

REM.

99-491

S. TWIST

MAY 21 1999

May 18, 1999

CERTIFIED/RETURN P386773334

Armour Corporation
C/o VIAD
1850 North Central Avenue
Phoenix, AZ 85077
Attn.: S. J. Twist, Ass't. Gen'l. Counsel

• RISK
ENTERPRISE
MANAGEMENT
LIMITED

RE: Insured: Armour Corporation ("Armour")
Sites/Claims: (1) South 8th Street, Memphis, AR;
(2) OIL, Monterey Park, CA
(3) Bern Scrap Metals, Buffalo, NY
(4) "Old Blue Chemical," Fairfax, SC
(5) Chicago, IL (2 sites)
(6) Greensboro, NC

Policies: Excess- HEC9543751 eff. 7/21/64-67 \$5M xs \$50Kpri
HEC9543785 eff. 7/21/64-67 \$5M xs \$5M xs \$50Kpri
HEC9559860 eff. 7/21/67-70 \$10M xs \$50Kpri
HEC9792765 eff. 7/21/70-3/31/72 \$500K xs \$50Kpri
HEC9791974 eff. 7/21/70-5/1/72 \$5M xs \$5M xs \$50K pri

Main File: 087-519241

Dear Mr. Twist:

Risk Enterprise Management Limited previously acknowledged Armour's claims arising out of alleged environmental contamination at the above sites. Risk Enterprise Management Limited ("REM") is handling certain claims of the Home Insurance Company. REM has received periodic information related to expenses incurred at some of the above sites. We have also received a corporate history synopsis provided by you, and some information about remediation activities at certain sites, as well as historical information generally describing certain site operations. We have also received large packages of invoices periodically, which allegedly represent costs incurred at

• 59 MAIDEN LANE
NEW YORK,
NY 10038
TEL: 212 530 7000

REM.

particular sites. No explanatory letters or demands have accompanied these billing information statements.

REM previously advised you that it did not have certain policies, and absent those policies, would be closing its file with regard to claims under those policies. We also did not have any specific demand from you that indicated that there was a claim that exhaustion or impacting of certain underlying policies had taken place, and at this time are unable to determine whether Armour is now making such a claim.

We now confirm that you have sent certain records which appear to be copies of the policies listed above, issued by Home Insurance Company, and we are able to provide you with our initial coverage analysis. Home's analysis is to be applied to each of the sites above. General site histories were recited by REM, on behalf of Home, in our prior acknowledgement letters dated October 20, 1997 and January 13, 1998 and we refer to and incorporate those site summaries in this letter.

*Other
X copies*

We requested, and continue to request, that if you believe that there has been a payment or exhaustion which would place a particular Home policy at issue, that you identify which sites, policies, and cost calculations lead to that conclusion, and provide specific supporting documentation.

As to policies HEC9792765, and HEC 9791974, each contains a "Lost Policy Receipt" which reads as follows: "IN CONSIDERATION OF DOLLARS returned premium [The Insured] hereby surrender, release and relinquish all our title and interests in [Policy HEC9792765 and HEC9791974] of HOME INSURANCE COMPANY and all advantages to be derived therefrom, the said policy having been lost or mislaid. We agree to make no claim whatever for any loss or damage for which HOME INSURANCE COMPANY would be liable under said policy, and to return the said policy to HOME INSURANCE COMPANY (if the same be found), forthwith and without further compensation." Accordingly, REM has determined that Home policies HEC9792765 and HEC9792974 do not provide any insurance to Armour as a result of the agreement outlined above, and coverage is declined.

We have reviewed our own files as well as the information which Armour has provided. REM may determine it should deny liability for this claim on other grounds for all policies. As to the remaining policies at issue, presently Home

REM.

is reserving all rights, as set forth in the remainder of this letter, as to all sites. Our coverage evaluation is continuing.

REM may require additional information which might include all policy identification for any policy which may have provided coverage for the continuing operation; date, time and place of alleged loss; the exact role of the insured in the operations giving rise to the claim, including the years of the insured's participation; role of the insured; the contaminants in issue; the type and extent of alleged damage, including whether the property of the insured or of third parties is affected; whether alleged damage occurred over time; and whether there has been a judicial determination as to the nature and extent of the insured's liability or there is a recovery shared responsibility with any other liable party who may be required to reimburse Armour. REM acknowledges your summary of the operation dates and remediation status at each site, and has relied on this information as part of its evaluation.

We are issuing this reservation of rights as to all sites, in order to apprise you of REM's coverage analysis based on the limited information available to it. At any time the insured may submit additional information and REM may modify or supplement its position as it acquires additional information.

As a preliminary matter, REM policies afford insurance only to those who were insureds under each policy during the respective policy period. To the extent that any entity seeks coverage for persons or entities that were not insureds during the respective policy periods, the claim is barred. REM also reserves the right to contest the effective dates of the policy/ies.

REM has verified the existence and terms of the policies at issue. Policy HEC9543785 provides, as to property damage, that:

[The company agrees] to indemnify the Insured for ultimate net loss in excess of the amount designated in the declarations as Primary Limits which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, covered by the underlying policy/ies specified in the declarations...."

The remaining excess policies listed above provide as follows:

I. COVERAGE

REM.

The Company hereby agrees to indemnify the Insured for all sums which the Insured shall be obligated to pay by reason of the liability

- (a) imposed upon the Insured by law, or
- (b) assumed under contract or agreement by the Named Insured or any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such,

for ultimate net loss because of

- (i) personal injuries,
- (ii) property damage,
- (iii) advertising liability,

caused by an occurrence happening anywhere in the world.

The terms "Personal Injuries," "Property Damage," "Occurrence," and "Ultimate Net Loss" are defined as follows in all policies, except HEC9543785:

The term "Personal Injuries," wherever used herein, shall mean:

- (a) bodily injury, sickness, disability or disease; or
- (b) false arrest, false imprisonment, detention or malicious prosecution; or
- (c) wrongful entry, wrongful eviction or other invasion of the right of private occupancy; or
- (d) libel, slander, defamation, or a publication or utterance in violation of an individual's right of privacy,

REM.

except a publication or utterance which arises out of any advertising activities.

All of the foregoing must occur during the policy period to be within the above definition.

Personal injuries may also mean mental injury, mental anguish, humiliation, shock or death as a direct result of any of the injuries enumerated under (a) through (d).

The term "Property Damage," wherever used herein, shall mean:

(a) 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

(b) 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.

The term "occurrence," wherever used herein, shall mean an accident or a happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injuries, property damage or advertising liability during the policy period. All such exposure to substantially the same general conditions existing at or emanating from one premises location shall be deemed one occurrence.

In policy HEC9543785, the term "ultimate net loss" is defined as :

"....the amount payable in settlement of the liability of the Insured after making deductions for all recoveries and for other valid and collectible insurances, excepting however the policy(ies) of the Primary Insurer(s) and shall exclude all expenses and costs.

REM.

Policy HEC9543785 also defines "accident" as:

"an accident or series of accidents arising out of one event or occurrence."

The remaining policies define "ultimate net loss" as follows:

The term "ultimate net loss," wherever used herein, shall mean the total of the following amounts:

- (a) all sums which the Insured shall become legally obligated to pay as damages (including interest thereon) whether by reason of adjudication or settlement because of personal injuries, property damage or advertising liability; and
- (b) all expenses incurred by the Insured or the Company in the investigation, negotiation, settlement and defense of any claim or suit seeking such damages, excluding only the salaries and expenses of the Insured's or the Company's employees.

Under exclusion 3 in policy HEC9543785, and exclusion (g) in the other policies, the insurance does not apply to property owned by the insured.

To the extent that the information you forwarded does not reflect an allegation of "personal injuries" or "property damage" as defined above, coverage is declined. Exclusion (g) also has application to the extent that the property was owned by the insured.

Nor does the insuring agreement provide coverage for all "personal injury" or "property damage" losses. What the insuring agreement covers is sums the insured becomes legally obligated to pay as "damages" because of "personal injuries" or "property damage." Reimbursement paid to a government for its administrative, legal, and remediation expenses may not be "damages" on account of "personal injuries" or "property damage" but rather uncovered economic loss. Remediation costs and the costs of preventive measures may also be economic loss rather than "damages." Similarly, the costs of complying with an injunction or administrative order may not be "damages" as used in the insuring agreement.

REM.

Under all policies except HEC9543785, it is also a requirement that the "personal injuries" and "property damage" result from an "occurrence." This means, among other matters, that there must be an accident or a happening or event or a continuous or repeated exposure to conditions that "unexpectedly and unintentionally" results in personal injuries or property damage. Whether the alleged pollution at the site resulted unexpectedly or unintentionally is called into question by information suggesting that the pollution may be from a long-term series of actions.

Further investigation may disclose other facts indicating that the pollution did not result unexpectedly and unintentionally. Also, insurance can only be provided against loss, damage or liability resulting from contingent or unknown events. Thus, for example, to the extent that any of the alleged pollution or contamination was detected prior to the inception of Home's policies, coverage may be barred by the "known loss" doctrine.

Another requirement arising from the definition of "occurrence" is that the "personal injuries" and "property damage" must happen "during the policy period." Here, not only is "environmental contamination" in issue instead of "personal injuries" or "property damage," the information received by REM thus far does not indicate that the contamination happened during each of the REM policy periods.

Punitive damages, fines and civil penalties are not encompassed within the basic insuring agreement and the definitions of "occurrence," "property damage," "personal injuries," or "ultimate net loss." To the extent that damages, fines, and penalties are awarded for intentional misconduct, it may also violate public policy for REM to insure them.

As previously noted, the policies identified above are excess liability policies rather than primary policies. In the policy HEC9543785, there exists only a duty to indemnify, limited by the definition of "Ultimate Net Loss" quoted above. In the remaining policies, Condition H in each is entitled "Assistance and Co-operation" and states in part as follows:

The Company shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the Insured.

REM.

Thus, Home has no obligation to defend Armour.

REM also reserves the right to assert that Armour has not complied with one or more conditions contained in the policies, whether or not quoted or referred to in this letter. This reservation includes but is not limited to contesting Armour's compliance with Conditions I, P and F of the policies (except HEC94543785).

Even where coverage is otherwise afforded under these policies, REM can have no duty to indemnify until the policy limits underlying REM's excess policies are properly exhausted. Excepting HEC0543785, Condition I of each policy is entitled "Loss Payable" and provides that

(I) liability under this policy with respect to any occurrence shall not attach unless and until the Insured, or the Insured's underlying insurer, shall have paid the amount of the underlying limits on account of such occurrence.

REM requests that you notify it in the event that the requirement set out in Condition I is satisfied.

Please also see Condition P of each policy in effect after July 21, 1967, which is entitled "Maintenance of Underlying Insurance" and provides in part that:

(I) It is a condition of this policy that the policy or policies referred to in the attached Schedule of Underlying Insurances shall be maintained in full effect during the period of this policy without reduction of coverage or limits except for any reduction of the aggregate limit or limits contained therein solely by payment of damages for personal injuries, property damage or advertising liability which occur during each annual period of this policy as defined herein.

Condition F requires that:

(w) whenever the Insured has information from which the Insured may reasonably conclude that an occurrence covered hereunder involves injuries or damages which,

REM.

without regard to liability, is likely to involve this policy, notice shall be sent to the Company as soon as practicable.

REM reserves its rights to contest the timeliness of the notice of claim.

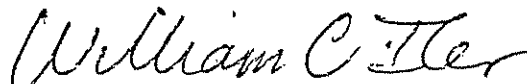
To the extent that Armour or any other insured failed to disclose to REM in connection with issuance of REM's policies any known existing or potential environmental liabilities, its claims may be barred. The same is true to the extent that there were any other material failures to disclose or any material misrepresentations of fact. REM emphasizes that it is not presently asserting that there was a misrepresentation, rather, it is merely reserving its rights in the event that additional information indicates that there was a misrepresentation.

This letter does not quote all the policy language that may be important in determining the existence or amount of any coverage. The reservation of rights is based on the information currently available to REM. If you are aware of other information that might affect this analysis, please provide it promptly. We also need to review the underlying policy to HEC9543751. Some further factual inquiry by REM may be necessary.

REM is aware that the insurance is in excess of certain underlying coverage. In the event the claim does not exhaust the underlying layer of insurance, there would be no obligation to respond to the event. That information would be helpful in our coverage evaluation. If in the meantime you have any questions or additional information, or wish to discuss any of the information we have requested, please telephone me at (212) 530-4138. Finally, REM renews its request that you advise it promptly of all developments affecting your claim.

Thank you for your assistance and cooperation.

Sincerely,



William C. Iler

Senior Litigation Analyst
Environmental Department

REM.

C:
David Page, Esq.
Anderson Kill & Olick
One Renaissance Square
Two North Central Suite 1910
Phoenix , AZ 85004