/a MICON, INC., et ) DEPOSITION OF: al, ) THOMAS A. ROWE, Defendants. ) JR.</p> <p style="text-align: center;">S T I P U L A T I O N S</p> <p>IT IS STIPULATED AND AGREED, by and between the parties through their respective counsel, that the deposition of:</p> <p>THOMAS A. ROWE, JR., may be taken before LeAnn Maroney, Notary Public, State at Large, at 2000 River Edge Parkway, Suite 800, Atlanta, Georgia, on March 30, 2006, commencing at 1:00 p.m.</p>	<p style="text-align: right;">Page 3</p> <p>1           A P P E A R A N C E S</p> <p>2</p> <p>3   FOR THE PLAINTIFF:</p> <p>4       ANDY DAVENPORT</p> <p>5       Attorney at Law</p> <p>6       Kasowitz, Benson, Torres &amp; Friedman</p> <p>7       1360 Peachtree Street, N.E.</p> <p>8       Suite 1150</p> <p>9       Atlanta, Georgia 30309</p> <p>10</p> <p>11   FOR THE DEFENDANT BAYER MATERIAL SCIENCES:</p> <p>12       TIMOTHY S. COON</p> <p>13       Attorney at Law</p> <p>14       Eckert, Seamans, Cherin &amp; Mellott</p> <p>15       600 Grant Street, 44th Floor</p> <p>16       Pittsburgh, Pennsylvania 15219</p> <p>17</p> <p>18   FOR THE DEFENDANT RHH FOAM SYSTEMS:</p> <p>19       CHRIS SCHAFFER</p> <p>20       Attorney at Law</p> <p>21       Stockham, Carroll &amp; Smith</p> <p>22       2204 Lakeshore Drive, Suite 114</p> <p>23       Birmingham, Alabama 35209</p>
<p style="text-align: right;">Page 2</p> <p>1           IT IS FURTHER STIPULATED AND AGREED</p> <p>2   that the signature to and reading of the</p> <p>3   deposition by the witness is not waived,</p> <p>4   the deposition to have the same force and</p> <p>5   effect as if full compliance had been had</p> <p>6   with all laws and rules of Court relating</p> <p>7   to the taking of depositions.</p> <p>8</p> <p>9           IT IS FURTHER STIPULATED AND AGREED</p> <p>10 that it shall not be necessary for any</p> <p>11 objections to be made by counsel to any</p> <p>12 questions, except as to form or leading</p> <p>13 questions, and that counsel for the parties</p> <p>14 may make objections and assign grounds at</p> <p>15 the time of the trial, or at the time said</p> <p>16 deposition is offered in evidence, or prior</p> <p>17 thereto.</p> <p>18           ***</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 4</p> <p>1   FOR THE DEFENDANT BASF CORPORATION:</p> <p>2       ADAM K. PECK</p> <p>3       Attorney at Law</p> <p>4       Lightfoot, Franklin &amp; White</p> <p>5       400 North 20th Street</p> <p>6       Birmingham, Alabama 35203</p> <p>7</p> <p>8   FOR THE DEFENDANT FLEXIBLE PRODUCTS:</p> <p>9       JASON MAYBERRY</p> <p>10       Attorney at Law</p> <p>11       Alston &amp; Bird</p> <p>12       One Atlantic Center</p> <p>13       1201 West Peachtree Street</p> <p>14       Atlanta, Georgia 30309</p> <p>15</p> <p>16   FOR THE DEFENDANT MICON PRODUCTS:</p> <p>17       JINNY M. RAY</p> <p>18       Attorney at Law</p> <p>19       Ferguson, Frost &amp; Dodson</p> <p>20       2500 Acton Road, Suite 200</p> <p>21       Birmingham, Alabama 35243</p> <p>22</p> <p>23</p>

Page 21

1 you recognize that document, Defendant's  
2 Exhibit 2?  
3 A Yes, I do.  
4 Q What is it?  
5 A It's a product page or a little  
6 flyer sheet that we put out to introduce  
7 the product.  
8 Q Okay. And it looks to me like  
9 on the business reply on the second page  
10 it's Tom Rowe -- I guess that's you -- that  
11 they would mail things back to?  
12 A Yes.  
13 Q People who had an interest in  
14 buying this product?  
15 A (Witness nods head.)  
16 Q Is that right?  
17 A Yes, sir.  
18 Q And on the front page of this  
19 brochure, if you could, read for me what it  
20 says under -- under the beakers.  
21 A We developed Rock-Glue Adhesive  
22 in response to a request from our parent  
23 corporation, Jim Walter Corp, who needed

Page 22

1 such a product for its own diverse mining  
2 operations. With our expertise and  
3 experience in developing many other  
4 products in the rigid foam and cement  
5 areas, we had already done our homework.  
6 Rock-Glue Adhesive was the proof that we  
7 could apply our research skills in a new  
8 field and help another industry improve its  
9 profitability.  
10 Q Does that accurately state what,  
11 in fact, you guys were able to do?  
12 A Yes.  
13 Q Did Celotex also develop MSDS's  
14 to go with this product?  
15 A To the best of my -- my memory,  
16 yes. Because we always had MSDS's when we  
17 went out with a new product.  
18 Q Okay.  
19 A Yes.  
20 Q Would Celotex have -- how would  
21 Celotex have done that? Would they have  
22 used industrial hygienists at Jim Walter  
23 Research?

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1 A Yes, it would have come through  
2 Jim Walter Research.  
3 Q Did Celotex -- and let me go  
4 back and ask you what -- do you remember  
5 about when this product -- we looked at  
6 this January '83 letter. Do you remember  
7 when this product became available for  
8 actual use by Jim Walter Resources?  
9 A I -- I don't have an exact date,  
10 but it would have been in late '83, early  
11 '84 early months.  
12 Q Okay. Let me show you one more  
13 letter that may help us a little bit  
14 explain what -- what happened then.  
15 (Defendant's Exhibit  
16 3 was marked for  
17 identification.)  
18 Q I'm going to show you what I've  
19 marked as Defendant's Exhibit 3, which is  
20 FP/BICE09677. Do you recognize that  
21 letter?  
22 A Yes.  
23 Q And that's a letter dated  
December 5th 1983 from you to a guy named

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1 Richard Huber?  
2 A Yes.  
3 Q At Flexible Products Company?  
4 A (Witness nods head.)  
5 Q What -- if you would, tell us  
6 what's going on here.  
7 A We were going through Flexible  
8 Products at the time to blend or toll, as  
9 they -- as they call it in the industry,  
10 this formulation and package it for us. We  
11 didn't have the ability in our plants to  
12 containerize it into containers they  
13 needed. In our facilities, we would blend  
14 the material and use it in a laminator to  
15 make rigid board stock for our -- our roof  
16 insulation or side wall sheathing. So, in  
17 this case we needed to put it into small  
18 containers to be used such as in the mining  
19 operation. So, we needed it either in a  
20 five-gallon container or a 55-gallon drum.  
21 Q Okay.  
22 A And we were going to use  
23 Flexible Products to blend the system and

6 (Pages 21 to 24)