THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

Docket No. 03-E-0106

In the Matter of the Liquidation of The Home Insurance Company

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APPENDIX TO LIQUIDATOR'S OBJECTION TO CLAIMANTS HOLSONS' MOTION TO RECOMMIT

ROGER A. SEVIGNY, COMMISSIONER OF INSURANCE OF THE STATE OF NEW HAMPSHIRE SOLELY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY,

By his attorneys,
MICHAEL A. DELANEY
ATTORNEY GENERAL

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, MA 02110-1700
(617) 542-2300

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BEFORE THE COURT-APPOINTED REFEREE
IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION
DISPUTED CLAIMS DOCKET

In Re Liquidator Number:	**2008-HICIL-39**
Proof of Claim Number:	**INSU700645-01; INSU275296**
	INSU700638; INSU700640
	INSU700641; INSU700624
	INSU700655; INSU700657
	INSU700658; INSU700659
	INSU700660; INSU700662
Claimant Name:	**Sheldon Holson and Melvin Holson**
Claimant Number:	
Policy or Contract Number:	
Insured or Reinsured Name:	**Holson Company**
Date of Loss:	

STRUCTURING CONFERENCE ORDER

A telephonic structuring conference was held in this matter on March 17, 2009. The parties have agreed to a briefing schedule on the coverage issues. Counsel for the claimant will file a brief on or before May 15, 2009. Counsel for the Liquidator will file a brief on or before June 15, 2009. Counsel for the claimant will file any reply brief on or before June 30, 2009. An oral argument will be held at the Merrimack County Superior Court at a mutually convenient date after June 30, 2009. Counsel for both parties will confer and inform the Liquidation Clerk of proposed dates for such oral argument.

So ordered.

3/17/09
Dated

Melinda S. Gehris, Referee

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

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

In Re Liquidator Number:	2008-HICIL-39
Proof of Claim Number:	INSU700645-01; INSU275296 INSU700638; INSU700640 INSU700641; INSU700642 INSU700655; INSU700657 INSU700658; INSU700659 INSU700660; INSU700662
Claimant Name:	Sheldon Holson and Melvin Holson
Insured or Reinsured Name:	Holson Company

MERITS BRIEF OF CLAIMANTS SHELDON HOLSON AND MELVIN HOLSON ON COVERAGE

I. INTRODUCTION

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

In 1986, the Holsons sold the Holson Company to an acquisition corporation that in turn eventually sold the company to the Intercraft Company. As part of this transaction, the Holsons received back the Site, and in 1989 sold the Site to K.V.L. Corporation ("KVL"). Before purchasing the property, KVL retained an environmental consultant to conduct a site inspection,

and KVL was satisfied with the results of that inspection. After the purchase, KVL's business plans changed, and it decided to sell the Site. In 1990, a site inspection by a potential buyer noted some solvent contamination in an underground sump and a concrete vault on the southern end of the Site. Further investigation uncovered groundwater contamination in the same area. The primary contaminants included freon-113, 1,1,1 trichloroethene, trichloroethylene, and tetrochloroethylene.

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

The Holsons and the Holson Company also notified The Home Insurance Company, (the "Home") on February 22, 1991, and asked The Home to defend them pursuant to insurance polices that provided coverage in excess of the coverage provided by Travelers and Fireman's Fund. (A summary of The Home policies is attached at Exhibit C.) The Holsons also had purchased individual personal umbrella liability insurance policies from The Home that covered

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

the years 1972 to 1979. (A summary of the individual Home/Holson policies is attached at Exhibit D).[2]

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

During the five year wait for a bench decision from the district court, the Holsons filed suit against the primary insurers, Travelers and Fireman's Fund, for breach of their duty to defend the KVL action. The Holsons ultimately reached a settlement with Travelers and Fireman's Fund, and on two occasions, by letters dated September 27, 1999, and October 5, 1999, the Holson's counsel informed Home of these settlements. The Holsons expressly informed Home that the primary insurers had exhausted the coverage provided by these insurance policies and the Holsons renewed their demand for a defense. The Home again declined to provide a defense or coverage, and provided no written explanation for its refusal. In fact, The Home could not even find its file and disputed the notice given by the Holsons back in 1991. (Exhibit E).

On August 3, 2000, Judge Thompson issued a Memorandum Opinion in which the Court found in favor of KVL and against the Holsons on several claims raised in the Complaint. KVL then moved for judgment, seeking $25,201,265.31 dollars in damages, an amount that far

[2] The Holsons filed their Proof of Claim in this matter under twelve separate Home insurance polices. Seven of these were issued to the Holson Company, and five were umbrella policies issued to Melvyn and Sheldon personally during the relevant time period. The Liquidator's July 17, 2008 Notice of Determination disallowed the claim under only the seven policies issued to the Holson Company; the Liquidator made no determination on the claims under the five umbrella policies issued to Melvyn and Sheldon Holson. In correspondence dated March 28, 2001, to The Home, these umbrella policies were specifically identified by policy number, coverage period, and limit of liability, and a specific request was made to The Home to produce copies of these policies. The Home never produced copies of these policies to the Holsons. In a letter dated May 15, 2009, we have again requested that the Home produce copies of these umbrella polices listed in their Proof of Claim and in Exhibit D. If The Home does not produce these policies, the Holsons reserve their right to reconstruct them and submit further briefing -- if necessary -- on the coverage provided to the Holsons under these policies.

exceeded the net worth of the Holsons. (Exhibit F). The Holsons again demanded a defense, and The Home again refused. On April 25, 2001, Judge Thompson entered a "Partial Judgment" that set forth the claims in the Complaint for which the Holsons were liable, and the amount of damages the Holsons were liable for on these claims. Facing a judgment that could exceed $15 million with interest, the Holsons settled with KVL in July, 2002, for $612,500.00.

The financial and emotional damages caused by The Home's wrongful refusal to defend and indemnify the Holsons are enormous. The KVL claims could have been settled prior to the Holsons incurring these damages if The Home had honored its duty to defend and indemnify the Holsons. The Home is liable to the Holsons for the consequence of its wrongful actions.

The Home's breach of its duty to defend is manifest. The claims set forth in the KVL complaint plainly fell within the scope of coverage provided by The Home. The question is not whether the underlying complaint sets forth *any claim that might not be covered*, but whether the complaint encompasses *any claims that might be covered*. The KVL complaint clearly sets forth covered claims.

Further, under settled Connecticut law, an insurer who wrongfully refuses to defend is liable not only for past and future defense costs, but also for the full amount of any settlement or judgment in the underlying action, and the attorneys' fees incurred in the coverage action. Missionaries of the Co. of Mary, Inc. v. The Aetna Cas. and Surety Co., 155 Conn. 104 (1967).

As set forth below, The Home Insurance Company in Liquidation (hereinafter also referred to as "The Home") is liable to the Holsons for the consequences of its wrongful actions.

II. ARGUMENT

A. The Home Had A Duty to Defend the Holsons

The Home provided liability insurance coverage to the Holsons in excess of the primary insurance coverage provided by Travelers and Fireman's Fund. In 1991, the Holsons notified The Home that their primary insurers refused to defend the KVL action; The Home also refused to defend the Holsons. Years later, after the Holsons reached settlements with Travelers and Fireman's Fund, they again notified The Home of these settlements, stating specifically that the settlements exhausted the primary coverage with these insurers. The Home again refused coverage, and claimed instead that these settlements with the primary insurers actually relieved it of its obligation to defend the Holsons. The Home never sought to become involved or informed, it just said no.

The Home breached its obligations to the Holsons. Under the language of its policies, The Home was required to defend the Holsons. In pertinent part, Endorsement 2 of The Home policies effective August 12, 1977, through August 12, 1981, states:

> With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy . . . the Company shall:
>
> (a) **defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient provided, however, that the settlement of any claim or suit within the retained limit shall be with the consent of the insured;**
>
> (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;
>
> (c) **pay all expenses incurred by the Company, all costs taxed against the insured in any such suit, all interest occurring after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon;**

(d) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.
The amounts so incurred, except settlement or satisfaction of claims and suits, are payable by the Company in addition to the applicable limit of liability of this policy
. . .

Coverage afforded under this Insuring Agreement shall not apply to defense, investigations, settlement of legal expenses covered by underlying insurances.

(emphasis added).

Under these contract terms, The Home had a duty to defend if the damage was not covered by the underlying policies and if The Home policy covered the KVL claim.

1. The Claim Triggered The Home's Duty to Defend Because the Claim Exceeded the Underlying Primary Limits

The Claim immediately triggered The Home's defense obligation because the KVL claim exceeded the limits of the Fireman's Fund and Travelers policies. In American Motorists Insurance Company v. the Trane Company, 544 F. Supp. 669, 692 (W.D. Wis. 1982), the court interpreted an Endorsement almost identical to the language contained in The Home policy's Endorsement 2, quoted above, and stated that

> whether the damage was covered by an underlying policy depends on the interplay of two factors: first, whether the monetary limits of the underlying policy are exceeded; and second, whether actual substantive coverage is denied by the underlying insurer. If the claim against the insured exceeds the monetary limits set by the underlying insurer, the excess insurer's duty to defend is usually activated.

The court noted that, where the amount of damage claimed was "clearly in excess" of the underlying policy limits, "by itself this fact is sufficient to invoke the [excess insurer's] duty to defend, if there is coverage under the policy." Id. at 692. See also Guaranty National Insurance Company v. American Motorists Insurance Company, 758 F. Supp 1394, 1397 (D.Mont. 1991)(excess insurer has duty to share in the defense costs where the claim exceeds the primary

coverage); Siligato v. Welch, 607 F.Supp. 743, 746 (D.Conn. 1985)("[t]he excess carrier's duty to defend is secondary to the duty of the primary insurer, but it is no less real a duty.")

Under The Home's defense obligation in Endorsement 2, The Home has a duty to defend "with respect to any occurrence not covered by the underlying policies . . . ." As the court stated in Trane, whether the damage was covered by an underlying policy depends "first, whether the monetary limits of the underlying policy are exceeded . . . ." Here, the Holsons faced a claim by KVL over $25 million, well in excess of the $50,000 and $100,000 limits per occurrence in the Fireman's Fund and Travelers' policies, respectively.

2. The Primary Insurers' Refusal to Defend Triggered The Home's Duty to Defend the Holsons.

Travelers and Fireman's Fund's refusal to defend triggered The Home's duty to defend because this duty is an express contractual obligation.

In American Motorists Insurance Company v. the Trane Company, supra, in interpreting a defense Endorsement similar to Endorsement 2, the court found that "[i]f the underlying insurer has refused to defend, asserting that there is no coverage under the substantive provisions of the underlying policy, the excess insurer will have a duty to defend." The court described the underlying insurers refusal to defend to "impose[] and even clearer duty" on the excess insurer, and that "the relevant determination" is not the similarity of the excess policy to the underlying policy, but "whether the alleged occurrence[] [is] potentially covered by the policy, giving rise to [the excess insurer's] duty to defend." Id. See also Hocker v. New Hampshire Insurance Company, 922 F.2d 1476 (10th Cir. 1991)(after primary insurer wrongfully failed to defend, excess insurer was obligated to drop down and defend); American Family Assurance Company of Columbus, Georgia v. United States Fire Company, 885 F.2d 826, 832 (8th Cir. 1989) (in excess

policy with defense obligation, once the primary denied coverage, excess insurer "is obligated to defend once it became clear [primary insurer's] policy would not cover [insured's] liability").

Here, as described in Section B, below, it is clear that the "alleged occurrence is potentially covered" by The Home policies. The primary insurers' refusal to honor their contractual obligation to defend did not – as The Home seems to contend – relieve The Home of its duty to defend. To the contrary, their refusal "imposed an even clearer duty" on The Home to defend. Instead of honoring that duty and its contractual commitment, The Home sought to hide behind that refusal, exposing its insureds to great peril. The Home thereby breached its obligation to defend.

3. The Settlements with Travelers and Fireman's Fund Also Triggered The Home's Defense Obligation

The Holsons' settlements with Fireman's Fund and Travelers also triggered The Home's duty to defend the Holsons because under Endorsement 2, the claim was "not covered by the underlying insurance. . . ." This is a fundamental obligation of the excess insurer – and The Home breached that obligation.

The Home contends that no obligation attached because these settlements did not "exhaust" the primary coverage. The Home is wrong, and this argument is specious. There is no language in Endorsement 2 that makes The Home's duty to defend contingent on the exhaustion of the "limits" of the underlying primary insurance. Endorsement 2 simply provides:

> With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy . . . the Company shall:
>
> (a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient provided, however, that the

> settlement of any claim or suit within the retained limit shall be with the consent of the insured;

The principle that an excess insurer must contribute to a settlement that reaches its limits even if the primary policy has not paid its full limits was established more than 75 years ago. In Zeig v. Massachusetts Bonding & Insurance Co., 23 F.2d 665 (2d Cir. 1928), an excess insurer argued that an insured could not collect from it unless it first actually collected the full amount of the primary policy limits. The Second Circuit disagreed, stating that:

> the [excess insurer] had no rational interest in whether the insured collected the full amount of the primary policies, so long as it was called upon to pay such portion of the loss as was in excess of the limits of the policies. To require absolute collection of the primary insurance to its full limit would, in many, if not most, cases involve delay, promote litigation, and prevent an adjustment of disputes, which is both convenient and commendable. Id. a 666.

See also Koppers Company, Inc. v. The Aetna Casualty and Surety Co., 98 F.3d 1440, 1454 (3d. Cir. 1996) (it is a "widely-followed rule that the policyholder may recover on the excess policy for a proven loss to the extent it exceeds the primary policy's limits;" settlement with primary insurer functionally exhausts primary coverage and triggers excess policy); Archer Daniels Midland Company v. Aon Risk Services, Inc., 356 F.3d 850, 859 (8th Cir. 2004)(exhaustion does not mean insurer must have collected every dollar of the underlying coverage and settlement with the underlying insurers does not absolve an excess insurer from liability); E.R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co., 853 F.Supp. 98, 101 (S.D.N.Y. 1994) (non-collusive, arms length settlement between insured and primary insurer triggers excess carrier's coverage); Drake v. Ryan, 514 N.W. 2d 785, 789 (Minn. 1994) (settlement with primary carrier for less than policy limits triggers excess carrier's duty to assume defense); Insurance Co. of State of Pa. v. Associated International Insurance Co., 922 F.2d 516 (9th Cir. 1990)(dicta approving insured's

settlement with mid-level excess insurer for less than policy limits which was deemed to exhaust policy limits toward payment of pending and future asbestos-related claims).

If as The Home contends, an excess carrier's defense obligation is not triggered unless and until the primary carrier pays "all sums" including the "supplemental defense obligation," then the excess carrier's duty to defend would be illusory. The Home's contention is not supported by The Home's insurance policy or the case law. See e.g. Pacific Employers' Insurance Company v. Servco Pacific Inc., 273 F.Supp.2d 1149, 1154 (D.Ct. Hawaii 2003)(requiring the primary carrier first to litigate the underlying claim to judgment, or make the payments in settling the claim, would mean the excess carrier would then have nothing left to defend and the excess carrier's duty to defend would be illusory). The Home had no ground to refuse to defend because the Holsons pursued their claims against the primary carriers and reached bona fide settlements with them that exhausted the primary levels.

In its July 28, 2008, "Notice of Determination," the Liquidator claimed that The Home had no duty to defend the Holsons because "loss and expense are allocated on a pro rata, time-on-risk basis among multiple triggered policies," and thus all of the primary insurance could not have been exhausted. The Liquidator relies on Security Ins. Co. of Hartford v. Lumbermens Mut. Cas Co., 826 A.2d 107 (2003) for this proposition. The Liquidator got it wrong. In Security, the Connecticut Supreme Court held that the insured's settlement with one of its primary carriers entitled the *other* primary carriers to apportion a pro rata share of the costs of the defense to the insured. Unlike The Home here, the primary insurers in that case did not contend that the settlement with one primary relieved them of their duty to defend the insured. This is a case in which The Home continuously and unreasonably refused to either defend or participate in the defense of the Holsons in the KVL litigation. Under Connecticut law, an insurer who refuses to

defend its insured is liable for the full costs of the defense, plus the resulting judgment or settlement amount, plus any attorneys' fees incurred in pursuing an action against the insured for its breach of its duty to defend. See Missionaries of the Company of Mary, Inc. v. Aetna Cas. & Sur. Co. 230 A.2d 21, 26 (Conn. 1967); City of West Haven v. Liberty Mut. In. Co. , 639 F.Supp. 1012, 1020 (D. Conn. 1986). This rule applies "whether or not [the insurer] might have had a good defense to the claim that it had a duty to indemnify."

Here, The Home polices provided coverage in excess of that provided by the underlying insurance policies listed on the Endorsement to each Home policy. Exhaustion of that primary policy through settlement triggered The Home excess policy. Such a "vertical exhaustion" of a primary policy is supported by the nature and terms of excess policies, as well as the nature of the indivisibility of the alleged environmental property damage in the KVL Complaint.

The court applied this principle in an asbestos-related property damage claim in Dayton Indep. School Dist. v. National Gypsum Co., 682 F.Supp. 1403, 1410-11 (E.D. Tex. 1988) rev'd on jurisdictional grounds sub nom W.R. Grace v. Continental Cas. Co., 896 F.2d 865 (5th Cir. 1990). There, the court held that "once the limits immediately underlying a given excess policy are exhausted, [the insured] may call upon that excess policy to provide coverage." In Dayton, the court found that the insured was not obligated to first exhaust all underlying insurance in every policy period before it could proceed to obtain indemnification from its excess carriers, because "the requirement of exhaustion applied only to those policies that share the same period." See also J.H. France Refractories Co. v. Allstate Insurance Co., 626 A.2d 50, 507 (Pa. 1993)("[e]ach insurer contracted to pay "all sums" which the insured becomes legally obligated to pay, not merely some pro rata portion thereof."); AC & S, Inc. v. Aetna Cas. & Sur. Co., 764 F.2d 968, 974 (3d Cir. 1985)("if a plaintiff's damages are caused in part during an insured period,

it is irrelevant to the insured's legal obligations and, therefore, to the insurer's liability that they were also caused, in part, during another period.")

In addition, in this case, each of the triggered policies should be held jointly and severally liable for the Holsons' damages because each has been triggered to provide coverage against liability for a single indivisible injury and thus "there is no basis for apportioning responsibility among" the several polices for that injury. Kopper v. Aetna Casualty & Surety, 98 F.3d 1440 (3d Cir. 1996). The court in Kopper, an environmental contamination case, noted that the same reasons for applying the joint and several allocation approach in asbestos injury cases apply to environmental property damage cases. Other courts have taken the joint and several approach where multiple policies cover an indivisible loss. See e.g. Keene Corp. v. Insurance Co. of N. Am, 667 F.2d 1034, 1047-50 (D.C. Cir. 1981), cert. denied, 455 U.S. 1007 (1982).

In explaining its denial of the Holsons' claim, the Liquidator's "Notice of Determination" also relied on Condition Q of The Home policy, which states that ". . . policies referred to in the attached 'Schedule of Underlying Insurances' shall be maintained in full effect during the currency of this policy . . . ." The Liquidator claimed that under this provision the Holsons "could not release Fireman's Fund and Travelers from their asserted duty to defend the ongoing KVL litigation, without assuming the burden of those defense costs." This pernicious contention would force all insureds in disputes with primary insurers to reject hard fought offers from primaries to pay either most or the full amount of their policies – leaving the insureds exposed to potentially horrific and financially crippling results. Having incurred millions of dollars in costs defending the KVL claim and in suing the primary insurers to obtain coverage, the "rule" advanced by the Liquidator would have required the Holsons to either (1) reject the primaries' belated offer to reimburse the Holsons for much of their savings that they were forced to commit

to their defense and accept even greater risks, or (2) forfeit the coverage they purchased for years from The Home. Nonsense. The law does not require insureds to make this "Scylla and Charybdis" type of choice. Not surprisingly, the "Notice of Determination" provides no support for this result. Condition Q, "Maintenance of Underlying Insurance," simply required the Holsons to have "maintained" or "kept in existence" the underlying primary policies – i.e. ensure that the premiums were paid so that they were not canceled. It is undisputed that the Holsons' did so.

In short, by making a claim against their primary insurers, and exhausting through settlement existing policies that they had duly maintained, the Holsons neither violated Condition Q nor forfeited their coverage under The Home policies that the Holsons' contracted and paid for. Exhausting an underlying insurance does not mean that the insurer has somehow no longer "maintained" that insurance. See e.g. New York Marine and General Insurance Company v. Lafarge North of America, 598 F.Supp. 2d 473 (S.D.N.Y. 2009)(finding that Lafarge satisfied the "maintenance of underlying insurance provision" where there was no evidence that Lafarge failed to pay the policy premiums or in any other way allowed the policy to lapse; "maintenance" means to "keep in existence" and do no more than that).

Finally, the context of the case further demonstrates the unfairness and unreasonableness of the Liquidator's position. The insurers' collective refusal to defend forced the Holsons to defend themselves for more than five years. They committed most of their savings to that defense and after running a successful business for more than 40 years faced financial ruin. Finally, when at the point of a sword the Travelers and Fireman's Fund offer to fulfill their obligation and reimburse the Holsons for all or most of their costs of defense, the Liquidator would require the Holsons to refuse the offer and fight on at the risk of financial ruin – or forfeit

the coverage and protection they purchased from The Home. It is a shameless argument that would turn "insurance" into a game of Russian Roulette. That is not what the policy provides, not what the law requires, and not fair or right.

B. The Home Breached Its Duty to Defend the Holsons

1. Under Connecticut Law, an Insurer Owes a Duty to Defend Whenever the Underlying Allegations Against the Policyholder Raise a Potential for Coverage Under the Policies.

Under Connecticut law — and the law of virtually every other jurisdiction — an insurer's contractual duty to defend its insured is independent of and considerably broader than its duty to pay settlements or judgments. The duty to defend attaches from the outset of the underlying litigation, as long as the claims against the insured allege any facts that *potentially* or *conceivably* fall within the coverage terms of the policy. City of West Haven v. Commercial Union Insurance Co., 894 F.2d 540, 544 (2d Cir. 1990) (citing Connecticut cases). "If an allegation of the complaint falls *even possibly* within the coverage, then the insurance company must defend the insured." Community Action for Greater Middlesex County, Inc. v. American Alliance Ins. Co., 757 A.2d 1074 (Conn. 2000) (emphasis added); Palace Laundry Co. v. Hartford Accident & Indem. Co., 234 A.2d 640, 645 (Conn. C. P. 1967)(finding that the insurer breached duty to defend where "although the allegations of the complaint on the issue of bodily injury caused by accident [were] gossamer thin, there was at least the possibility that the plaintiff" in the underlying suit would prove that her injury resulted from a covered accident). Thus, to establish its right to a defense, a policyholder need not demonstrate that the underlying claims are actually covered by the policy; as long as the underlying allegations do not preclude the possibility of coverage, the insurer must defend.

In addition, an insurer's obligation to furnish a defense is determined solely by comparing the policy language with the underlying allegations against the policyholder. Because the duty to defend is based on the facts as alleged in the four corners of the complaint, rather than the facts ultimately established at trial, facts outside the complaint that might negate the duty to defend are not taken into account. Stamford Wallpaper Company v. TIG Insurance, 138 F.3d 75 (2d Cir. 1998) citing Cole v. East Hartford Estates Ltd. Partnership, No. CV 950547179S, 1996 WL 292135, at *2 (Conn. Super. May 15, 1996); Keithan v. Massachusetts Bonding & Ins. Co., 159 Conn. 128 (Conn. 1970); Missionaries of the Co. of Mary, Inc., 155 Conn. 104, 111 (Conn. 1967), quoting Lee v. Aetna Casualty & Sur. Co., 178 F.2d 750, 751 (2d Cir. 1949) (L. Hand, J.). "The seriousness with which [Connecticut] courts take this duty is exemplified by the fact that the duty to defend must be exercised regardless of whether the original suit is totally groundless or regardless of whether, after full investigation, the insurer got information which categorically demonstrates that the alleged injury is not in fact covered." Krevolin v. Dimmick, 39 Conn. Super. 44, 48 (1983) (citations omitted).

If some but not all of the underlying allegations potentially fall within the terms of the policy, the insurer must defend the entire underlying action. If one claim of the underlying action is covered by the policy, there is a duty to defend. Town of East Hartford v. Conn. Interlocal Risk Mgmt. Agency, 1997 WL 568043 at *9 (Conn. Super.), Schurgast v. Schumann, 156 Conn. 471, 490 (1968); accord, e.g., State of New York v. Blank, 745 F. Supp. 841, 844 (N.D.N.Y. 1990).

Consistent with this principle, an insurer cannot escape its defense obligations by relying on standard policy exclusions unless all of the underlying allegations fall solely and entirely within the exclusionary language and are subject to no other conceivable interpretation. EDO Corp. v. Newark Insurance Co., 898 F. Supp. 952, 961 (D.Conn. 1995); Town of East Hartford,

1997 WL 568043 at *6 (Conn.Super.) citing Cole v. East Hartford Estates Ltd. Partnership, Superior Court, Judicial District of Hartford-New Britain at Hartford, Docket No. 54179, 16 Conn. L. Rptr. 579 (May 16, 1996)(Sheldon, J.). In sum, Connecticut law places an exceptionally heavy burden of persuasion on insurers seeking to avoid their threshold defense obligations. "To avoid the duty to defend, . . . the insurer must demonstrate that the allegations in the underlying complaints are **solely** and **entirely** within **specific and unambiguous** exclusions from the policy's coverage." EDO, 898 F. Supp at 961 (emphasis added).

2. The Home Wrongfully Refused to Defend the Holsons Against the KVL Complaint.

The allegations in the KVL Complaint set forth claims for covered property damage that occurred during the extended period in which The Home policies were in effect. The facts alleged in the KVL Complaint fall squarely within the coverage terms of The Home's policies. The Home therefore wrongfully breached its duty to defend the Holsons against the KVL action.

The Home claims that its policies contain a "pollution exclusion" that relieves it of any defense obligation in this case. This qualified pollution exclusion carves out from coverage suits arising from the "discharge, dispersal, release or escape" of "pollutants into or upon land, the atmosphere or any water course or body of water," except where "such discharge, dispersal, release or escape is sudden and accidental."

The Connecticut Supreme Court has held that the meaning of "sudden" is a "temporal" one and "requires that the release in question occur in a rapid or otherwise abrupt manner." Buell Industries, Inc. v. Greater New York Mutual Ins. Company, et al, 259 Conn. 527 (2002).[3]

[3] Note that the Connecticut Supreme Court did not rule on this definition of "sudden and accidental" until 2002, more than a decade after the Holsons notified The Home of the KVL action. At the time The Home refused to defend, many state supreme courts had held that the term "sudden" is ambiguous and can reasonably be construed to mean an unexpected pollution process, including unanticipated pollution damage that takes place over an extended period of time. These courts found the word "sudden" to be ambiguous, and thus relied on the insurance industry's

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

The Complaint does not specify how the contamination itself occurred, at what point it occurred, or with what frequency it occurred. In other words, the allegations do not specify whether the contaminating event or events occurred over time or as a sudden event. They do not indicate whether the discharge resulted as a sudden or as a continuous event. The allegations of the Complaint certainly do not foreclose, for example, that an accident occurring during the relevant time period resulted in a sudden release of hazardous substances into the environment. As a result, even according to the pollution exclusion its broadest interpretation, the allegations of the Complaint do not eliminate the possibility that the exclusion may not apply to the particular facts developed in the KVL action. As the court held in State of N.Y. v. Blank, the Complaint's

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contemporaneous explanation of the intended meaning and effect of the clause when it was submitted to state insurance departments for regulatory approval in 1970. At that time, insurance industry trade associations represented to state regulators that the clause would merely clarify, but not reduce, the scope of coverage already available for accidental pollution under standard "occurrence" policies. Thus, these courts relied on these representations in holding that the clause preserves coverage for gradual but unexpected pollution damages.

"broad, general allegations admit of the possibility that the property damage was caused, if even in part, by the 'sudden and accidental' discharge of pollutants'." 27 F.3d 783, 791 (2nd Cir. 1994). Under these circumstances, where the complaint does not unambiguously establish that all of the contamination was not, and could not have been, "sudden and accidental" within the meaning of the exception, the insurer owes its insured a defense in the action. A complaint need not allege facts negating the applicability of a policy exclusion in order to trigger the insurer's duty to defend. Schwartz v. Steveson, 657 A.2d 244, 247 (Conn. App. 1995).

In EDO, 898 F. Supp at 962, the court rejected the insurer's claim that the relevant allegations did not bring the dispute within the exception for "sudden and accidental" discharges:

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

Similarly, a reasonable interpretation of the substance of the allegations in the KVL Complaint is that there was a possibility that the discharge was sudden and accidental; the allegations certainly permit proof of "sudden and accidental" releases during the policy periods, and the pollution exclusion does not absolve The Home of its defense obligation.

C. Because The Home Wrongfully Refused to Defend, It Was Required to Fully Defend and Indemnify the Holsons

Like any breach of contract, The Home's breach of their duty to defend the Holsons have tangible consequences. Under a long line of Connecticut Supreme Court cases, those consequences are clear: The Home is liable for (1) the past and future defense costs in the KVL action; (2) the full amount of the Holsons' settlement with the KVL action (3) counsel fees in this

action; and (4) interest. West Haven, 169 F. Supp. at 1020; Keithan, 159 Conn. at 139; Missionaries of the Co. of Mary, Inc. 155 Conn. at 490

This rule applies "whether or not [the insurer] might have had a good defense to the claim that it had a duty to indemnify." Firestine, 388 F. Supp. at 950. Accord, Schurgast, 156 Conn. at 490; Krevolin, 39 Conn. Super. at 52.

The Supreme Court of Connecticut explained the rationale for this settled rule establishing the measure of damages for breach of the duty to defend a quarter century ago:

> The [insurer], after breaking the contract by its unqualified refusal to defend, should not thereafter be permitted to seek the protection of that contract in avoidance of its indemnity provisions. Nor should the [insurer] be permitted, by its breach of the contract, to cast upon the [insured] the difficult burden of proving a causal relation between the [insurer's] breach of the duty to defend and the results which are claimed to have flowed from it. To do so would cast upon the insured not only the unpleasant but the extremely difficult burden of proof on the issue whether the [insurer's] attorney, by superior skill and wisdom, could have produced a better result at less expense than that achieved by [the insured's] counsel.

Missionaries of the Co. of Mary, 155 Conn. at 113-14; (citation omitted).

The Home could readily have avoided the application of this rule by agreeing to defend the Holsons in the KVL action while reserving its right to contest indemnification for an adverse judgment or settlement. The reservation-of-rights procedure has long been recognized by the Connecticut courts as an appropriate vehicle for enabling an insurer to discharge its primary obligation to protect its insured against third-party claims while preserving its coverage defenses for another day. See, e.g., Keithan,159 Conn. at 139; Schurgast, 156 Conn. at 490. Missionaries of the Co. of Mary, 155 Conn. at 113. Instead of availing itself of this procedure, The Home refused to defend, and now must pay the monetary consequences of that decision.

VI. CONCLUSION

For the reasons set forth above, the Holsons are entitled to (1) the defense costs they incurred in defending the KVL claim; (2) the full amount of their settlement with KVL; and (3) reasonable attorney's fees incurred in the prosecution of this action.[4]

Respectfully submitted,

SHELDON HOLSON AND MELVIN HOLSON

By their Attorneys,

Dated: May 15, 2009

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

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

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[4] Pursuant to the Referee's March 17, 2009, Structuring Conference Order, this brief addresses only coverage issues, and does not address the issue of the amount of these damages.

CERTIFICATE OF SERVICE

I hereby certify that I sent via electronic and first class mail a true and accurate copy of the within Merits Brief to Eric A. Smith, Esq., Rackemann, Sawyer & Brewster P.C., 160 Federal Street, Boston, MA 02110-1700 on May 15, 2009.

(56068-117369)
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Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

COMPLAINT

I. INTRODUCTION

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

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

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

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

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

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

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

II. JURISDICTION AND VENUE

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

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

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

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

III. PARTIES

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

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

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

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

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

IV. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

Partnership $7,180,000.00 for the site.

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

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

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

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

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

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

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

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

levels of fewer, but related compounds."

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

V. COUNT ONE (COST RECOVERY UNDER CERCLA)

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

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

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

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

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

Administrator of the Environmental Protection Agency.

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

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

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

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

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

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

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

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

VI. COUNT TWO (CONTRIBUTION UNDER CERCLA)

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

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

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

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

VII. COUNT THREE (CONNECTICUT HAZARDOUS WASTE REIMBURSEMENT)

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

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

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

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

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

VIII. COUNT FOUR (NEGLIGENCE OF HOLSON)

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

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

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

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

IX. COUNT FIVE (NEGLIGENCE OF TRC)

47. Mill's Pride hereby incorporates the allegations

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

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

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

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

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

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

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

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

XI. COUNT SEVEN (BREACH OF CONTRACT OF TRC)

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

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

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

XII. COUNT EIGHT (STRICT LIABILITY OF HOLSON)

56. Mill's Pride hereby incorporates the allegations

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

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

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

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

XIII. COUNT NINE (NUISANCE - AS TO HOLSON)

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

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

62. The improper disposal or leakage of the hazardous

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

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

XIV. COUNT TEN (MISREPRESENTATION)

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

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

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

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

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

WHEREFORE, the Plaintiff claims:

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

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

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

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

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

6. Monetary damages;

7. Punitive damages;

8. Costs;

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

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

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

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

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

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

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

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

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

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

S 14-22-00 E - 18.30 feet.
S 8-45-00 E - 56.47 feet.
S 1-02-00 E - 75.20 feet.
S 15-17-30 W - 132.70 feet.
and S 4-28-00 W - 100.08 feet to a point.

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

N 67-58-30 E - 66.00 feet.
S 84-00-00 E - 9.47 feet.
S 80-05-40 E - 100.10 feet.
S 83-02-40 E - 100.01 feet and,
S 78-53-00 E - 34.74 feet to land of Calvin W. Irwin

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

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

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

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

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

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

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

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

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

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

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

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

JUN 11 1993

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

FIRST AMENDED COMPLAINT

I. INTRODUCTION

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

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

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

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

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

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

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

II. JURISDICTION AND VENUE

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

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

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

III. PARTIES

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

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

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

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

IV. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. COUNT ONE (COST RECOVERY UNDER CERCLA)

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. COUNT TWO (CONTRIBUTION UNDER CERCLA)

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

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

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

VII. COUNT THREE (CONNECTICUT HAZARDOUS WASTE REIMBURSEMENT)

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

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

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

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

VIII. COUNT FOUR (NEGLIGENCE OF HOLSON)

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

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

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

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

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

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

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

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

X. COUNT SIX (STRICT LIABILITY OF HOLSON)

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

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

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

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

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

XI. COUNT SEVEN (NUISANCE - AS TO HOLSON)

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

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

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

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

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

XII. COUNT EIGHT (MISREPRESENTATION)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, the Plaintiff claims:

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

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

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

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

5. Prejudgment and postjudgment interest;

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

7. Punitive damages pursuant to common law;

8. Costs of this action;

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

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

By _____

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

CERTIFICATION

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

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

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

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

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

Gary S. Klein

J:\4011563.01

EXHIBIT "A"

J:\4011563.01

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

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

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

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

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

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

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

S 14-22-00 E - 18.30 feet.
S 8-58-00 E - 56.47 feet.
S 1-02-00 E - 75.20 feet.
S 15-17-30 W - 132.70 feet.
and S 4-28-00 W - 100.08 feet to a point.

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

S 67-58-30 E - 66.00 feet.
S 84-00-00 E - 9.47 feet.
S 88-06-40 E - 100.10 feet.
S 83-02-40 E - 100.01 feet and,
S 78-53-00 E - 34.74 feet to land of Calvin W. Irwin

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit B

Insurance Co.	Policy No.	Policy Period	Liability Limit
Fireman's Fund	MXP2751907 XLX1202881	8/12/75-8/12/78 5/10/76-5/10/77	$50k/$50k $10M
Fireman's Fund	MXP3548610 XLX1299518	8/12/78-8/12/81 5/10/77-8/12/78	$50k/$50k $10M
Fireman's Fund	XLX1362975	8/12/78-1/26/79	$10M
Travelers	650-347B9676	12/01/79-12/01/80	$100k/$100k
Travelers	650-347B9676	12/01/80-12/01/81	$100k/$100k
Travelers	650-347B9676	12/01/81-12/01/82	$100k/$100k
Travelers	650-347B9676	12/01/82-12/01/83	$100k/$100k
Travelers	650-347B9676	12/01/83-12/01/84	$100k/$100k
Travelers	650-347B9676	12/01/84-12/01/85	$100k/$100k
Travelers	650-347B9676 CUP-319G9748	12/01/85-12/01/86	$1M/$1M $3M
Travelers	650-347B9676 CUP-319G9748	12/01/86-12/01/87	$1M/$1M $3M
Travelers	660-321G4719 CUP-320G8196	12/01/87-12/01/88	$1M/$3M $3M
Travelers	660-321G4719 CUP-320G8196	12/01/88-12/01/89	$1M/$3M $3M
Travelers	660-897J2074 CUP-897J2086	12/01/89-7/15/90	$1M/$3M $3M

1115 BROAD STREET • P. O. BOX 1621 • BRIDGEPORT, CONNECTICUT 06601 • (203) 366-5811

Exhibit C

INSURED	INSURANCE CO.	POLICY NO.	POLICY PERIOD	LIABILITY LIMIT
Melvin Holson	The Home Insurance Co.	9961025	11/10/72-11/10/73	$1M
Melvin Holson	The Home Insurance Co.	4371837	11/10/73-11/10/76	$1M
Melvin Holson	The Home Insurance Co.	9342374	11/10/76-11/10/79	$1M
Sheldon Holson	The Home Insurance Co.	4766202	11/10/73-11/10/76	$1M
Sheldon Holson	The Home Insurance Co.	9342286	11/10/76-11/10/79	$1M
The Holson Company	The Home Insurance Co.	HEC 4763813	12/1/73-12/1/76	$4M
The Holson Company	The Home Insurance Co.	HEC 9347489	12/1/76-8/12/77	$4M
The Holson Company	The Home Insurance Co.	HEC 9535253	8/12/77-8/12/78	$4M
The Holson Company	The Home Insurance Co.	HEC 9797466	8/12/78-8/12/79	$4M
The Holson Company	The Home Insurance Co.	HEC 9831171	8/12/79-10/17/79	$4M
The Holson Company	The Home Insurance Co.	HEC 9031605	10/17/79-8/12/80	$3M
The Holson Company	The Home Insurance Co.	HEC 9909110	8/12/80-8/12/81	$3M

Exhibit D

INSURED	INSURANCE CO.	POLICY NO.	POLICY PERIOD	LIABILITY LIMIT
Melvin Holson	The Home Insurance Co.	9961025	11/10/72-11/10/73	$1M
Melvin Holson	The Home Insurance Co.	4371837	11/10/73-11/10/76	$1M
Melvin Holson	The Home Insurance Co.	9342374	11/10/76-11/10/79	$1M
Sheldon Holson	The Home Insurance Co.	4766202	11/10/73-11/10/76	$1M
Sheldon Holson	The Home Insurance Co.	9342286	11/10/76-11/10/79	$1M
The Holson Company	The Home Insurance Co.	HEC 4763813	12/1/73-12/1/76	$4M
The Holson Company	The Home Insurance Co.	HEC 9347489	12/1/76-8/12/77	$4M
The Holson Company	The Home Insurance Co.	HEC 9535253	8/12/77-8/12/78	$4M
The Holson Company	The Home Insurance Co.	HEC 9797466	8/12/78-8/12/79	$4M
The Holson Company	The Home Insurance Co.	HEC 9831171	8/12/79-10/17/79	$4M
The Holson Company	The Home Insurance Co.	HEC 9031605	10/17/79-8/12/80	$3M
The Holson Company	The Home Insurance Co.	HEC 9909110	8/12/80-8/12/81	$3M

Exhibit E

R E M®

JUN 14 2000

June 8, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Gerald J. Petros, Esq.
Hinckley, Allen & Snyder LLP
1500 Fleet Center
Providence, Rhode Island 02903-2393

RISK
ENTERPRISE
MANAGEMENT
LIMITED

Re: REM's Principal: The Home Insurance Company
Insured: The Holson Company, Melvin and Sheldon Holson and/or Danbury Road Family Partnership
Site: Unidentified
Policy: Unidentified
REM File No.: Not yet assigned

Dear Mr. Petros:

This letter is further to my March 1, 2000 letter to which you have not responded. Although you contend that Home previously received notice of this claim, I am unable to locate any evidence of that fact. Again, I ask that you provide me with any evidence you have in support of this contention. If you have a claim number, please provide that as well.

I again request that you please provide me with responses to my January 10, 2000 letter. Specifically, and at a minimum, I require policy numbers under which the claim is being, or has been, made.

Lastly, you contend that the underlying coverage for this claim was exhausted. Please provide me with evidence of that exhaustion, specifically the name of the underlying carrier(s), year(s) of coverage, limit(s) of liability and any other evidence of exhaustion, i.e., a letter from that carrier or carrier's counsel.

Please feel free to contact me at the above address or at (212)530-4334.

Very truly yours,

Ilona S. Hanau, Esq
Senior Litigation Analyst
Environmental & Mass Tort Division

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

ISH/rh
Holson3.doc

1500 FLEET CENTER
PROVIDENCE, RHODE ISLAND 02903-2393
401 274-2000
FAX: 401 277-9600

HINCKLEY, ALLEN & SNYDER LLP
Attorneys at Law

Gerald J. Petros

May 3, 2000

Ilana S. Hanau, Esq.
Senior Litigation Analyst
Environmental & Mass Tort Division
REM
59 Maiden Lane
New York, NY 10038

Re: The Home Insurance Company
Insured: The Holson Company, Melvin and Sheldon Holson and/or Danbury Road Family Partnership

Dear Ms. Hanau:

I am in receipt of your letter dated March 6, 2000, where you again state that The Home Insurance Company has no documentation regarding this claim. In the interest of expediting this matter, I am attaching all of the previous correspondence sent by the insured to The Home regarding this claim, which The Home has apparently lost or destroyed.

I have also attached various documents that evidence The Home insurance coverage of this claim, including policies, or parts of policies. Based on this documentation, we have identified the following Home polices: HEC 9347489 (effective date December 1, 1976 to August 12, 1977), HEC 9535253 (effective date August 12, 1977 to August 12, 1978), HEC 4763813 (listed as underlying coverage for Fireman's Fund excess liability coverage dated May 1976 to May 1977), HEC 9831171 (effective date August 12, 1979), and HEC 9909110 (effective date August 12, 1980).

Very truly yours,

Gerald J. Petros

GJP:rhm
Enclosures

cc: Paula Rawleigh
Sheldon Holson
Mel Holson
(all without enclosures)

28 STATE STREET ☐ BOSTON, MASSACHUSETTS 02109-1775 ☐ 617 345-9000 ☐ FAX: 617 345-9020

REM.

MAR -6 2000

March 1, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Gerald J. Petros, Esq.
Hinckley, Allen & Snyder LLP
1500 Fleet Center
Providence, Rhode Island 02903-2393

RISK
ENTERPRISE
MANAGEMENT
LIMITED

Re: REM's Principal:The Home Insurance Company
Insured: The Holson Company, Melvin and Sheldon Holson and/or Danbury Road Family Partnership
Site: Unidentified
Policy: Unidentified
REM File No.:Not yet assigned

Dear Mr. Petros:

I am in receipt of your letter dated January 21, 2000. You contend that Home previously received notice of this claim and has, in fact, been on notice for years. Please provide me with any evidence you have in support of this contention, as I have been unable to locate any such documentation. If you have a claim number, please provide that as well.

I attempted to contact you by phone on January 10, 2000, February 29, 2000 and again on March 1, 2000, to discuss this matter, to no avail.

Please provide me with responses to my January 10, 2000 letter. Specifically, and at a minimum, I require policy numbers under which the claim is being, or has been, made.

Lastly, you contend that the underlying coverage for this claim was exhausted. Please provide me with evidence of that exhaustion.

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

R E M.®

Please feel free to contact me at the above address or at (212)530-4334.

Very truly yours,

Ilana S. Hanau, Esq.
Senior Litigation Analyst
Environmental & Mass Tort
Division

ISH/rh

Holson2.doc

1500 FLEET CENTER
PROVIDENCE, RHODE ISLAND 02903-2393
401 274-2000
FAX: 401 277-9600

HINCKLEY, ALLEN & SNYDER LLP
Attorneys at Law

Gerald J. Petros

January 21, 2000

Ilana S. Hanau, Esq.
Senior Litigation Analyst
Environmental & Mass Tort Division
REM
59 Maiden Lane
New York, NY 10038

Re: The Home Insurance Company
Insured: The Holson Company, Melvin and Sheldon Holson and/or Danbury Road Family Partnership

Dear Ms. Hanau:

Months ago, we advised The Home Insurance Company that the underlying coverage for this claim was exhausted, and The Home's policies were next up. After months of delay, we were disappointed to receive your letter of January 10, 2000, which pretends that The Home Insurance Company had never before received any information concerning this claim. Nothing could be further from the truth. The Home has been on notice regarding this claim for years now. I suggest that you talk to your client, and gather the information that we have already sent to The Home Insurance Company. After you have reviewed that information, if you need any additional information we will be happy to provide it. But please do not send me any more letters asking me to send you copies of correspondence with The Home. I assume that The Home does not shred open files where the insured has demanded a defense and indemnity.

Very truly yours,

Gerald J. Petros

GJP:cl

cc: Paula Rawleigh
Sheldon Holson
Mel Holson

REM.®

JAN 13 2000

January 10, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Gerald J. Petros, Esq.
Hinckley, Allen & Snyder LLP
1500 Fleet Center
Providence, Rhode Island 02903-2393

RISK
ENTERPRISE
MANAGEMENT
LIMITED

Re: REM's Principal: The Home Insurance Company
Please be advised that Risk Enterprise Management, Limited (REM) has been appointed to manage the business of The Home Insurance Company
Insured: The Holson Company, Melvin and Sheldon Holson and/or Danbury Road Family Partnership
Site: Unidentified
Policy: Unidentified
REM File No.: Not yet assigned

Dear Mr. Petros:

Risk Enterprise Management, Limited ("REM") on behalf of The Home Insurance Company ("Home") hereby acknowledges receipt of your notice of claim made on the part of The Holson Company, Melvin and Sheldon Holson and Danbury Road Family Partnership. According to your notice, you indicate that Home has refused to participate in the defense or settlement of the underlying lawsuit K.V.L. Corporation f/k/a Mill's Pride, Inc. v. The Holson Company, Danbury Road Family Partnership, Melvin Holson and Sheldon Holson. No other information has been provided.

Please be advised that we will be reviewing your notice to determine whether REM has a duty to defend against any suit arising out of the claim or to indemnify for any loss that may result from it.

Your letter does not identify specific insurance policies issued by The Home.

Please provide us with photocopies of those policies issued by The Home that you wish us to consider in making our coverage determination.

In addition to your failure to provide me with policy information, I have no factual information regarding this claim. Specifically, for what is coverage being sought. Please be as detailed as possible.

Further, please provide me with copies of all correspondence between you, the above referenced insureds and The Home which resulted in Home's alleged refusal to participate in the defense and/or settlement of the above mentioned lawsuit.

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

REM®

Please provide me with a copy of the referenced lawsuit as well as any dispositive motions.

You allege in your October 5, 1999 letter that the primary coverage provided by Fireman's Fund Insurance Company has been exhausted. Please provide me with the name, address and telephone number of the analyst handling this matter for Fireman's Fund. Also, provide me with proof of the exhaustion of the Fireman's Fund policy/ies.

Be assured that we will promptly review whatever is submitted. After examining the information and documents you provide, we may have additional questions, therefore, please provide us with as much information as possible.

This letter of acknowledgment is not an admission by REM that it has a duty to defend against the claim you described or to indemnify for any loss that my result from it. Presently, we are not in a position to make either determination and respectfully must reserve all of Home's rights to contest both. When we complete our policy review and investigation, we will notify you promptly of our coverage position.

In the interim, if you have not done so already, it is suggested that you give notice of this claim to any other primary or excess carriers that have not been contacted. Also, advise me if there are any other developments. At anytime, please feel free to contact me at the above address or at (212)530-4334.

Very truly yours,

Ilana S. Hanau, Esq.
Senior Litigation Analyst
Environmental & Mass Tort
Division

ISH/rh

holsonack.doc

1500 FLEET CENTER
PROVIDENCE, RHODE ISLAND 02903-2393
401 274-2000
FAX: 401 277-9600

HINCKLEY, ALLEN & SNYDER LLP
Attorneys at Law

Gerald J. Petros

December 9, 1999

Ms. Marie DiGennaro
Major Litigation Department
The Home Insurance Company
P.O. Box 2331
New York, NY 10272

Re: The Holson Company, Melvin and Sheldon Holson and Danbury Road Family Partnership

Dear Ms. DiGennaro:

This letter will confirm that Home has received and reviewed my letter of October 5, 1999.

Very truly yours,

Gerald J. Petros

GJP:cl

334981v1
(50142/90585)

Lomas, Cynthia A.

From: Petros, Gerald J.
Sent: Wednesday, December 08, 1999 9:12 AM
To: Lomas, Cynthia A.
Subject: RE: Home Insurance

Prepare a letter confirming this.

-----Original Message-----
From: Lomas, Cynthia A.
Sent: Friday, November 19, 1999 12:27 PM
To: Petros, Gerald J.
Subject: Home Insurance

I spoke with Marie DiGennaro - 212-530-4124 today. She has received your letter and called to confirm the policy numbers that I had given her earlier in the week. She is going to assign your letter to a claims representative who should be in touch with you by Monday, November 29. If you do not hear from any one, please call Marie.

1500 FLEET CENTER
PROVIDENCE, RHODE ISLAND 02903-2393
401 274-2000
FAX: 401 277-9600

HINCKLEY, ALLEN & SNYDER LLP
Attorneys at Law

Gerald J. Petros

October 5, 1999

Ms. Marie DiGennaro
Major Litigation Department
The Home Insurance Company
P.O. Box 2331
New York, NY 10272

Re: The Holson Company, Melvin and Sheldon Holson and Danbury Road Family Partnership

Dear Ms. DiGennaro:

Some or all of these parties are insured under liability policies issued by The Home Insurance Company. The Home policies provide excess coverage and stand behind the primary coverage provided by Fireman's Fund Insurance Company. To date, The Home has refused to participate in the defense or settlement of the underlying lawsuit, K.V.L. Corporation f/k/a Mill's Pride, Inc. v. The Holson Company, Danbury Road Family Partnership, Melvin Holson and Sheldon Holson.

Please be advised that as a result of a recent settlement, Fireman's Fund has now exhausted its primary insurance policies. Therefore, the Home Insurance Company is now directly responsible for payment of the defense costs and any settlement or judgment incurred by our clients in connection with the pending lawsuit brought by K.V.L. We are still waiting for the District Court's decision in this case which was tried in the spring of 1995. Please contact me as soon as possible so we can discuss appropriate plans for your company to assume responsibility for this claim and fulfill its obligations under the policies issued to our clients.

Very truly yours,

Gerald J. Petros

GJP:cl

Exhibit F

SEP -5 2000

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

K.V.L. CORPORATION, f/k/a MILL'S PRIDE, INC. Plaintiff, v. THE HOLSON COMPANY, DANBURY ROAD FAMILY PARTNERSHIP, MELVIN HOLSON, AND SHELDON HOLSON Defendants	CIVIL ACTION NO. 5:91 CV 59 (AWT) SEPTEMBER 5, 2000

PLAINTIFF'S MOTION FOR JUDGMENT
IN ACCORDANCE WITH MEMORANDUM OPINION DATED AUGUST 3, 2000

The Plaintiff K.V.L. Corporation, f/k/a Mill's Pride, Inc. ("KVL") hereby moves that the Court enter judgment in its favor in accordance with the Court's August 3, 2000 Memorandum Opinion ("Opinion"). The Court should enter judgment in favor of KVL and award KVL all past clean-up costs for the Property, a declaration of the Defendants' liability for post-trial reasonable cleanup costs, compensatory damages for the purchase of the property and the clean up, prejudgment interest, common law exemplary damages in the form of KVL's attorney's fees and

litigation costs; and offer of judgment interest dating from June 24, 1993, the date on which KVL served its offer of judgment.

Count Three of the Complaint – The Connecticut Reimbursement Act

In accordance with Section II, C of the Opinion, the Court should award KVL $429,523.68, constituting KVL's clean-up costs as of the time of trial. These costs should be awarded as to all Defendants, jointly and severally.

The Court should also declare that the Defendants are obligated to pay KVL all reasonable costs of clean-up and monitoring incurred after the trial[1] – approximately $100,000.00 to date – and declare the Defendants liable under the Connecticut Reimbursement Act, Conn. Gen. Stat. §22a-452, for all reasonable costs incurred by KVL in the future to continue its efforts to remediate the property.

Count Eight of the Complaint – Fraudulent Misrepresentation

The Court found that the Partnership Defendants fraudulently induced KVL to purchase the Property. In accordance with the Court's Opinion, KVL is therefore entitled to fraud damages, both compensatory, including the clean-up costs set forth above, and punitive. Because of the passage of time, the Defendants' past unwillingness to accept a tender of the

---

[1] At a time the Court deems appropriate and if no agreement can be reached with the Defendants, KVL will present evidence of its post-trial clean-up and monitoring costs. KVL understands that this amount is not part of this judgment and would only become a judgment after a further proceeding and only if Defendants failed to pay in accordance with the declaration of this Court.

property in recission of the contract, and the changed conditions of the property, KVL does not believe it can equitably pursue recission as a fraud remedy at this time. Thus, KVL believes the Court should award it compensatory damages based on its contractual or benefit of the bargain damages. KVL's compensatory benefit of the bargain damages are easily calculated under Connecticut law as the difference between the purchase price of $7,180,000.00 and the actual value of the Property on the date of the closing absent fraud, $4,700,000.00. *See Miller v. Appleby*, 183 Conn. 51, 57 (1981)(measure of damages in misrepresentation of real estate cases is difference between contract price and true value of property at the time of purchase). KVL, therefore, has incurred a loss on the contract price of the property of $2,480,000.00. In addition, as a natural and foreseeable consequence of the fraud which induced KVL to buy the property, KVL has been forced to incur clean up costs to date of $429,523.68. Thus, the total amount of compensatory damages due on the fraud claim against the Partnership Defendants is $2,909,523.68.

In accordance with Connecticut law, KVL is also entitled to punitive or exemplary damages which include its consultant's "litigation support," costs, and its attorney's fees, in the amount of $639,578.54.[2] "Punitive damages consist of the reasonable expense properly

---

[2] An Affidavit of Attorney's Fees with regard to KVL's attorney's fees and costs incurred in this litigation through trial and the post-trial briefs is submitted herewith as Exhibit A. To avoid any claim of waiver of the attorney client privilege, KVL is willing to provide the underlying billing records in support of the affidavit for *in camera* inspection by the Court.

incurred in the litigation." *See Markey v. Santangelo*, 195 Conn.76, 81 (1985). These damages should be awarded jointly and severally as to Melvin Holson, Sheldon Holson, and the Danbury Road Family Partnership.

Counts Nine and Ten – The Transfer Act

Under the Transfer Act, KVL is entitled to its clean-up costs and "all direct and indirect damages." This statutory entitlement naturally and expressly includes KVL's Reimbursement Act damages of $429,523.68 (including any "litigation support" undertaken by KVL's clean-up firm), and the benefit of the bargain damages of $2,480,000.00. Consistent with the notion of "all direct and indirect damages", KVL is also entitled to attorney's fees and costs from all Defendants under the Transfer Act in the amount of $639,578.54. *See Hartt v. Schwartz*, 1993 WL 104421 (Conn. Super. Ct. 1993)(refusing to strike a claim for attorney's fees under the Transfer Act). In accordance with the Opinion, these damages should be awarded against all Defendants jointly and severally.

Prejudgment and Post-judgment Interest

The Court has clearly held that the Defendants engaged in an extended fraud, violation of the Transfer Act, and failed to clean-up or otherwise respond to an environmental disaster that they alone caused. Such conduct clearly constitutes wrongful detention of monies owed and mandates an award of interest. Pursuant to Connecticut law, Conn. Gen. Stat. Section 37-3a, the Court is empowered to assess prejudgment interest at the rate of 10% per annum from the time of the wrongful detention through and after the date of judgment. As to KVL's fraud and Transfer

Act benefit of the bargain damages, the wrongful detention commenced in January 9, 1989, when the Defendants induced KVL to purchase the Property and violated the Transfer Act as to KVL. Therefore, the Court should award 10% interest per annum on $2,480,000.00 ($248,000.00 per year) for approximately 11 ½ years, or 115% total. This would compensate KVL for the loss of its income and growth potential on the amount of its fraud and Transfer Act damages in connection with the purchase of the property.

In addition, the Court should award KVL 10% per annum statutory interest on the clean-up costs awarded under the Connecticut Reimbursement Act, the fraud claim, and the Transfer Act. This interest should run from date KVL paid for the cleanup expenses, but for simplicity, KVL proposes that such interest be assessed from the close of the trial, May 1995 at 10%, or $42,952.37 per annum for approximately 5 years. Again, once it was clear that the Defendants owed the money, they wrongfully detained the money and should not be granted a windfall for having the use of this money. Conversely, the Court should compensate KVL for its losses in having to spend the money on the clean-up and then lose the ability to invest those monies.

In addition, under Connecticut law, interest at the statutory rate should continue to run after judgment enters until paid in full. Conn. Gen. Stat. Section 37-3a. Under Connecticut law, the Court has broad discretion to, and should, award prejudgment interest for the Defendants' wrongful detention. *See Foley v. Huntington Co.*, 52 Conn. App. 712, 738 (1996)(trier of fact has discretion to award interest).

Offer of Judgment Interest

Pursuant to Conn. Gen. Stat. Section 52-192a, on June 24, 1993, KVL served its offer of judgment, offering to settle certain of its claims, including its claims in the eighth, ninth and tenth counts of its complaint, in full for $2,000,000.00.[3] Under Connecticut law, if the Court awards KVL more than $2,000,000.00 as set forth above, on any of these three counts, then in addition to clean-up costs, compensatory damages, punitive damages/attorney's fees, and prejudgment interest, the Court must award 12% interest per annum offer of judgment interest running from June 24, 1993 to the date of judgment. This award of interest is ***mandatory*** and intended to punish the Defendants for not accepting a settlement offer seven years ago. *See Blakeslee Arpaia Chapman, Inc. v. El Constructors, Inc.*, 239 Conn. 708, 752 (1997). Moreover, the offer of judgment interest at 12% runs on the entire amount of damages awarded, including prejudgment interest and all other amounts. *Gillis v. Gillis*, 21 Conn. App. 549, 556 (1990) (concluding that trial court improperly denied offer of judgment interest on Section 37-3a interest portion of verdict); see also *Gionfriddo v. Avis Rent A Car System, Inc.*, 192 Conn. 301, 304-305 (1984) ("it is the total judgment that is the relevant [basis] for comparison").

Future Clean Up Costs

The Court should declare that, under Conn. Gen. Stat. Section 22a-452, the Defendants are liable for all additional costs of clean up incurred until the Property is completely cleaned up.

---

[3] KVL did not serve an offer of judgment on its third count seeking reimbursement costs under Conn. Gen. Stat. §22a-452.

The Court can maintain ongoing jurisdiction over this matter to the extent that the Defendants seek to dispute any of KVL's additional costs.

Allocation Of Payments Made By Defendants

Once the Court enters judgment, it is incumbent on the Defendants to pay the judgment in full. Under Connecticut law each of the Defendants are jointly and severally liable for the judgment against them. KVL is entitled to allocate any partial satisfaction of the judgment from particular Defendants as it deems appropriate in its discretion.

Calculation of the Judgments

In accordance with the Court's Memorandum Opinion, the Court has found that the Defendants are liable under statute and common law for all clean-up costs and all direct and indirect damages, plus punitive damages, and the Court should find the Defendants are also liable for prejudgment interest, offer of judgment interest, and costs. Because Defendants have already threatened appeals on some or all of the claims upon which Plaintiff has prevailed, plaintiff believes the court should calculate an award under each count to ensure the record is clear on appeal and for any post-trial proceedings. The Court should therefore calculate damages and enter judgment accordingly as follows:

A. Count Three of the Complaint – The Connecticut Reimbursement Act

A joint and several award against each of the Defendants as follows:

Past Clean-Up Costs

1)	Past Clean Up Costs:	$ 459,523.68
2)	Statutory Interest:	$ 229,761.85 (5 years @ 10%)

TOTAL JUDGMENT ON COUNT THREE:

$ 689,285.53

Together with a declaration of the Defendants' liability for reasonable post-trial clean up costs.

B. Count Eight of the Complaint – Fraudulent Misrepresentation

A joint and several award against each of the Partnership Defendants, Melvin Holson, Sheldon Holson, and Danbury Road Family Partnership, as follows:

Compensatory Damages

1)	Contract Damages:	$2,480,000.00
2)	Statutory Interest:	$2,852,000.00 (11.5 years @ 10%)
	Subtotal:	$5,332,000.00
3)	Past Clean Up Costs:	$ 459,523.68
4)	Statutory Interest:	$ 229,761.85 (5 years @ 10%)
	Subtotal:	$ 689,285.53
5	Total Compensatory damage	$6,021,285.53

Attorney's Fee/Punitive Damages

Total:	$ 639,578.54
TOTAL DAMAGES COUNT EIGHT	$6,660,864.07

Offer of Judgment Interest $5,595,125.82 (7 years @ 12%)

TOTAL JUDGMENT COUNT EIGHT:

$12,255,989.89

C. **Counts Nine and Ten – The Transfer Act**

A joint and several award against each of the Defendants as follows:

Compensatory (direct) Damages

1)	Contract Damages:	$2,480,000.00
2)	Statutory Interest:	$2,852,000.00 (11.5 years @ 10%)
	Subtotal:	$5,332,000.00
3)	Past Clean Up Costs:	$ 459,523.68
4)	Statutory Interest:	$ 229,761.85 (5 years @ 10%)
	Subtotal:	$ 689,285.53
5	Total Compensatory damage	$6,021,285.53

Attorney's Fee/Indirect Damages

Total:	$ 639,578.54
TOTAL DAMAGES	$6,660,864.07

Offer of Judgment Interest $5,595,125.82 (7 years @ 12%)

TOTAL JUDGMENT COUNTS NINE AND TEN:

$12,255,989.89

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

Peter M. Nolin (ct06223)
Gary S. Klein (ct 09827)
Sandak Friedman Hennessey & Greco, LLP
970 Summer Street
Stamford, CT 06905
(203) 425-4200
(203) 325-8608 (fax)
Its Attorneys

CERTIFICATION

I certify that a copy of the foregoing was sent via first class mail, postage prepaid, on September 1, 2000 to:

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

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

Mark J. Zimmermann, Esq.
Updike Kelly & Spellacy, P.C.
One State Street
P.O. Box 231277
Hartford, CT 06123-1277

Gary S. Klein

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

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

In Re Liquidator Number:	**2008-HICIL-39**
Proof of Claim Number:	**INSU700645-01; INSU275296** **INSU700638; INSU700640** **INSU700641; INSU700642** **INSU700655; INSU700657** **INSU700658; INSU700659** **INSU700660; INSU700662**
Claimant Name:	**Sheldon Holson and Melvin Holson**
Insured or Reinsured Name:	**Holson Company**

LIQUIDATOR'S SECTION 15 SUBMISSION

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), makes this submission in support of the Liquidator's determination of the claim of Sheldon Holson and Melvin Holson (the "Holsons") pursuant to § 15 of the Revised and Restated Order Establishing Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation. In accordance with the March 7, 2009 Scheduling Order, the Liquidator addresses only coverage issues.

Introduction

The Liquidator's determination of the Holson's claim should be sustained. Home had no duty to defend for two independent reasons. First, the Holsons have not satisfied their burden of showing that the allegations of the KVL complaint bring the claim within the "sudden and accidental" exception to the pollution exclusion, which requires that there be allegations of rapid or otherwise abrupt discharges. The Connecticut Supreme Court has expressly rejected the Holsons' argument that the burden rests on the insurer to show that the allegations of the

complaint exclude sudden and accidental discharges. Second, the Home policies can have no obligation to defend pollution claims like the KVL case because the policies provide only excess coverage above the scheduled underlying insurance. The Endorsement 2 on which the Holsons rely does not apply because the pollution exclusion endorsement provides that coverage for pollution claims will be no broader than that provided by the underlying policies. Those policies have not been exhausted by payment as required to trigger Home excess coverage for defense expenses. Neither the refusal of primary insurers to defend nor the settlements with primary insurers for partial defense costs satisfies the exhaustion requirement. Finally, the Home excess policies had no duty to indemnify for the KVL settlement because of the pollution exclusion, the court's finding that the Holsons made fraudulent misrepresentations to procure the sale to KVL, and the allocation of the settlement amount across the many years of primary coverage.

A. Issues to be determined:

1. Have the Holsons met their burden of demonstrating that the allegations of the KVL complaint affirmatively bring the claim within the "sudden and accidental" exception to the pollution exclusion as required to obtain a defense under Schilberg Integrated Metals Corp. v. Continental Cas. Co., 819 A.2d 773 (Conn. 2003)?

2. Where the pollution exclusion expressly provides that Home's coverage for pollution claims shall not be broader than coverage provided by the underlying policies, do the Home excess policies have a duty to defend pollution claims as claims "not covered" by the underlying policies?

3. Did the primary insurers' refusal to defend obligate Home to pay the costs of defense where the Home excess policies include defense costs within ultimate net loss and provide that liability can only attach after payment of the underlying limits?

4. Did the Holsons' settlements with the primary insurers for amounts to defray defense costs trigger liability for past or future defense costs under the Home policies, where Home's policies provide that liability can attach only after payment of the underlying limits and require that the primary policies be maintained in full force and effect?

5. Do the Home policies provide any indemnity coverage in light of the pollution exclusion, the KVL court's finding of fraudulent misrepresentation, and the requirement that the primary policies be exhausted by payment?

B. Exhibits:

The Liquidator relies upon the following exhibits (cited as "Liq. Ex."):

1. The Home excess policies (available documentation)
2. Claimants' Mandatory Disclosures (without exhibits)
3. Claimants' counsel's letter dated May 10, 2001
4. Claimants' counsel's letter dated January 5, 1995
5. Travelers' letter dated March 28, 2001
6. Fireman's Fund settlement dated July 19, 1999 (to be filed subject to Liquidator's assented-to motion to file exhibit under seal)
7. Claimants' counsel's letter dated October 4, 2005
8. Claimants' counsel's letters September 27, 1999 and October 5, 1999
9. Memorandum Opinion in KVL Action dated August 3, 2000
10. Attachment 3 from Claimants' proof of claim
11. Liquidator's notice of determination
12. Home letter to Holson's broker dated August 5, 1980

C. Background

1. Facts

Home issued seven Manuscript Excess Liability Policies to the Holson Company ("Holson") in effect from 1973 to 1981 providing limits ranging from $3 million to $5 million excess of scheduled primary policies issued by Federal Insurance Company ("Federal") with limits of $50,000 from 1973-1976 and by Fireman's Fund Insurance Company ("Fireman's Fund") or Travelers Indemnity Company ("Travelers") with limits of $100,000 from 1976 through 1981. The available Home excess policy documentation is included in Liquidator's Exhibit ("Liq. Ex.") 1 and the policies are discussed in the following section.

The Holsons were the primary shareholders, directors and principal officers of Holson for over thirty years until 1986. Liq. Ex. 2 at 1.

In 1968, Holson acquired a site in Wilton, Connecticut (the "Wilton site"). Holson operated a photograph album manufacturing facility on the Wilton site for a twenty-two year

period from 1966 to 1988. Liq. Ex. 3 at 2. The Wilton site was sold to KVL Corporation ("KVL") in the late 1980s.

On February 1, 1991, KVL filed an action against Holson and the Holsons in the United States District Court for the District of Connecticut seeking damages relating to contamination at the Wilton site. K.V.L. Corp. v. The Holson Co., et al., C.A. No. 5:91CV59 (D. Conn.) (the "KVL Action"). The complaint in the KVL Action is Exhibit A to the Holsons' brief.

In February, 1991, Holson notified its insurers of the KVL Action. The insurers declined to defend. See Liq. Ex. 4.

The KVL Action was tried in the Connecticut federal court in 1995. Liq. Ex. 2 at 2.

Holson later brought a declaratory judgment action against the primary insurers seeking coverage and defense for the KVL Action. Holsons Br. at 3. In 1999, while the KVL Action remained pending, Holson entered settlements with Fireman's Fund and Travelers.

The May 1999 settlement with Travelers is confidential and its amount is unknown. According to a letter from Travelers, the parties to the settlement "agreed" that the two CGL policies issued by Travelers for the 1979-80 and 1980-81 periods were "deemed to be exhausted." Liq. Ex. 5; see also Liq. Ex. 7. The August 1999 settlement with Fireman's Fund "bought back" Fireman's Fund's policies. It will be filed as Liquidator's Exhibit 6 upon a ruling on the Liquidator's motion to file exhibit under seal. The Holsons advised Home of the fact of the Fireman's Fund settlement and asserted that it exhausted the primary policies by letters dated September 27, 1999 and October 5, 1999. Liq. Ex. 8. See Liq. Ex. 7.

The settlements between the Holsons and the primary insurers did not involve KVL or resolve the KVL Action. None of the settlement amounts were paid to KVL or used to satisfy or

extinguish KVL's liability claims. Liq. Ex. 3 at 3. The payments were used "solely" to defray a portion of the defense costs in the KVL Action. Id. See Holsons Br. at 13.

On August 3, 2000, the court in the KVL Action issued a decision against the Holsons on certain claims, including a finding that the Holsons "made fraudulent misrepresentations as alleged by KVL." Liq. Ex. 9 at CF 168. On April 25, 2001, the court entered a partial judgment holding them liable for an amount in excess of $2,000,000. Liq. Ex. 2 at 3.

In September 2002, the Holsons reached a settlement with KVL that resolved the KVL Action for a payment by the Holsons of $612,500. See Liq. Ex. 2 at 3, Liq. Ex. 10.

The Holsons' proof of claim appears to seek $612,500 for the KVL settlement, $25,000 in future monitoring/remediation expenses and $1,109,260.72 in defense expenses less the proceeds from the Fireman's Fund and Travelers settlements. Liq. Ex. 10; see Liq. Ex. 2 at 4. Holsons also seek "compensatory" damages, but such damages would not be a Class II claim under RSA 402-C:44.

The Liquidator issued a notice of determination denying the claim on July 28, 2008. Liq. Ex. 11. The Holsons filed their objection on September 25, 2008.

2. The Home Insurance Policies

Provisions of the Home excess policies make clear that the Liquidator was correct in determining that there is no coverage for the Holsons' claim.

a. The schedule of underlying insurance. The Home policies provide coverage above scheduled underlying policies as set forth in the declarations. The 1973-1976 Home policy schedule provides it is excess of a Federal Insurance Company CGL policy with a $50,000 property damage limit (Liq. Ex. 1 at CF44); the 1976-1980 Home policies' schedules provide they are excess of Fireman's Fund CGL policies with $100,000 limits (id. at CF49, 57,

66, 76, 87); and the 1980-1981 Home policy schedule provides it is excess of a Travelers CGL policy with a $100,000 limit (id. at CF95). See also Holsons Br., Ex. B (indicating slightly different underlying policies actually issued). The schedules of underlying policies show that the Home policies are "true" excess policies, intended to be excess by their very terms, and not primary policies coincidentally made excess by the application of "other insurance" provisions.[1]

b. Underlying limits and loss payable. The form Manuscript Excess Liability Policy applicable to all the Home policies contains a "Limit of Liability" provision that specifies that Home "shall only be liable for the ultimate net loss the excess of either (a) the limits of the underlying insurances as set out in the attached schedule in respect of each occurrence covered by said underlying insurances; or (b) [$10,000[2]] ultimate net loss in respect of each occurrence not covered by underlying insurances, (hereinafter called the 'underlying limits')." Liq. Ex. 1 at CF41. Liability under the policies does not attach until these underlying limits have been paid. The "Loss Payable" clause of Condition J provides:

> 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. The Insured shall make a definite claim for any loss for which the Company may be liable under the policy within twelve (12) months after the Insured shall have paid an amount of ultimate net loss in excess of the amount borne by the Insured or after the Insured's liability shall have been fixed and rendered certain either by final judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and The Company. If any subsequent payments shall be made by the Insured on account of the same occurrence, additional claims shall be made similarly from time to time. Such losses shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this policy. [Liq. Ex. 1 at CF43 (emphasis added)]

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[1] Excess coverage "is generally available at a lesser cost than the primary policy since the risk of loss is less than for the primary insurer and there may be lesser duties such as with respect to the duty to defend." 1 E. Holmes, Appleman on Insurance 2d § 2.16 at 323 (1996). See 23 E. Holmes, Appleman on Insurance 2d § 145.4[B] at 32 (interim ed. 2003) ("Overall, it is the primary insurer's duty to assume all defense costs. A true excess insurer is specifically intended to come into play only when the limits of underlying primary coverage are exhausted.") (footnotes omitted).

[2] The $10,000 amount was set in endorsements to the policies. Liq. Ex. 1 at CF45, 53, 58, 67, 77, 88, 96.

c. Pollution exclusion. The Home policies contain by endorsement a pollution exclusion that excludes coverage for pollution claims unless they arise from a "sudden and accidental" release. The endorsement also provides that pollution coverage under the policies is no broader than that provided by the scheduled underlying policies. The endorsement states:

> It is agreed that the insurance does not apply 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 watercourse or body of water; but this exclusion does not apply, if such discharge, dispersal, release or escape is sudden and accidental.
>
> It is further understood and agreed that in no event shall coverage provided by this policy for Contamination or Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances. [Liq. Ex. 1 at CF46, 55, 62, 70, 80, 91 (emphasis added)][3]

d. Ultimate net loss and defense. The Home policies define "Ultimate Net Loss" as amounts that the insured or its insurer become liable to pay as well as defense costs, which are thus included within the policy limits. Specifically, the policies define "Ultimate Net Loss" as:

> [T]he total sum which the Insured, or any company as his insurer, or both, become obligated to pay by reason of personal injury, property damage or advertising liability claims, either through adjudication or compromise, and shall also include hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and law costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses, and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the Insured's or of any underlying insurer's permanent employees. [Liq. Ex. 1 at CF41 (emphasis added)]

The definition of "Ultimate Net Loss" also specifically excludes defense expenses that are included in other insurance, such as the underlying primary insurance. The definition continues:

[3] The available policy documentation in the possession of the Liquidator for the Home policy No. HEC9909110 for the 1980-1981 policy period does not include this endorsement. However, as stated on its declarations page (Liq. Ex. 1 at CF94), that policy was expressly a renewal of the 1979-80 Home policy No. HEC9831605 which, like all the other preceding Home excess policies, included the contamination and pollution endorsement (id. at CF91). Indeed, the Home underwriter's letter dated August 5, 1980 responding to the broker's renewal submission states that the renewal is subject to "[s]ame terms and conditions as expiring." Liq. Ex. 12. Accordingly, the 1980-81 policy, like the policy it renewed, included the standard pollution exclusion endorsement.

> The Company shall not be liable for expenses as aforesaid when such expenses are included in other valid and collectible insurance. [Liq. Ex. 1 at CF42]

Moreover, the Home policies also expressly provide that Home will not have a duty to defend. Condition H of the policies provides:

> 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 but The Company shall have the right and shall be given the opportunity to associate with the Insured or the Insured's underlying insurers, or both, in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonably likely to involve The Company, in which event the Insured and The Company shall co-operate in all things in the defense of such claim, suit or proceeding. [Liq. Ex. 1 at CF 43 (emphasis added)]

e. Maintenance of underlying insurance. The Home policies require that the Insured maintain the underlying policies in full effect except for payments of claims. If not, Home is only liable to the extent it would have been if the requirement were met. Condition Q provides:

> 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 currency of this policy except for any reduction of the aggregate limit or limits contained therein solely by payment of claims in respect of accidents and/or occurrences occurring during the period of this policy. Failure of the Insured to comply with the foregoing shall not invalidate this policy but in the event of such failure, the Company shall only be liable to the same extent as they would have been had the Insured complied with the said condition. [Liq. Ex. 1 at CF43]

ARGUMENT

The parties agree that Connecticut law governs the insurance coverage issues.[4] The principles for interpreting insurance contracts are well settled in Connecticut.

> It is the function of the court to construe the provisions of the contract of insurance. The interpretation of an insurance policy involves a determination of the intent of the parties as expressed by the language of the policy including what coverage the insured expected to receive and what the insurer was to provide, as disclosed by the provisions of the policy. A contract of insurance must be viewed in its entirety, and the intent of the

[4] This dispute concerns coverage for contamination by Holson's operations at a site in Connecticut under policies issued to Holson, which was located and operating at the site during the policy years. See Liq. Ex. 1 at CF40, 48, 56, 65, 75, 84, 94. In the circumstances, New Hampshire choice of law principles provide for application of Connecticut law. See Ellis v. Royal Ins. Co., 129 N.H. 326, 330 (1987).

parties for entering it derived from the four corners of the policy giving the words of the policy their natural and ordinary meaning and construing any ambiguity in the terms in favor of the insured.

Hartford Cas. Ins. Co. v. Litchfield Mut. Ins. Co., 876 A.2d 1139, 1143-44 (Conn. 2005), quoting QSP, Inc. v. Aetna Cas. & Sur. Co., 773 A.2d 906, 913-14 (Conn. 2001) (ellipses and brackets omitted). In determining whether there is an ambiguity, a court "will not torture words to import ambiguity," and "any ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms"; a provision is ambiguous "when it is reasonably susceptible to more than one reading." Connecticut Med. Ins. Co. v. Kukikowski, 942 A.2d 334, 338 (Conn. 2008) (citations and quotations omitted).

I. HOME HAD NO DUTY TO DEFEND BECAUSE THE HOLSONS FAILED TO SATISFY THEIR BURDEN OF SHOWING THAT THE KVL COMPLAINT ALLEGED A "SUDDEN AND ACCIDENTAL" RELEASE UNDER THE CONTROLLING SCHILBERG DECISION.

It is well established that "if the complaint alleges a liability which the policy does not cover, the insurer is not required to defend." Security Ins. Co. of Hartford v. Lumbermens Mut. Cas. Co., 826 A.2d 107, 122 (Conn. 2003), quoting QSP, Inc., 773 A.2d at 915. Home had no duty to defend here because the pollution exclusion applies, and the Holsons fail to show that the KVL complaint alleged a "sudden and accidental" release within the exception to the exclusion. The Holsons cite numerous cases regarding duty to defend issues, but they fail to mention the controlling Connecticut Supreme Court decision regarding that duty and the pollution exclusion, Schilberg Integrated Metals Corp. v. Continental Cas. Co., 819 A.2d 773, 788 (Conn. 2003), which held that the insured must show that the complaint brings the claim within the exception.

The pollution exclusion provides that:

> It is agreed that the insurance does not apply 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 watercourse or body of water; but this exclusion does not apply, if such discharge, dispersal, release or escape is sudden and accidental. [Liq. Ex. 1 at CF46 (emphasis added)]

Under the plain language of this exclusion, claims regarding pollution are excluded from coverage unless the release of the contaminants was "sudden and accidental." The Connecticut Supreme Court has held that "the term 'sudden,' as used in [the "sudden and accidental" exception], requires that the release in question occur in a rapid or otherwise abrupt manner. The release of pollutants over an extended period of time cannot qualify as 'sudden' for purposes of the exception to the pollution exclusion." Buell Indus., Inc. v. Greater New York Mut. Ins. Co., 791 A.2d 489, 503 (Conn. 2001) (construing a sudden and accidental exception in a pollution exclusion identical to the Home pollution exclusions, see id. at 495 n.8). The insured bears the burden of showing that a release is "sudden and accidental" to obtain indemnity coverage under this exception to the pollution exclusion. Id. at 504.

The allegations of the complaint in the KVL Action set forth claims based upon the contamination of the Wilton site, and such claims plainly "arise out of the discharge, dispersal, release or escape of . . . toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land" within the pollution exclusion. See Holsons Br., Ex. A. The claims are thus excluded from coverage by the pollution exclusion unless they fall within the "sudden and accidental" exception. This means they must arise from a rapid or otherwise abrupt discharge as required by Buell.

Implicitly conceding that the KVL complaint does not allege such a discharge, the Holsons seek to bring the case within the sudden and accidental exception by contending that the allegations "do not foreclose" an accident with a sudden release and "do not eliminate the possibility that the exclusion may not apply." Holsons Br. at 17. However, the Connecticut

Supreme Court specifically rejected these arguments in Schilberg, 819 A.2d 773.[5] Under that case, the burden is on the insured to "demonstrate a reasonable interpretation of the complaint that brings the claim within the sudden and accidental discharge exception." Id. at 788 (emphasis added). Without such allegations there is no duty to defend.

In Schilberg, the Connecticut Supreme Court addressed whether insurance policies with a pollution exclusion identical to those here were obligated to defend against an environmental cleanup claim. See 819 A.2d at 778 & n.2. The court applied the logic of its decision in Buell, 791 A.2d 489, which had held in the indemnity context that "when a policy contains an exception [the "sudden and accidental" exception] within an exception [the pollution exclusion], the insurer need not negative the internal exception; rather the insured must show that the exception from the exemption from liability applies." Schilberg, 819 A.2d at 782. The court concluded this principle also applies to the determination of a duty to defend, so that "the burden of proving the applicability of the sudden and accidental discharge exception in the present [duty to defend] case properly rested with the plaintiff [policyholder]." Id at 783.

The court rejected the arguments now advanced by the Holsons. It noted that the policyholder argued that "under Connecticut law, the insurer bears the burden of establishing that the underlying allegations eliminate every reasonable possibility that the discharge of pollutants was 'sudden and accidental.' We disagree." Schilberg, 819 A.2d at 781 (emphasis added, punctuation and ellipses omitted). The court later stated that "the plaintiff cannot prevail on its claim merely by relying on the fact that the allegations in the underlying complaint do not

[5] All of the cases cited by the Holsons in their duty to defend argument pre-date the 2003 Schilberg decision. Holsons Br. at 14-19. Indeed, the Holsons cite two of the cases that the plaintiff in Schilberg cited as support for the position rejected by the court. Schilberg, 819 A.2d at 781 n.5, citing EDO Corp. v. Newark Ins. Co., 898 F. Supp. 952 (D. Conn. 1995), and Cole v. East Hartford Estates Ltd. Partnership, Superior Court, Judicial District of Hartford-New Britain at Hartford, Docket No. CV95-0547179S (May 15, 1996). See Holsons Br. at 15-16.

eliminate all reasonable possibility of a sudden and accidental discharge of pollutants." Id. at 788. The court held that:

> The relevant inquiry, therefore, is not whether the substance of the department's allegations rules out the possibility of a sudden and accidental discharge, as the plaintiff suggests, but, rather, whether the plaintiff has demonstrated that a reasonable interpretation of the substance of the department's allegations potentially would bring the claims within the purview of the sudden and accidental discharge exception to the policies. An insured does not satisfy its burden of proving the applicability of the sudden and accidental discharge exception, however, by the assertion of conclusory statements, or reliance on mere speculation or conjecture as to the true nature of the facts. . . . [A] court should not attempt to impose the duty to defend on an insurer through a strained, implausible reading of the complaint that is linguistically conceivable but tortured and unreasonable.

Id. at 784-85 (citations and quotations omitted) (emphasis added). The court then examined the allegations of the complaint before it and concluded there was no duty to defend because the complaint did not show that the event that caused the pollution was sudden and accidental. Schilberg, 819 A.2d at 785-88. It agreed with the Second Circuit's decision in Stamford Wallpaper Co. v. TIG Ins., 138 F.3d 75, 80 (2d Cir. 1998), that "in order for the sudden and accidental [discharge] exception to apply, the allegations within the four corners of the complaint must raise the possibility that the event which caused the pollution-related property damage was sudden and accidental." 819 A.2d at 787.[6]

The KVL complaint plainly sought to recover damages on account of the release of contaminants at the Wilton site, so the pollution exclusion applies. As with the complaints at issue in Schilberg and Stamford, the KVL complaint contains no allegations that reasonably raise the possibility that the event or events that caused the contamination at the Wilton site were in fact sudden and accidental. See Holsons Br., Ex. A. The complaint merely alleges that Holson manufactured photograph albums at the site from 1968 until 1988 (¶12); that contamination at

[6] In Stamford, the Second Circuit – applying Connecticut law – rejected the reasoning of New York v. Blank, 27 F.3d 783 (2d Cir. 1994) (applying New York law), on which the Holsons rely here. See Stamford, 138 F.3d at 81; Holsons Br. at 17-18.

the site is concentrated in areas surrounding several large underground concrete "vaults" connected to the building on the site through a network of underground piping, and that the vaults are constructed with pervious sidewalls designed to allow their contents to "leach" out into the surrounding soil (¶ 20); that a consultant concluded that "disposal practices" at the facility introduced solvent contaminated materials into the sump and vaults, which in turn resulted in contamination of soils and groundwater (¶ 22); that there has been a "release" of hazardous substances at the site (¶ 30); that there was "improper disposal" of the substances found around the vaults (¶ 44); that there were violations of environmental laws and/or standards at the site (¶ 51); and that there was "disposal or leakage" (sometimes alleged to be "improper") of hazardous substances at the site (¶¶ 57, 61, 62). (The amended complaint is to the same effect.)

These allegations do not suggest that the releases of contaminants were "sudden and accidental." Thus, the Holsons' have not satisfied their burden of demonstrating "a reasonable interpretation of the complaint that brings the claim within the sudden and accidental discharge exception." Schilberg, 819 A.2d at 788. The Holsons contentions are just the type of speculation that the Schilberg and Stamford courts found insufficient to require a defense in the face of a pollution exclusion. Accordingly, Home had no obligation to defend the KVL action.

II. EVEN IF A "SUDDEN AND ACCIDENTAL" RELEASE HAD BEEN ALLEGED, HOME HAD NO DUTY TO DEFEND BECAUSE THE HOME EXCESS POLICIES DO NOT PROVIDE A DUTY TO DEFEND BUT ONLY TO PAY DEFENSE EXPENSES AFTER THE PRIMARY INSURANCE IS EXHAUSTED, WHICH IT IS NOT.

Even if the KVL complaint did set forth a claim based on a "sudden and accidental" release, the Home policies do not provide for a duty to defend but only for payment of defense costs once the underlying policies have been exhausted. Neither the primary insurers' denial of coverage nor the settlements between the Holsons and the primary insurers satisfies the exhaustion requirement.

A. The Home Policies Do Not Provide A Duty To Defend Pollution Claims.

The Holsons repeatedly assert that Home had an obligation to defend, but in the absence of a policy provision on the point, there is no basis for a duty to defend. See Hartford, 876 A.2d at 1143-44 (interpretation of policy "involves a determination of the intent of the parties as expressed in the language of the policy" and as "derived from the four corners of the policy"). To find a duty to defend, the Holsons point only to Endorsement 2 to the Home policies. Holson Br. at 5-6. That endorsement to Home policies for periods after August 12, 1977 amended the "Limits of Liability" provision and added a duty to defend for certain claims not covered by the underlying policies. However, it is not relevant here in light of the pollution exclusion's limitation of pollution coverage to matters covered by the scheduled underlying policies.

The "Limit of Liability" provisions in the Home policies originally read, in pertinent part:

> The Company shall be only liable for the ultimate net loss the excess of either (a) the limits of the underlying insurances as set out in the attached schedule in respect of each occurrence covered by said underlying insurances; or (b) $25,000 ultimate net loss in respect of each occurrence not covered by underlying insurances, . . . [Liq. Ex. 1 at CF41]

The endorsement cited by the Holsons amended section (b) to read: "$10,000 ultimate net loss in respect to each occurrence not covered by underlying insurance." Id. at CF58. It also added a new "Defense Settlement" provision:

> With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any other underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy . . . the Company shall:
>
> (a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof . . .
>
> Coverage afforded under this Insuring Agreement shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurances. [Id. (emphasis added)]

The Home policies thus generally provided (a) excess coverage (but not a duty to defend) for occurrences "covered" by the scheduled underlying policies, and (b) coverage (including a duty to defend) for occurrences "not covered" by the scheduled underlying policies or any other underlying insurance but covered under the terms and conditions of the Home policy.

The duty to defend language found in the "Defense Settlement" provision has no application here because the pollution exclusion limits coverage of pollution claims like the KVL Action to instances covered by the scheduled underlying policies. The pollution exclusion specifically provides that "in no event shall coverage provided by this policy for Contamination or Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances." Liq. Ex. 1 at CF55 (emphasis added). The plain meaning of this language is that the Home policies can only provide coverage for pollution claims if the primary policy does; they provide no independent coverage for such claims. The "Defense Settlement" provision for claims "not covered" by underlying insurance but covered by the Home policies thus does not apply to pollution claims, and there is no duty to defend such claims.[7]

The Holsons suggest that the Home policies provide a duty to defend because the claims in the KVL Action exceeded the limits of the primary policies. Holsons Br. at 6-7. This is not evident from the KVL complaint itself, which does not state an amount. In any event, there is no applicable provision in the Home policies that would provide a duty to defend. Since the "Defense Settlement" provision of Endorsement 2 does not apply to pollution claims, the Home policies are true excess policies that only sit above scheduled underlying policies.[8]

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[7] Since there could be no pollution claims covered by the Home policies that were not covered by the underlying policies, this case is distinguishable from American States Ins. Co. v. Allstate Ins. Co., 891 A.2d 75, 84-85 (Conn. App. 2006), where the umbrella insurer provided a defense after the primary insurer refused. The umbrella policy there provided coverage for the claims, which were "not covered" by the insured's other policies.

[8] This distinguishes American Motorists Ins. Co. v. The Trane Co., 544 F. Supp. 669, 692 (W.D. Wis. 1982), relied on by the Holsons. The court there found an excess duty to defend because the claim was not covered by an underlying policy but was covered under the excess policy. As described above, the Home policies here provide no

B. Any Home Obligation Regarding Defense Has Not Attached Because The Primary Policies Have Not Been Exhausted By Payment.

The Home excess policies are not obligated to provide a defense, only to pay defense costs, and then only once the underlying limits have been exhausted by payment. The exhaustion requirement has not been satisfied.

The Home policies define "Ultimate Net Loss" to include defense costs, and that definition specifically excludes expenses included in other insurance (such as those incurred by a primary insurer in defending the insured). Under the policies, Home is only liable for ultimate net loss "in excess of" the limits of the underlying insurance, see the "Limit of Liability" provision (Liq. Ex. 1 at CF41), and liability under the policies "shall not attach unless and until the Insured, or the Insured's underlying insurer, shall have paid the amount of the underlying limits" under the "Loss Payable" provision of Condition J (id. at CF43) (emphasis added).

If there were any doubt that the policies only provide for defense costs after the underlying limits are exhausted by payment, they further provide that Home "shall not be called upon to assume charge of the settlement or defense of any claim." Condition H (Liq. Ex. 1 at CF43). Home thus has no duty to defend, only a right to associate with a defense if it chooses. Accordingly, Home at most could have an obligation to pay defense expenses Ultimate Net Loss once the underlying limits have been paid. See 1 B. Ostrager & T. Newman, Insurance Coverage Disputes § 6.03[e] at 412 (14th ed. 2008) ("A majority of courts have held that an excess insurer with the right to associate does not have any duty to defend the insured until primary coverage is exhausted."). The Connecticut Superior Court has relied on Condition H in denying an insured's request for a defense. Reichhold Chem., Inc. v. Hartford Acc. & Indem. Co., 1999 Conn. Super.

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broader coverage for pollution claims than the underlying policies, so there can be no pollution claim covered by the Home policies that is not covered by the underlying policies.

LEXIS 2066 at *29 (Conn. Super. Feb. 11, 1999), reversed on choice of law grounds and remanded for consideration under New York law, 750 A.2d 1051 (Conn. 2000).

Finally, even if the right to associate were somehow considered a duty to defend, it is well-established that excess policies do not have an immediate duty to defend, which is instead an obligation of the primary insurer that continues until the primary limits are exhausted. See 14 L. Russ & T. Segalla, Couch on Insurance 3d § 200:38 at 200-53 (2007) ("As a general rule, a true-excess insurer is not obligated to defend its insured until all primary insurance is exhausted or the primary insurer has tendered its policy limits."). As stated in Appleman:

> Excess insurance, however, is secondary coverage that does not attach until a predetermined amount of primary insurance is exhausted. Hence, the primary insurer's duty to defend the insured continues until the lawsuit is concluded, until its policy limits are exhausted, or until there is no potential for coverage under its policy.

23 Appleman on Insurance 2d § 145.2[A] at 6-7. See 1 Ostrager & Newman, Insurance Coverage Disputes § 6.03[b] at 402 ("The traditional view is that an excess insurer is not required to contribute to the defense of the insured so long as the primary insurer is required to defend.").[9]

1. The primary insurers' denial of a defense did not trigger any Home obligation to pay defense expenses.

The Holsons attempt to get around the exhaustion requirement by asserting that the primary insurers "wrongfully" denied coverage and that this required Home to defend.

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[9] As this suggests, the cases cited by the Holsons for a concurrent excess duty to defend are a minority view. The cases are also distinguishable because they do not involve true excess insurance but concurrent primary policies one of which is excess to the other due to application of "other insurance" clauses. Guaranty Nat'l Ins. Co. v. American Motorists Ins. Co., 758 F. Supp. 1394, 1397 (D. Mont. 1991), addressed two motor vehicle policies that both provided for a duty to defend, one of which was excess of the other under its "other insurance" provision. Id. at 1395. The court asserted that duty to defend obligations "do not arise out of contract, but are based upon equitable principles," id. at 1397, but in Connecticut, the obligations of the insurer must be based on contract language. Siligato v. Welch, 607 F. Supp. 743, 746 (D. Conn. 1985), also involved two motor vehicle policies that both provided a duty to defend. The court held that the "secondary" or "excess" insurer was obligated to defend on default of the primary insurer, subject to its right to be indemnified by the primary insurer. Id. Again, the Home policies are "true" excess policies over scheduled underlying policies, and the policies only provide for payment defense costs after the underlying limits are paid.

However, "[a]s a general rule, a true excess insurer's duty to defend is not automatically triggered when the primary insurer denies coverage." 14 Couch on Insurance 3d § 200:43 at 200-58. This is particularly the case here, where there is no duty to defend, and the policies are clear that liability for ultimate net loss (including defense costs) only attaches when the underlying limits are paid. The underlying limits clearly had not been paid when notice of the KVL Action was given to Home in 1991 and again in 1995. Failure – if such it was – of a primary insurer to defend thus does not shift the obligation to an excess insurer. "Rather, the true excess [insurer's] defense obligations are contingent upon the excess policy's terms and conditions." Id. at 200-58 to 200-59. The Home policies' terms do not provide for even payment of defense expenses until the primary coverage is exhausted. See National Union Fire Ins. Co. v. Travelers Ins. Co., 214 F.3d 1269, 1273-74 (11th Cir. 2000) (no justification for extra-contractual duty to defend where excess insurance contract does not require it).[10]

2. The settlements between Holsons and the primary insurers did not transfer a defense obligation to the excess insurer Home.

The Holsons finally contend that their settlements with the primary insurers served to extinguish the primary insurers' duty to defend and thus transfer that duty to the excess insurer

[10] The cases cited by Holsons are distinguishable. See National Union, 214 F.3d at 1273-74 n.8. In Hocker v. New Hampshire Ins. Co., 922 F.2d 1476, 1482 (10th Cir. 1991), the court held that an excess insurer must "drop down" for occurrences that are, in fact, covered by the underlying insurance despite the wrongful denial of coverage by the primary insurer. This holding, however, turned upon language in the insuring agreement that provided a duty to defend for occurrences "not covered, as warranted, by the underlying policies." Id. at 1481 (quoting insuring agreement). The court noted that the "as warranted" language modified "not covered" so that the insured agrees to drop down when the terms of the underlying policy "warrant" coverage, even if the primary insurer denies coverage; without the phrase "as warranted", the excess policy drops down only in the event the underlying policy in fact does not provide coverage. Id. at 1482 & n.5, citing Mission Nat'l Ins. Co. v. Duke Transp. Co., Inc., 792 F.2d 550, 553 (5th Cir. 1986). The Home policies do not have "as warranted" language, and since the Home policies provide no broader coverage for pollution claims than the primary, there is no situation where they could drop down for lack of underlying coverage. In American Family Assur. Co. v. United States Fire Co., 885 F.2d 826, 832 (11th Cir. 1989), the court held that absent a contractual obligation an excess insurer is not obligated to provide a defense, but it found such an obligation in a provision that provided that if underlying insurance is exhausted, the insurer "shall be obligated to assume charge of the settlement or defense." It implicitly held, without explanation, that the underlying insurer's refusal to defend exhausted the primary insurance. Id. The Liquidator submits this does not follow, but in any event the Home policies have no such language and they only provide for payment of defense costs after the underlying limits have been paid.

Home. It is undisputed that the primary insurers paid Holsons, not KVL, and that the settlements did not end the KVL Action, which continued. The primary carriers and the insured cannot by such an agreement transfer the primary insurers' duty to defend to the excess insurer. While those parties may have agreed to truncate the primary insurers' obligations prior to conclusion of the lawsuit, that does not obligate Home to step in before liability attaches under its policy terms.

First, Home can only become liable once the primary limits are exhausted, which requires payments to resolve the insured's liability to the claimant, not voluntary agreements between the insured and primary insurer to resolve disputed coverage and defense obligations. Under Home's policies, Home is only liable for Ultimate Net Loss "the excess of" the limits of the underlying insurers, see "Limits of Liability" (Liq. Ex. 1 at CF 41), and liability does 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." "Loss Payable" Condition J (id. at CF 43) (emphasis added). This language plainly requires payment of the underlying limits on account of loss, not a compromise of the duty to defend – which is in addition to the underlying limits.

The settlements here did not exhaust the primary limits by payment of loss. Indeed, the Holsons have advised that the settlement payments were not used to pay KVL at all. Instead, they were used solely to "defray" part of the defense costs in the KVL Action. Liq. Ex. 3 at 3. The payments thus were not of the primary limits, but served to avoid defense obligations which do not count against those limits. See 23 Appleman on Insurance 2d § 145.2[A] at 6-7 ("[T]he primary insurer's duty to defend the insured continues until the lawsuit is concluded, until its policy limits are exhausted, or until there is otherwise no potential for coverage under its policy. In order to exhaust its policy limits, a primary insurer must actually pay a settlement in exchange for its insured's release, or in full or partial satisfaction of a judgment against its insured.").

The Holsons contend that payment of the underlying limits is not required. However, the Home policies require that the underlying limits actually be paid before any liability attaches to Home, and the Connecticut courts have enforced exhaustion by payment requirements. See Continental Ins. Co. v. Cebe-Habersky, 571 A.2d 104 (Conn. 1990) (claimant's settlement for $3,000 less than policy limits was not payment of primary limits to trigger secondary policy even though claimant would credit secondary insurer with full policy limits). The Holsons' reliance on Zeig v. Massachusetts Bonding & Ins. Co., 23 F.2d 665 (2d Cir. 1928), and other cases from other jurisdictions interpreting payment requirements to permit an excess insurer's liability to be triggered by a primary settlement for less than policy limits, is accordingly misplaced.[11] The Connecticut courts apply clear policy language in accordance with its terms. In light of Cebe-Habersky, it is clear that Connecticut would follow the courts that have rejected Zeig and held that an insured may not settle with its primary insurer for less than policy limits and then turn to the excess insurer for unreimbursed defense and indemnity costs in excess of the limit.

The California Court of Appeal held that such a below-limits primary settlement did not trigger an excess insurer's liability in Qualcomm, Inc. v. Certain Underwriters at Lloyd's, London, 73 Cal. Rptr. 3d 770 (Cal. App. 2008). It declined to follow Zeig for several reasons:

> First, the court appeared to place policy considerations . . . above the plain meaning of the terms of the excess policy . . . . Second, we disagree with its strained interpretation of the word 'payment.' . . . Third, the Zeig court acknowledged that parties in these circumstances may include excess policy language explicitly requiring actual payment as

[11] It is noteworthy that Zeig did not involve any defense issues. It only held that an excess insurer's indemnity obligation was triggered under a clause requiring that primary insurance be "exhausted in the payment of claims to the full amount of the expressed limits" when the loss exceeded the primary limit and the excess insurer was only called upon to pay the portion in excess of the primary limit. 23 F.2d at 666. The court held that there was no "rational advantage" to the insurer in requiring actual collection of the primary insurance, although it recognized that that result would apply "when the terms of the contract demand it." Id. This case involves a question of the duty to defend, and there is thus good reason for the excess insurer to require actual payment of the underlying limits in satisfaction of claims. It is only when those limits are paid to resolve claims that the primary duty to defend ceases. Further, the Home policies terms expressly specify that liability only attaches when the underlying limits have been actually paid and that Home is not liable for defense costs that are within other insurance.

> a condition precedent to coverage and that a court may reach a contrary result "when the terms of the contract demand it."

Id. at 780 (citations omitted); see id. at 782. Similarly, in Comerica Inc. v. Zurich Am. Ins. Co., 498 F. Supp. 2d 1019 (E.D. Mich. 2007), the court declined to follow Zeig. Id. at 1029-32. The insured had settled lawsuits for $21 million, but the primary insurer with $20 million limits disputed coverage and settled with Comerica for $14 million including an agreement that the primary policy would be deemed fully exhausted. Id. at 1020, 1025-26. The court denied Comerica's claim against the excess insurer stating: "Payments by the insured to fill the gap, settlements that extinguish liability up to the primary insurer's limits, and agreements to give the excess insurer 'credit' against a judgment or settlement up to the primary insurer's liability limit are not the same as actual payment." Id. at 1032. The Wisconsin Supreme Court has similarly held that "[a] 'settlement plus credit' does not constitute 'payment' of liability limits as that term is commonly and ordinarily understood." Danbeck v. American Family Mut. Ins. Co., 629 N.W.2d 150, 155 (Wis. 2001).[12] These cases demonstrate that proper respect for policy language requires that the primary insurers must pay their policy limits before Home's policies could attach, and that a settlement that merely provides payment of part of the outstanding defense costs does not suffice. The primary policies have not been exhausted, and Home accordingly has no obligations regarding the KVL Action.

Second, Connecticut law is also clear that an insured cannot by agreement with its primary insurers reduce their obligations and transfer them to the excess insurer. An insured's

[12] See also Federal Ins. Co. v. Srivastava, 2 F.3d 98, 101-02 (5th Cir. 1993) (settlement between insured and carriers to resolve the first $22 million of a $31.6 million judgment for a payment of $8.5 million did not trigger excess policy for layer starting at $22 million: the primary insurers were shifting part of their contracted-for risk to the excess carrier); United States Fire Ins. Co. v. Lay, 577 F.2d 421, 423 (7th Cir. 1978) (excess insurer is not liable where claimant settled with the insured and primary carrier for less than the amount of the primary coverage: "[w]e can conceive of good reasons for an excess carrier to be unwilling to accept liability unless the amount of the primary policy has actually been paid. A settlement for less than the primary limit that imposed liability on the excess carrier would remove the incentive of the primary insurer to defend in good faith or to discharge its duty to represent the interests of the excess carrier.") (citation omitted).

agreement to accept less than full performance by its primary insurers at least makes the insured responsible for the obligations that otherwise would rest on those insurers. See Security, 826 A.2d at 127. In Security, the insured ACMAT had entered into a "buy-back" agreement with Lumbermens, under which Lumbermens paid $300,000 for a release of its obligations under certain liability polices for a two year period (the "buy-back period"). Id. at 112-13. Another insurer, Security, then sought to allocate defense costs to the insured for the buy-back period. The court agreed. "The buy-back period presents not a period of time for which ACMAT failed to obtain insurance, but rather a period for which it contractually assumed the liability of its insurer in exchange for $300,000." Id. at 127.[13] So here, by entering a buy-back agreement with Fireman's Fund, and likely also with Travelers, the Holsons assumed the liability otherwise assigned to those insurers.[14] The Holsons cannot now turn to Home for defense costs that rightfully should have been paid by Travelers and Fireman's Fund.[15]

The Home policies' definition of "Ultimate Net Loss" expressly provides that Home "shall not be liable" for defense expenses "when such expenses are included in other valid and collectible insurance." Liq. Ex. 1 at CF41-42. The Holsons' choice to release the primary

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[13] The cases cited by the Holsons holding that settlement with the primary insurer can functionally exhaust primary coverage have generally only involved on the duty to indemnify, and they have clearly recognized that the policyholder becomes obligated for the difference in coverage. See Koppers Co., Inc. v. The Aetna Cas. & Sur. Co., 98 F.3d 1440, 1454 (3d Cir. 1996) ("[B]y settling the policyholder loses any right to coverage of the difference between the settlement amount and the primary policy's limits. The excess insurer cannot be made liable for any part of this difference because the excess insurer never agreed to pay for losses below a specified floor."); Archer Daniels Midland Co. v. Aon Risk Servs., Inc., 356 F.3d 850, 859 (8th Cir. 2004). A case that appears to differ rests in part on policy language requiring that the excess insurer provide "underlying insurance," and in any event does not address the language in the Home policies providing that liability only attaches upon payment of the underlying limits. E.R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co., 853 F. Supp. 98, 101-02 & n.4 (S.D.N.Y. 1994). Insurance Co. of Penn. v. Associated Int'l Ins. Co., 922 F.2d 516 (9th Cir. 1990), involved reinsurance issues.

[14] The Holsons have not provided the Travelers agreement on the ground that it is confidential and Travelers has not agreed to its release. If they dispute this characterization, then it should be produced subject to confidentiality order.

[15] The only cases cited by Holsons that involved a duty to defend are distinguishable. The court in Drake v. Ryan, 514 N.W.2d 785, 789 (Minn. 1994), itself distinguished the case before it, involving two motor vehicle policies, from a true excess/primary situation, and the case involved a settlement with the claimant. Pacific Employers Ins. Co. v. Servco Pac., Inc., 273 F. Supp. 2d 1149, 1152 n.4, 1154-55 (D. Haw. 2003), involved an excess policy with an express duty to defend upon exhaustion of underlying insurance, and the court noted that the insured conceded it could only collect defense costs "from the date of settlement" with the primary insurer, not past defense costs.

insurers from their duties to defend does not render the insurance invalid or uncollectible within the meaning of this provision. An insured's voluntary decision to settle with an insurer and forego disputed insurance coverage cannot make another insurer liable for it.

This is confirmed by the requirement of the Home policies' "Maintenance of Underlying Insurance" provision that the underlying insurances "shall be maintained in full effect" except for reductions in limits "solely by payment of claims." Condition Q (Liq. Ex. 1 at CF43). Here, the Fireman's Fund policy has not been maintained – it has been "bought back." See Liq. Ex. 6. The same is likely the case for the Travelers' policy. The primary limits have not been reduced by payment of claims. The policies at issue are liability policies, not first party policies, and the phrase "payment of claims" necessarily refers to payments to claimants, not payments to insureds for disputed coverage and defense obligations. The agreements thus violated the Holsons' obligation to maintain the underlying policies in full effect, in which case the primary policies would have paid the costs of defending the KVL Action.

By settling with the primary insurers without a payment to KVL to resolve the lawsuit, Holsons prematurely released the insurers from their duty to defend. Under Condition Q, Home can only be liable to the same extent as if the primary policies had remained in effect and paid the defense expenses until the KVL case was resolved. Liq. Ex. 1 at CF43 (if the insured does not maintain the underlying insurance, "the Company shall only be liable to the same extent as they would have been had the Insured complied with the said condition"). Since no payments of claims were even arguably made until the Holsons settled with KVL in September 2002, the primary insurers were obligated to defend the KVL Action at least until that time, which was after the KVL Action had been tried and the court's opinion issued. Accordingly, Home is not liable for any defense costs, all of which properly should have been paid by the primary insurers.

III. HOME IS NOT LIABLE TO INDEMNIFY THE HOLSONS.

The Holsons contend that Home is obligated to indemnify them for whatever part of the $612,000 settlement is in excess of primary limits. This is not the case for several independent reasons. First, the pollution exclusion precludes coverage of any claims based on pollution not arising from a "sudden and accidental" release. Under Buell, it is the insured's burden to show that the claims fall within this exception to the pollution exclusion. 791 A.2d at 503-504. The Holsons have not met this burden, see Part I above, so there is no Home obligation to indemnify. Second, the KVL court found that the Holsons had made fraudulent misrepresentations to KVL involving known untruths for the purpose of inducing KVL to purchase the site, Liq. Ex. 9 at CF168-74, reflecting "such a high degree of recklessness as to be tantamount to bad faith" and warrant an award of punitive damages. Id. at CF181. Such conduct is not an occurrence within the Home policies, which provide coverage only for harm that results "unexpectedly and unintentionally." Liq. Ex. 1 at CF41 (definition of "Occurrence"). Deliberate acts that are inherently injurious or which inevitably result in injury are not occurrences under Connecticut law. Providence Washington Ins. Group v. Albarello, 784 F. Supp. 950, 953-55 (D. Conn. 1992) (discharge of employee and conversion of stock are not occurrences). Third, under Connecticut law, claims for progressive injuries are allocated pro rata to the insurers (and insureds, where self-insured) across the years during which the injury continued. Security, 826 A.2d at 119-22. The operations at the Wilton site took place from 1966 through 1988, so the $612,000 settlement should be spread across many years. The policies scheduled to underlie the Home policies from 1973 to 1981 had at least $650,000 in primary limits, so the excess layer has not been reached.

The Holsons contend that Home breached a duty to defend and therefore cannot assert defenses to coverage, citing Missionaries of the Company of Mary, Inc. v. Aetna Cas. & Sur.

Co., 230 A.2d 21, 25-26 (Conn. 1967). However, as noted in Part II, Home did not have a duty to defend. As to pollution claims, Home could only have a duty to pay defense expenses once the primary policies were exhausted by payment. The rationale of the Missionaries case does not extend to this situation. It only applies where the insurer could have chosen to defend subject to a reservation of rights to contest its obligation to indemnify. See 230 A.2d at 25-26.

CONCLUSION

The Referee should sustain the Liquidator's determination denying the Holsons' claim for lack of coverage under the Home policies.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER
OF INSURANCE OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,
By his attorneys,
KELLY A. AYOTTE
ATTORNEY GENERAL

J. Christopher Marshall
NH Bar ID No. 1619
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

J. David Leslie
NH Bar ID No. 16859
Eric A. Smith
NH Bar ID No. 16952
Rackemann, Sawyer & Brewster P.C.
160 Federal Street
Boston, MA 02110
(617) 542-2300

June 15, 2009

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Section 15 Submission, the Liquidator's Exhibits and the collection of non-New Hampshire authorities were sent via e-mail on June 15, 2009 to counsel for the Holsons.

Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

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

In Re Liquidator Number:	**2008-HICIL-39**
Proof of Claim Number:	**INSU700645-01; INSU275296** **INSU700638; INSU700640** **INSU700641; INSU700642** **INSU700655; INSU700657** **INSU700658; INSU700659** **INSU700660; INSU700662**
Claimant Name:	**Sheldon Holson and Melvin Holson**
Insured or Reinsured Name:	**Holson Company**

EXHIBITS TO LIQUIDATOR'S SECTION 15 SUBMISSION

1. The Home excess policies (available documentation)
2. Claimants' Mandatory Disclosures (without exhibits)
3. Claimants' counsel's letter dated May 10, 2001
4. Claimants' counsel's letter dated January 5, 1995
5. Travelers' letter dated March 28, 2001
6. Fireman's Fund settlement dated July 19, 1999
   (subject to Liquidator's Assented-To Motion to File Exhibit Under Seal)
7. Claimants' counsel's letter dated October 4, 2005
8. Claimants' counsel's letters September 27, 1999 and October 5, 1999
9. Memorandum Opinion in KVL Action dated August 3, 2000
10. Attachment 3 from Claimants' proof of claim
11. Liquidator's notice of determination
12. Home letter to Holson's broker dated August 5, 1980

Exhibit 1

THE HOME INSURANCE COMPANY
DAILY REPORT

RENEWING OR IN LIEU OF HEC 9793161 | RATE OF COMM. 15 % | SUBJECT TO AUDIT Yes ☐ No ☒ | HEC 4763813

	CO.	ACCT. ID CODE	STAT. STATE	TERM	TRANS. CODE	RATE OF COMMISSION	MAJOR LINE CODE	REINS OR TAX LOC	SUB. LINE 46-48	STATISTICAL PREMIUM	IF PAID ON INSTALLMENTS MONTH & YR.	COLLECTION PREMIUM
	A	07	07			15	772		770	3150.00	12-73	$1,050.
											12-74	$1,050.
											12-75	$1,050.

THE HOME INSURANCE COMPANY
EXCESS LIABILITY POLICY

INS

COLLECTION PREMIUM

KEY PUNCH 11/16 er

NEW YORK OFFICE

Insured's Name and Mailing Address

Producer

The Nelson Company
111 Danbury Avenue
Wilton, Conn

Nathan M. Gainsburg & Son's Co.
84 William Street
New York, N.Y. 10038

RECEIVED NOV 23 1973 K.P. DEPT. 12

HEC 4763813

12-1-73 Inception (Mo. Day Yr.) | 12-1-76 Expiration (Mo. Day Yr.) | 3 Years | M Control | 91752 Producer No. | 061 Office | State Loc.

FROM: December 1, 1973 TO: December 1, 1976
12:01 A.M. Standard Time at the address of the Named Insured as stated herein

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE	$4,000,000.00
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$4,000,000.00

ITEM 3. PREMIUMS

THE PREMIUM IS BASED UPON

Flat Charge

MINIMUM PREMIUM $ 1,050.00

ADVANCED PREMIUM

DURING THE POLICY PERIOD $ See below

PREMIUM IF PAID IN INSTALLMENTS

EFFECTIVE DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM →	$
$1,050.00	$1,050.00	$1,050.00		3,150.00

CF 040

COUNTERSIGNED BY (AUTHORIZED REPRESENTATIVE)

DATE 11-12-73 mp

H20254 F DR 7/68

MAIL TO CENTRAL PROCESSING DEPARTMENT (W.O. COPY)

THE HOME INSURANCE COMPANY
New York, New York

MANUSCRIPT EXCESS LIABILITY POLICY

(A stock insurance company herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the insuring agreements, limits of liability, definitions, exclusions, conditions, and other terms of this policy:

INSURING AGREEMENTS

I. COVERAGE

The Company hereby agrees, subject to the limitations, terms and conditions hereinafter mentioned, 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 and/or any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such,

for damages, direct or consequential and expenses, all as more fully defined by the term "ultimate net loss" on account of:—

(i) Personal Injuries, including death at any time resulting therefrom,

(ii) Property Damage,

(iii) Advertising Liability,

caused by or arising out of each occurrence happening anywhere in the world.

II. LIMIT OF LIABILITY

The Company shall only be liable for the ultimate net loss the excess of either

(a) the limits of the underlying insurances as set out in the attached schedule in respect of each occurrence covered by said underlying insurances)

or (b) $25,000 ultimate net loss in respect of each occurrence not covered by underlying insurances,

(hereinafter called the "underlying limits"):

and then only up to a further sum as stated in Item 2 of the Declarations in all in respect of each occurrence—subject to a limit as stated in Item 2 of the Declarations in the aggregate for each annual period during the currency of this policy, separately in respect of Products Liability and in respect of Personal Injury (fatal or non-fatal) by Occupational Disease sustained by any employees of the Insured.

In the event of reduction or exhaustion of the aggregate limits of liability under said underlying insurance by reason of losses paid thereunder, this policy shall

(1) in the event of reduction pay the excess of the reduced underlying limit

(2) In the event of exhaustion continue in force as underlying insurance.

The inclusion or addition hereunder of more than one Insured shall not operate to increase the Company's limit of liability.

THIS POLICY IS SUBJECT TO THE FOLLOWING DEFINITIONS:

I. INSURED

Named Insured: As stated in Item 1 of the Declarations forming

2. PERSONAL INJURIES [illegible]

The term "Personal Injuries" wherever

bodily injury, mental injury, mental anguis

part hereof and/or subsidiary, associated, affiliated companies owned and controlled companies as now or hereafter constituted and of which prompt notice has been given to the Company (Hereinafter called the "Named Insured").

The unqualified word "Insured", wherever used in this policy, includes not only the Named Insured but also:—

(a) any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such, and any organization or proprietor with respect to real estate management for the Named Insured;

(b) any person, organization, trustee or estate to whom the Named Insured is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this policy, but only in respect of operations by or on behalf of the Named Insured or of facilities of the Named Insured or used by them;

(c) any additional insured (not being the Named Insured under this policy) included in the Underlying Insurances, subject to the provisions in Condition B; but not for broader coverage than is available to such additional Insured under any underlying insurances as set out in attached Schedule;

(d) with respect to any automobile owned by the Named Insured or hired for use in behalf of the Named Insured, or to any aircraft owned by or hired for use in behalf of the Named Insured, any person while using such automobile or aircraft and any person or organization legally responsible for the use thereof, provided the actual use of the automobile or aircraft is with the permission of the Named Insured. The insurance extended by this sub-division (d), with respect to any person or organization other than the Named Insured, shall not apply—

1. to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any occurrence arising out of the operation thereof;

2. to any manufacturer of aircraft, engines, or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents with respect to any occurrence arising out of the operation thereof;

3. with respect to any hired automobile or aircraft, to the owner thereof or any employee of such owner. This sub-division (d) shall not apply if it restricts the insurance granted under sub-division (c) above.

disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination (except where it is a violation of a statute or regulation prohibiting such) humiliation; also libel, slander or defamation of character or invasion of rights of privacy, except that which arises out of any Advertising activities.

3. **PROPERTY DAMAGE**

The term "Property Damage" wherever used herein shall mean loss of or direct damage to or destruction of tangible property (other than property owned by the Named Insured).

4. **ADVERTISING LIABILITY**

The term "Advertising Liability" wherever used herein shall mean:—

(1) Libel, slander or defamation;

(2) Any infringement of copyright or of title or of slogan;

(3) Piracy or unfair competition or idea misappropriation under an implied contract;

(4) Any invasion of right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Named Insured's Advertising activities.

5. **OCCURRENCE**

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 injury, 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.

6. **ULTIMATE NET LOSS**

The term "Ultimate Net Loss" shall mean the total sum which the Insured, or any company as his insurer, or both, become obligated to pay by reason of personal injury, property damage or advertising liability claims, either through adjudication or compromise, and shall also include hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and law costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the Insured's or of any underlying insurer's permanent employees.

The Company shall not be liable for expenses as aforesaid when such expenses are included in other valid and collectible insurance.

7. **AUTOMOBILE**

The term "automobile", wherever used herein, shall mean a land motor vehicle, trailer or semi-trailer.

8. **AIRCRAFT**

The term "aircraft", wherever used herein, shall mean any heavier than air or lighter than air aircraft designed to transport persons or property.

9. **PRODUCTS LIABILITY**

The term "Products Liability" means

(a) Liability arising out of goods or products manufactured, sold, handled or distributed by the Named Insured or by others trading under his name if the occurrence occurs after possession of such goods or products has been relinquished to others by the Named Insured or by others trading under his name and if such occurrence occurs away from premises owned, rented or controlled by the Named Insured; provided such goods or products shall be deemed to include any container thereof, other than a vehicle, but shall not include any vending machine or any property, other than such container, rented to or located for use of others but not sold;

(b) Liability arising out of operations, if the occurrence occurs after such operations have been completed or abandoned and occurs away from premises owned, rented or controlled by the Named Insured; provided operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to an agreement; provided further the following shall not be deemed to be "operations" within the meaning of this paragraph: (i) pick-up or delivery, except from or onto a railroad car, (ii) the maintenance of vehicles, owned or used by or in behalf of the Insured, (iii) the existence of tools, uninstalled equipment and abandoned or unused materials.

10. **ANNUAL PERIOD**

The term "each Annual Period" shall mean each consecutive period of one year commencing from the inception date of this Policy.

THIS POLICY IS SUBJECT TO THE FOLLOWING EXCLUSIONS:

This policy shall not apply:—

(a) to any obligation for which the Insured or any company as its insurer may be held liable under any Workmen's Compensation, unemployment compensation or disability benefits law provided, however, that this exclusion does not apply to liability of others assumed by the Named Insured under contract or agreement;

(b) to claims made against the Insured:
  (i) for repairing or replacing any defective product or products manufactured, sold or supplied by the Insured or any defective part or parts thereof nor for the cost of such repair or replacement;
  (ii) for the loss of use of any such defective product or products or part or parts thereof;
  (iii) for improper or inadequate performance, design or specification; but nothing herein contained shall be construed to exclude claims made against the Insured for personal injuries or property damage (other than damage to the product of the Insured) resulting from improper or inadequate performance, design or specification;

(c) with respect to advertising activities, to claims made against the Insured for:
  (i) failure or performance of contract, but this shall not relate to claims for unauthorized appropriation of ideas based upon alleged breach of an implied contract;
  (ii) infringement of registered trade mark, service mark or trade name by use thereof as the registered trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans;
  (iii) incorrect description of any article or commodity;
  (iv) mistake in advertised price;

(d) except in respect of occurrences taking place in the United States of America, its territories or possessions, or Canada, to any liability of the Insured directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Except insofar as coverage is available to the Insured in the underlying insurances as set out in the attached Schedule, this policy shall not apply:—

(e) to liability of any Insured hereunder for assault and battery committed by or at the direction of such Insured except liability for Personal Injury or Death resulting from any act alleged to be assault and battery committed for the purpose of preventing or eliminating danger in the operation of aircraft, or for the purpose of preventing personal injury or property damage; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(f) with respect to any aircraft owned by the Insured except liability of the Named Insured for aircraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(g) with respect to any watercraft owned by the Insured, while away from premises owned, rented or controlled by the Insured, except liability of the Named Insured for watercraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(h) to any employee with respect to injury to or the death of another employee of the same Employer injured in the course of such employment.

THIS POLICY IS SUBJECT TO THE FOLLOWING CONDITIONS:—

A. **PREMIUM**

The premium for this policy shall be computed on the basis set forth under Item No. 3 of the policy declarations.

Upon expiration of this policy or its termination during the policy period, the earned premium shall be computed as thus defined. If the earned premium thus computed is more than the advance premium paid, the named Insured shall immediately pay the excess to the company; if less, the company shall return the difference to the named Insured; but the company shall receive and retain the annual minimum premium for each twelve (12) months of the policy period.

B. In the event of additional Insureds being added to the coverage under the Underlying Insurance during currency hereof prompt notice shall be given to The Company and if an additional premium has been charged for such addition on the Underlying Insurances, The Company shall be entitled to charge an appropriate additional premium hereon.

C. **PRIOR INSURANCE AND NON CUMULATION OF LIABILITY**

It is agreed that if any loss covered hereunder is also covered in whole or in part under any other excess policy issued to the Insured prior to the inception date hereof the limit of liability hereon as stated in Item 2 of the Declarations shall be reduced by any amounts due to the Insured on account of such loss under such prior insurance.

Subject to the foregoing paragraph and to all the other terms and conditions of this policy in the event that personal injury or property damage arising out of an occurrence covered hereunder is continuing at the time of termination of this policy The Company will continue to protect the Insured for liability in respect of such personal injury or property damage without payment of additional premium.

D. **SPECIAL CONDITIONS APPLICABLE TO OCCUPATIONAL DISEASE**

As regards personal injury (fatal or non-fatal) by occupational disease sustained by an employee of the Insured, this policy is subject to the same warranties, terms and conditions (except as regards the premium, the amount and limits of liability and the renewal agreement, if any) as are contained in or as may be added to the underlying insurances prior to the happening of an occurrence for which claims is made hereunder.

E. **INSPECTION AND AUDIT**

The Company shall be permitted at all reasonable times during the policy period to inspect the premises, plants, machinery and equipment used in connection with the insured's business, trade or work, and to examine the Insured's books and records at any time during the currency hereof and within one year after final settlement of all claims so far as the books and records relate to any payments made on account of occurrences happening during the term of this policy.

F. **CROSS LIABILITY**

In the event of claims being made by reason of personal injuries suffered by any employee or employees of one Insured hereunder for which another Insured hereunder is or may be liable, then this policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

In the event of claims being made by reason of damage to property belonging to any Insured hereunder for which another Insured is, or may be liable then this policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

Nothing contained herein shall operate to increase Company's limit of liability as set forth in Insuring Agreement II.

G. **NOTICE OF OCCURRENCE**

Whenever the Insured has information from which the Insured may reasonably conclude that an occurrence covered hereunder involves injuries or damages which, in the event that the Insured should be held liable, is likely to involve this policy, notice shall be sent to the Company as soon as practicable, provided, however, that failure to give notice of any occurrence which at the time of its happening did not appear to involve this policy but which, at a later date, would appear to give rise to claims hereunder, shall not prejudice such claim.

H. **ASSISTANCE AND CO-OPERATION**

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 but The Company shall have the right and shall be given the opportunity to associate with the Insured or the Insured's underlying insurers, or both, in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonably likely to involve The Company, in which event the Insured and The Company shall co-operate in all things in the defense of such claim, suit or proceeding.

I. **APPEALS**

In the event the Insured or the Insured's underlying insurers elect not to appeal a judgment in excess of the underlying limits, The Company may elect to make such appeal at their cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of The Company for ultimate net loss exceed the amount set forth in Insuring Agreement II for any one occurrence and in addition the cost and expense of such appeal.

J. **LOSS PAYABLE**

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. The Insured shall make a definite claim for any loss for which the Company may be liable under the policy within twelve (12) months after the Insured shall have paid an amount of ultimate net loss in excess of the amount borne by the Insured or after the Insured's liability shall have been fixed and rendered certain either by final judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and The Company. If any subsequent payments shall be made by the Insured on account of the same occurrence, additional claims shall be made similarly from time to time. Such losses shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this policy.

K. **BANKRUPTCY AND INSOLVENCY**

In the event of the bankruptcy or insolvency of the Insured or any entity comprising the Insured, The Company shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

L. **OTHER INSURANCE**

If other valid and collectible insurance with any other insurer is available to the Insured covering a loss also covered by this policy, other than insurance that is in excess of the insurance afforded by this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this policy subject to the terms, conditions and limitations of other insurance.

M. **SUBROGATION**

Inasmuch as this policy is "Excess Coverage", the Insured's right of recovery against any person or other entity cannot be exclusively subrogated to the Company. It is, therefore, understood and agreed that in case of any payment hereunder, the Company will act in concert with all other interests (including the Insured) concerned, in the exercise of such rights of recovery. The apportioning of any amounts which may be so recovered shall follow the principle that any interests (including the Insured) that shall have paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by them; the Company is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the Interests (including the Insured) of whom this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the Insured) concerned, in the ratio of their respective recoveries as finally settled.

N. **CHANGES**

Notice to or knowledge possessed by any person shall not effect a waiver or 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 hereof, signed by The Company.

O. **ASSIGNMENT**

Assignment of interest under this policy shall not bind The Company unless and until their consent is endorsed hereon.

P. **CANCELLATION**

This policy may be cancelled by the named insured 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 30 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. 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.

Q. **MAINTENANCE OF UNDERLYING INSURANCE**

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 currency of this policy except for any reduction of the aggregate limit or limits contained therein solely by payment of claims in respect of accidents and/or occurrences occurring during the period of this policy. Failure of the Insured to comply with the foregoing shall not invalidate this policy but in the event of such failure, the Company shall only be liable to the same extent as they would have been had the Insured complied with the said condition.

.....

Authorized Representative

NON-PREMIUM ENDORSEMENT

Endorsement No. 1

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
HEC 4763813	The Holson Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
12-1-73	11-12-73 np
PRODUCER	PRODUCER NO.-OPC
Nathan M. Guinsburg's Son & Co.	91752-081

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

SCHEDULE OF UNDERLYING INSURANCES

POLICY NUMBER	PRIMARY CARRIER	COVERAGE	EACH PERSON	EACH ACCIDENT	AGGREGATE
To be Advised	Federal	*Comprehensive General Liability Including Products			
		Bodily Injury	-	$500,000.00	$500,000.00
		Property Damage	-	$ 50,000.00	$ 50,000.00
		*Including Personal Injury A,B & C; Occurrence Bodily Injury and Property Damage.			
To be Advised	Federal	Comprehensive Automobile Liability			
		Bodily Injury	$300,000.00	$500,000.00	-
		Property Damage	-	$ 50,000.00	-
To be Advised	I.N.A.	Aircraft Liability			
		Bodily Injury & Property Damage		$1,000,000.00	Combined Single Limit
		per passenger limit	$100,000.00	-	-
To be Advised	American Mutual	Employers Liability	-	$100,000.00	-

This schedule applies to the policies listed above and renewals thereof.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 044

H 22800 D 9/00 74

LIMIT OF LIABILITY ENDORSEMENT

Endorsement No. 2

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
H.E.C. 4763813	The Holson Company
EFFECTIVE DATE	**DATE PREPARED**
12-1-73 (12:01 A.M. standard time)	11-12-73 np
PRODUCER	**PRODUCER NO. – OPC**
Nathan M. Guinsburg's Son & Co.	91752-081

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

In consideration of the premium charged, it is understood and agreed that paragraph (b) of Insuring Agreement II, Limit of Liability is hereby amended to read as follows:

(b) $10,000 ultimate net loss in respect of each occurrence not covered by underlying insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H 29440 D

CF 045

NON-PREMIUM ENDORSEMENT

Endorsement No. 3

Issued by –

[X] THE HOME INSURANCE COMPANY [ ] THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
HEC 4763813	The Holson Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
12-1-73	11-12-73 mp
PRODUCER	PRODUCER NO.—OPC
Nathan M. Guinsburg's Son & Co.	91752-081

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

EXCLUSION

CONTAMINATION OR POLLUTION

It is agreed that the insurance does not apply 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 watercourse or body of water; but this exclusion does not apply, if such discharge, dispersal, release or escape is sudden and accidental.

It is further understood and agreed that in no event shall coverage provided by this policy for Contamination or Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 046

H22300 (PM) 5/68

GU 8679a
(Ed. 10-59)

Endt. No. 4

A&G 661a

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(BROAD FORM)

This endorsement, effective 12-1-73 (12:01 A. M., standard time), forms a part of policy No. HEC 4763813

issued to The Holson Company

by The Home Ins. Co.

It is agreed that the policy does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

II. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) 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

(c) the injury, sickness, disease, death or destruction 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 (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

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

"**nuclear material**" means source material, special nuclear material or byproduct material;

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

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

"**waste**" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"**nuclear facility**" means

(a) any nuclear reactor,

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

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

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

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

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

With respect to injury to or destruction of property, the word "**injury**" or "**destruction**" includes all forms of radioactive contamination of property.

AUTHENTICO

Authorized Representative

CF 047

THE HOME INSURANCE COMPANY
—Manchester, New Hampshire—

DAILY REPORT

RENEWING OR IN LIEU OF [redacted] | RATE OF COMM. [redacted] % | SUBJECT TO AUDIT Yes ☒ No ☐ | HEC—9 34 74 89

CO.	ACCT. ID CODE	TRANS CODE	STAT. STATE	REINS OR TAX LOC	MAJOR LINE CODE	SUB. LINE	RATE OF COMMISSION			STATISTICAL PREMIUM	IF PAID ON INSTALLMENT: MONTH & YR.	IF PAID ON INSTALLMENT: COLLECTION PREMIUM
(1)	(2-3)	(55-56)	(1-3)	(14-17)	(18-20)	(21-23)	(52-54)			(56-63)	(36-38)	(58-65)
					[redacted]	[redacted]				[redacted]		

COLLECTION PREMIUM [redacted] KEY PUNCH

1 - FIELD OFFICE
0 - AGENCY

NEW YORK OFFICE

HEC—9 34 74 89

C

Insured's Name and Mailing Address

[redacted]

Producer

[redacted]

Inception (Mo. Day Yr.)	Expiration (Mo. Day Yr.)	Years	Control	Producer No.	OPC	State Loc.
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

FROM: [redacted] TO: [redacted]
[redacted] Standard Time at the address of the Named Insured as stated herein

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE	$[redacted]
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$[redacted]

ITEM 3. PREMIUMS [redacted]

THE PREMIUM IS BASED UPON [redacted]

MINIMUM PREMIUM $ [redacted]

ADVANCED PREMIUM $ [redacted]

DURING THE POLICY PERIOD

PREMIUM IF PAID IN INSTALLMENTS

EFFECTIVE DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM →	$

CF 048

COUNTERSIGNED BY (AUTHORIZED REPRESENTATIVE)

DATE 11/18/76

H202564F 1/76 DP

SCHEDULE OF INSURANCE
NON-PREMIUM ENDORSEMENT

Endorsement No. [redacted]

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
[redacted]	[redacted]
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
[redacted]	[redacted]
PRODUCER	PRODUCER NO. – OPC
[redacted]	[redacted]

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

SCHEDULE OF UNDERLYING INSURANCES

POLICY NUMBER	PRIMARY CARRIER	COVERAGE	EACH PERSON	EACH OCCURRENCE	AGGREGATE
[redacted]	[redacted]	[redacted]			
		[redacted]	---	[redacted]	[redacted]
		[redacted]	---	[redacted]	[redacted]
[redacted]					
[redacted]	[redacted]	[redacted]			
		[redacted]	[redacted]	[redacted]	---
		[redacted]	---	[redacted]	---
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	
[redacted]	[redacted]	[redacted]	---	[redacted]	---

CF 049

SIGNATURE OF AUTHORIZED REPRESENTATIVE

NON-PREMIUM ENDORSEMENT HOME INSURANCE COMPANIES **Endorsement No.** [illegible]

Issued by — (Type in full name of Insuring Company)

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED
[illegible]	The [illegible] Company

EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
12/1/76	[illegible]/76

PRODUCER	PRODUCER NO.—OPC
[illegible]'s Son & Co.	[illegible]

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

In consideration of the premium charged it is understood and agreed that such insurance as is afforded by this policy with respect to Products/Completed Operations shall follow the terms, conditions, and exclusions of the Fireman's Fund Ins. Co.'s policies set forth in the Schedule of Underlying Insurance.

CF 050

SIGNATURE OF AUTHORIZED REPRESENTATIVE

NON-PREMIUM ENDORSEMENT — Endorsement No. 3

Issued by — (Type in full name of Insuring Company)

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED
[illegible] 9 34 74 [illegible]	The [illegible] Company

EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
12/1/76	12/28/76

PRODUCER	PRODUCER NO.—OPC
[illegible]'s Son & Co.	[illegible]

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

EMPLOYEE BENEFIT LIABILITY

In consideration of the premium charged, it is understood and agreed that this policy is extended to provide coverage for Employee Benefits Liability following the terms, conditions and exclusions (except as respects the premium, the obligation to investigate and defend, the amount and limits of liability and renewal agreement, if any) of the Fireman's Fund Insurance Company policy number to be stated as set forth in the Schedule of Underlying Insurance and amount of the limits set forth therein.

It is further understood and agreed that such insurance as is afforded by this Endorsement shall be subject to the following exclusion:

This Endorsement does not provide coverage for any claim to the extent that recovery could not have been obtained upon such claim in an action at law prior to the effective date of the Employee Retirement Income Security Act of 1974 (ERISA).

CF 051

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H 22300 (FH) 7/75

NON-PREMIUM ENDORSEMENT

Endorsement No. 4

Issued by — (Type in full name of Insuring Company)

[redacted]

POLICY NUMBER	NAMED INSURED
[redacted]	[redacted]
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
[redacted]	[redacted]
PRODUCER	PRODUCER NO.—OPC
[redacted]	[redacted]

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

[redacted]

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 052

H 22300 (FHO 7/79

HOME

LIMIT OF LIABILITY ENDORSEMENT

Endorsement No. 9

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
H.E.C. [redacted]	[redacted]
EFFECTIVE DATE	DATE PREPARED
[redacted] (12:01 A.M. standard time)	[redacted]
PRODUCER	PRODUCER NO. – OFC
[redacted]	[redacted]

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

In consideration of the premium charged, it is understood and agreed that paragraph (b) of Insuring Agreement II, Limit of Liability is hereby amended to read as follows:

(b) $10,000 ultimate net loss in respect of each occurrence not covered by underlying insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H22449F

CF 053

[redacted] No. 6

GU.0679a
(Ed. 10-59)

A&G 661a

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(BROAD FORM)

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

issued to [redacted]

by [redacted]

It is agreed that the policy does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

II. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) 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

(c) the injury, sickness, disease, death or destruction 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 (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

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

"nuclear material" means source material, special nuclear material or byproduct material;

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

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

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

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

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

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

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

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

With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

H301200

[redacted]
Authorized Representative

CF 054

CONTAMINATION AND POLLUTION ENDORSEMENT

Endorsement No. 7

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
[redacted]	[redacted]
EFFECTIVE DATE	DATE PREPARED
[redacted]	[redacted]
PRODUCER	PRODUCER NO. – OPC
[redacted]	[redacted]

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

It is agreed that such insurance as is afforded by this policy does not apply to Personal 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.

It is further agreed that in no event shall coverage provided by this policy for Contamination and Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 055

THE HOME INSURANCE COMPANY
Manchester, New Hampshire

DAILY REPORT

RENEWING OR IN LIEU OF	RATE OF COMM.	SUBJECT TO AUDIT		
HEC 9 36 74 89	15 %	Yes [X] No [ ]		HEC—9 53 52 53

	CO.	ACCT. ID CODE	TRANS. CODE	STAT. STATE	REINS OR TAX LOC	MAJOR LINE CODE	SUB. LINE	RATE OF COMMISSION				STATISTICAL PREMIUM	IF PAID ON INSTALLMENT MONTH & YR.	COLLECTION PREMIUM
	(1)	(2-3)	(55-56)	(1-3)	(14-17)	(18-20)	(21-29)	(52-54)				(56-63)	(36-38)	(58-65)
						772	770		-04	412		$3,600.00		

COLLECTION PREMIUM

KEY PUNCH

[ ] 1 - FIELD OFFICE
0 - AGENCY

HEC—9 53 52 53

C

Insured's Name and Mailing Address
The Dalkon Company
121 Danbury Road
Wilton, Connecticut

Producer
NEW YORK OFFICE
[illegible] & Co.
56 William Street
New York, N. Y. 10038

8/12/77	8/12/78	1	D	92752	081	Conn.
Inception (Mo. Day Yr.)	Expiration (Mo. Day Yr.)	Years	Control	Producer No.	OPC	State Loc.

FROM: August 12, 1977 TO: August 12, 1978
12:01 AM Standard Time at the address of the Named Insured as stated herein

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE	$4,000,000.00
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$4,000,000.00

ITEM 3. PREMIUMS

THE PREMIUM IS BASED UPON	& DEPOSIT MINIMUM PREMIUM
Minimum & Deposit Premium adjustable at a rate of $.257 Per $1,000.00 Value.	$ 3,600.00
	ADVANCED PREMIUM
DURING THE POLICY PERIOD	$ 3,600.00

PREMIUM IF PAID IN INSTALLMENTS

EFFECTIVE DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM →	$

CF 056

COUNTERSIGNED BY (AUTHORIZED REPRESENTATIVE)	DATE
	9/9/77 [illegible]

H20254F 1/76 DR.

COPY

SCHEDULE OF INSURANCE
NON-PREMIUM ENDORSEMENT

Endorsement No. 1

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
HMC 9 53 52 53	The Halcon Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
6/12/77	9/9/77
PRODUCER	PRODUCER NO. – OFC
Nathan Quinsberg's Son & Co.	91752-001

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

SCHEDULE OF UNDERLYING INSURANCES

POLICY NUMBER & DATES	PRIMARY CARRIER	COVERAGE	EACH PERSON	EACH OCCURRENCE	AGGREGATE
MXP2751907 Eff. 6/12/75-76	Firemans Fund	*Comprehensive General Liability Bodily Injury	---	$500,000.00	$500,000.00
		Property Damage	---	$100,000.00	$100,000.00
*Includes: Products/Completed Operations, Blanket Contractual Liability, Personal Injury A, B, C Exclusion "C" deleted, Water Damage Legal, Employees as Additional Insureds, Broad Form Property Damage.					
LA2635237 Eff. 6/23/77-78	Firemans Fund	Comprehensive Automobile Liability Bodily Injury	$500,000.00	$300,000.00	---
		Property Damage	---	$100,000.00	---
To Be Advised	U. S. Aviation Under-writers	Aircraft Liability Bodily Injury &/Or Property Damage	---	$3,000,000.00	---
To Be Advised	Employers Mutual	Employers Liability	---	$100,000.00	---

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 057

H20884F 6/76

SELF INSURED RETENTION
NON-PREMIUM ENDORSEMENT

Endorsement No. 2

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
HHC 9 93 52 53	The Nelson Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
6/15/77	9/9/77
PRODUCER	PRODUCER NO. –OFC
Nathan Gutenberg's Son & Co.	93782-081

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

In consideration of the premium charged, it is agreed that with respect to Insuring Agreement II, Limit of Liability, Section (b) is amended in its entirety to read as follows:
"(b) $10,000 ultimate net loss in respect to each occurrence not covered by underlying insurances."
It is further agreed that the following Insuring Agreement is made a part of the policy:

"III. Defense Settlement:
With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any other underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy or would be except that the ultimate net loss in respect to such occurrence is within the $10,000 figure set forth in Insuring Agreement II (b) above, (hereinafter called the 'retained limit'), the Company shall:

(a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient provided, however, that the settlement of any claim or suit within the retained limit shall be with the consent of the insured;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;

(c) pay all expenses incurred by the Company, all costs taxed against the insured in any such suit, all interest occurring after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon;

(d) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.

The amounts so incurred, except settlement or satisfaction of claims and suits are payable by the Company in addition to the applicable limit of liability of this policy.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement.

The insured shall promptly reimburse the Company for any amount within the retained limit paid on behalf of the insured in settlement or satisfaction of a claim or suit. Coverage afforded under this Insuring Agreement shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurances."

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 058

H80483F

NON-PREMIUM ENDORSEMENT

Endorsement No. 3

Issued by – (Type in full name of Insuring Company)

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED
HDC 9 59 52 59	The Nelson Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT: 6/12/77	DATE PREPARED: 9/8/77
PRODUCER: Nathan Ginsburg's Son & Co.	PRODUCER NO.—OPC: 01792-083

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

In consideration of the premium charged it is understood and agreed that such insurance as is afforded by this policy with respect to Products/Completed Operations shall follow the terms, conditions, and exclusions of the Fireman's Fund Ins. Co.'s policies set forth in the Schedule of Underlying Insurance.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 059

H 22300 (END 7/73

NON-PREMIUM ENDORSEMENT

Endorsement No. 4

Issued by – (Type in full name of Insuring Company)

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED
HMC 9 53 52 83	The Nelson Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/77	9/9/77
PRODUCER	PRODUCER NO.—DPC
Nathan Goldsberg's Son & Co.	91752-081

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

EMPLOYEE BENEFITS LIABILITY

In consideration of the premium charged, it is understood and agreed that this policy is extended to provide coverage for Employee Benefits Liability following the terms, conditions and exclusions (except as respects the premium, the obligation to investigate and defend, the amount and limits of liability and renewal agreement, if any) of the Fireman's Fund Insurance Company Policy Number To Be Advised as set forth in the Schedule of Underlying Insurances and excess of the limits set forth therein.

It is further understood and agreed that such insurance as is afforded by this Endorsement shall be subject to the following exclusion:

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).

CF 060

SIGNATURE OF AUTHORIZED REPRESENTATIVE

NON-PREMIUM ENDORSEMENT

Endorsement No. 5

Issued by — (Type in full name of Insuring Company)

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED
XHC 9 53 52 53	The Nolan Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
6/23/77	6/9/77
PRODUCER	PRODUCER NO.--OPC
Nathan Gutenberg's Ins & Co.	92782-002

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

In consideration of the premium charged, it is understood and agreed that except insofar as coverage is available to the insured in the underlying insurance as set forth in the Schedule of Underlying Insurance, this Policy shall not apply to any liability assumed by the insured under contract.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 061

CONTAMINATION AND POLLUTION ENDORSEMENT

Endorsement No. 6

Issued by –

[X] THE HOME INSURANCE COMPANY [ ] THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
XHC 9 53 52 53	The Nelson Company
EFFECTIVE DATE	DATE PREPARED
8/22/77	9/9/77
PRODUCER	PRODUCER NO. – OPC
Nathan Galesburg's Son & Co.	21752-001

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

It is agreed that such insurance as is afforded by this policy does not apply to Personal 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.

It is further agreed that in no event shall coverage provided by this policy for Contamination and Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 062

GU 8679a
(Ed. 10-59)

[redacted] No. 7

A&G 661a

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(BROAD FORM)

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

issued to [redacted]

by [redacted]

It is agreed that the policy does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

II. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) 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

(c) the injury, sickness, disease, death or destruction 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 (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

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

"nuclear material" means source material, special nuclear material or byproduct material;

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

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

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

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

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

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

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

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

With respect to injury to or destruction of property, the word **"injury"** or **"destruction"** includes all forms of radioactive contamination of property.

NA0180D

[redacted]
Authorized Representative

CF 063

HOME

COUNTERSIGNATURE ENDORSEMENT Endorsement No.

Issued by – Type in Full Name of Insuring Company

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HBC 9535253	The Holsam Company
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8-12-77	9-15-77
PRODUCER	PRODUCER NO. – OPT.
Nathan Guinsburg's Son & Co.	91752-081

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

IT IS AGREED THAT THIS POLICY HAS BEEN COUNTERSIGNED FOR THE –

State of Connecticut

Premium $3,600.00

Term August 12, 1977 to August 12, 1978

Thomas J. Reutmayer
SIGNATURE OF AUTHORIZED REPRESENTATIVE

A. R. of T. 145

H 23378 (F) 11/72

CF 064

THE HOME INSURANCE COMPANY

DAILY REPORT

RENEWING OR IN LIEU OF: HEC 9535253 | RATE OF COMM.: 15 % | SUBJECT TO AUDIT: Yes [X] No [ ] | HEC—9 79 74 66

CO.	ACCT. ID CODE (2-3)	TRANS CODE (5-6)	STAT. STATE (7-8)	REINS OR TAX LOC (14-17)	MAJOR LINE CODE (18-20)	SUB. LINE (21-23)	RATE OF COMMISSION (52-54)			STATISTICAL PREMIUM (56-63)	IF PAID ON INSTALLMENT: MONTH & YR (36-38)	COLLECTIO PREMIUM (39-51)
A	01	11	07		772	770	15	-04	412	$4,100.00		

COLLECTION PREMIUM $4,100.00

KEY PUNCH

[ ] 1 - FIELD OFFICE
0 - AGENCY

NEW YORK OFFICE

Producer

8/24/78 Dm.

HEC—9 79 74 66

[C]

VERIFIED AUG 31 1978 N.H.K.F.

Insured's Name and Mailing Address

The Nolson Co.
111 Danbury Road
Wilton, Connecticut

Nathan Guinsburg's Son & Co.
84 William Street
New York, N.Y. 10038

8/12/78 Inception (Mo. Day Yr.)	8/12/79 Expiration (Mo. Day Yr.)	1 Years	D Control	91752 Producer No.	081 GPC	Conn. State Loc.

FROM: August 12, 1978 TO: August 12, 1979
12:01 A.M. Standard Time at the address of the Named Insured as stated herein

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE	$ 4,000,000.00
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$ 4,000,000.00

ITEM 3. PREMIUMS

THE PREMIUM IS BASED UPON

A minimum and deposit charge adjustable at a rate of $.241 per $1,000.00 of sales.

& Deposit

MINIMUM PREMIUM $ 4,100.00

ADVANCED PREMIUM

DURING THE POLICY PERIOD $ 4,100.00

PREMIUM IF PAID IN INSTALLMENTS

EFFECTIVE DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM →	$

CF 065

COUNTERSIGNED BY (AUTHORIZED REPRESENTATIVE)

DATE 8/22/78 tf

H20254F 1/76 DR.

PROCESSING COPY (H/O)

SCHEDULE OF INSURANCE
NON-PREMIUM ENDORSEMENT

Endorsement No. 1

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
HEC 9797466	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/78	8/22/78
PRODUCER	PRODUCER NO. -OPC
Nathan Guinsburg's Son & Co.	91752-081

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

SCHEDULE OF UNDERLYING INSURANCES

POLICY NUMBER & Dates	PRIMARY CARRIER	COVERAGE	EACH PERSON	EACH OCCURRENCE	AGGREGATE
To Be Advised 8/12/78-81	Firemans Fund Ins. Co.	*Comprehensive General Liability			
		Bodily Injury	---	$500,000.00	$500,000.00
		Property Damage	---	$100,000.00	$100,000.00
To Be Advised 4/1/78-79	Firemans Fund Ins. Co.	Comprehensive Automobile Liability			
		Bodily Injury	$500,000.00	$500,000.00	---
		Property Damage	---	$100,000.00	---
To Be Advised 10/5/77-78	U.S. Aviation Under-writers	Aircraft Liability Bodily Injury &/or Property Damage	---	$5,000,000.00	---
To Be Advised 4/1/78-79	Employers Mutual	Employers Liability	---	$100,000.00	---

*Includes: Products/Completed Operation Liability; Blanket Contractual Liability; Personal Injury A,B,C, with Exclusion "C" deleted; Independent Contractors Coverage; Water Damage Legal; Employee Benefits Liability; Broad Form Property Damage; Employees as Additional Insureds.

This schedule applies to the policies listed above and/or any renewals thereof.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 066

SELF INSURED RETENTION
NON-PREMIUM ENDORSEMENT

Endorsement No. 2

Issued by –

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
HEC 9797466	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/78	8/22/78
PRODUCER	PRODUCER NO.-OPC
Nathan Guinsburg's Son & Co.	91752-081

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

In consideration of the premium charged, it is agreed that with respect to Insuring Agreement II, Limit of Liability, Section (b) is amended in its entirety to read as follows:

"(b) $10,000 ultimate net loss in respect to each occurrence not covered by underlying insurances."

It is further agreed that the following Insuring Agreement is made a part of the policy:

"III. Defense Settlement:

With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any other underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy or would be except that the ultimate net loss in respect to such occurrence is within the $10,000 figure set forth in Insuring Agreement II (b) above, (hereinafter called the 'retained limit'), the Company shall:

(a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient provided, however, that the settlement of any claim or suit within the retained limit shall be with the consent of the insured;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;

(c) pay all expenses incurred by the Company, all costs taxed against the insured in any such suit, all interest occurring after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon;

(d) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.

The amounts so incurred, except settlement or satisfaction of claims and suits are payable by the Company in addition to the applicable limit of liability of this policy.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement.

The insured shall promptly reimburse the Company for any amount within the retained limit paid on behalf of the insured in settlement or satisfaction of a claim or suit. Coverage afforded under this Insuring Agreement shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurances."

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 067

H30483F

NON-PREMIUM ENDORSEMENT

Endorsement No. 3

Issued by — *(Type in full name of Insuring Company)*

The Home Insurance Company

POLICY NUMBER	NAMED INSURED	
REC 9797466	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/78	8/22/78	8/12/79
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

Regardless of any other provision of this policy, this policy does not apply to punitive or exemplary damages, except insofar as coverage for punitive or exemplary damages is available to the insured in the underlying insurances listed on the Schedule of Underlying Insurances.

CF 068

SIGNATURE OF AUTHORIZED REPRESENTATIVE

NON-PREMIUM ENDORSEMENT

Endorsement No. 4

Issued by — *(Type in full name of Insuring Company)*

The Home Insurance Company

POLICY NUMBER	NAMED INSURED	
HEC 9797466	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/78	8/22/78	8/12/79
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

In consideration of the premium charged, it is understood and agreed that this policy is extended to provide coverage for Employee Benefits Liability following the terms, conditions and exclusions (except as respects the premium, the obligation to investigate and defend, the amount and limits of liability and renewal agreement, if any) of The Firemans Fund Policy Number (To Be Advised) as set forth in the Schedule of Underlying Insurances and excess of the limits set forth therein.

It is further understood and agreed that such insurance as is afforded by this Endorsement shall be subject to the following exclusion:

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).

CF 069

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H22300FH 4/77

CONTAMINATION AND POLLUTION ENDORSEMENT

Endorsement No. 5

Issued by –

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HEC 9797466	The Nolson Co.
EFFECTIVE DATE	DATE PREPARED
8/12/78	8/22/78
PRODUCER	PRODUCER NO. – OPC
Nathan Guinsburg's Son & Co.	91752-081

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

It is agreed that such insurance as is afforded by this policy does not apply to Personal 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.

It is further agreed that in no event shall coverage provided by this policy for Contamination and Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 070

GU 8679a
(Ed. 10-59)

Endorsement No. 6

A&G 661a

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(BROAD FORM)

This endorsement, effective 8/12/78 (12:01 A. M., standard time), forms a part of policy No. HEC 9797466

issued to The Holson Co.

by The Home Insurance Company

It is agreed that the policy does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

II. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) 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

(c) the injury, sickness, disease, death or destruction 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 (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

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

"**nuclear material**" means source material, special nuclear material or byproduct material;

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

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

"**waste**" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"**nuclear facility**" means

(a) any nuclear reactor,

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

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

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

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

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

With respect to injury to or destruction of property, the word "**injury**" or "**destruction**" includes all forms of radioactive contamination of property.

H30150(F)

Authorized Representative

CF 071

INSURANCE HOME COMPANIES

COUNTERSIGNATURE ENDORSEMENT Endorsement No. 7

Issued by — Type in Full Name of Insuring Company

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HEC 9797466	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/78	8/22/78
PRODUCER	PRODUCER NO. — OPC
Nathan Guinsburg's Son & Co.	91752-081

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

IT IS AGREED THAT THIS POLICY HAS BEEN COUNTERSIGNED FOR THE —

State of Connecticut

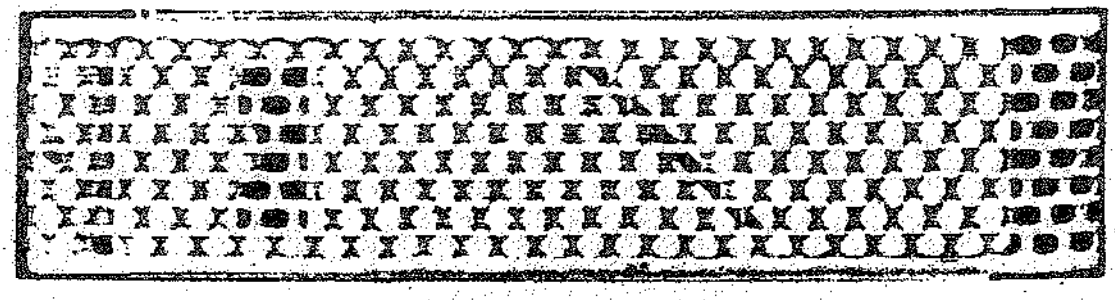
Premium $4,100.00

Term 8/12/78 - 8/12/79

Attach to HO copy

Thomas J. Reitmeyer
SIGNATURE OF AUTHORIZED REPRESENTATIVE

H 23378 (F) 11/72



CF 072

INSURANCE HOME COMPANIES

CENTRAL REPORTS PROCESSING

NON-PREMIUM ENDORSEMENT

Endorsement No. 8

Issued by — (Type in full name of Insuring Company)

The Home Insurance Company

H/O COPY

POLICY NUMBER	NAMED INSURED	
HEC 9 79 74 66	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT: 1-25-79	DATE PREPARED: 2-6-79 am	POLICY EXPIRATION: 8-12-79
PRODUCER: Nathan Guinsburg's Son & Co.		PRODUCER NO.—OPC: 91752-081

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

In consideration of the premium charged, it is hereby agreed that Endorsement No. 1, Schedule of Underlying Insurances, is amended in part as follows:

Policy Number & Dates	Primary Carrier	Coverage	Each Person	Each Occurrence	Aggregate
360AC12412 10/5/78-79	USAIG	Aircraft Liability Bodily Injury and/or Property Damage	---	$10,000,000.00	---

NON-MONEY

ATTACH

CF 073

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H22300FH 4/77

PREMIUM AUDIT STATEMENT

CO.	ACCT. ID.	POLICY NUMBER (INDICATE PREFIX)	AUDIT PERIOD	CONTROL	PAGE	OF PAG
		HEC 9 79 74 66	FROM 8/12/78 TO 8/12/79		1	

COMPANY NAME	POLICY PERIOD	PRODUCER NO. - OPC	TRANS. COI
Home Ins.	FROM Same TO	91752-081	

TYPE OF POLICY	TYPE OF STATEMENT	TYPE OF AUDIT
Excess-Umbrella	☐ CANCELLATION ☐ ANNUAL ☐ QUARTERLY ☒ FINAL ☐ SEMI-ANNUAL ☐ MONTHLY	

DATE PREPARED	PHYSICAL AUDIT	CANCELLATION METHOD	
1/17/80	☐ YES ☐ NO	☐ SR ☐ PR	0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

INSURED NAME AND ADDRESS

The Nolson Co.
111 Danbury Rd.
Wilton, Conn.

PRODUCER NAME AND ADDRESS

Nathan Guinsburg's & Son Co.
84 William Street
New York, N.Y. 10038

☐ IF "X" IS INDICATED, THERE WILL BE NO ADDITIONAL OR RETURN PREMIUM DUE FOR THIS AUDIT PERIOD.
☐ IF "X" IS INDICATED, AUDIT IS WAIVED - SUBJECT TO POLICY CONDITIONS.

CLASSIFICATION	STAT STATE (1-3)	TAX OR REINS. (14-17)	MAJOR LINE (18-20)	TERR (21-22)	CLASS CODE (23-27)	LIMIT (28-29)	AUDITED EXPOSURE (42-51)	RATES	COMM RATE (52-54)	AUDITED PREMIUM (56-65)
Sales							18,059,756	.241/ 1000		4,351.

REMARKS

gd

TOTAL EARNED PREMIUM 4,351.

LESS PREVIOUS CHARGES 4,100.

ADJUSTMENT TO PREMIUM NOT INCLUDED IN ADDITIONAL/RETURN PREMIUM DUE

DO NOT PUNCH SEE STAMP WITH PREMIUM

CENTRAL JAN 18 1980 PROCESSING

ADDITIONAL PREMIUM DUE $ 251.

RETURN PREMIUM DUE $

STAT STATE (1-3)	TAX LOCATION (14-17)	MAJOR LINE (18-20)	TERR. (21-22)	CLASS CODE (23-27)	LIMITS (28-29)	AUDITED EXPOSURE (42-51)	COMM. RATE (52-54)	AUDITED PREMIUM (56-65)

COUNTERSIGNING PRODUCER CODE OPC	COUNTERSIGNING PREMIUM	RATE OF COUNTERSIGNING COMM.	RATE OF COMMISSION

GROSS PREMIUM	COMMISSION	NET PREMIUM
		MONEY

ONL 6905 (1) 10/77

PROCESSING COPY (H/O)

CF 074

THE HOME INSURANCE COMPANY
New York, New Hampshire

DAILY REPORT

CANCELLED

RENEWING OR IN LIEU OF: HEC 9 79 74 66 | RATE OF COMM: 15 % | SUBJECT TO AUDIT: Yes ☒ No ☐ | HEC—9 83 11 71

CO.	ACCT. ID CODE	TRANS CODE	STAT. STATE	REINS OR TAX LOC	MAJOR LINE CODE	SUB. LINE	RATE OF COMMISSION	STATISTICAL PREMIUM	IF PAID ON INSTALLMENT: MONTH & YR.	COLLECTION PREMIUM
1	(2-3)	(55-56)	(1-3)	(14-17)	(18-20)	(21-23)	(52-54)	156-63)	(36-38)	(58-65)
					See	Below				
										$4,200.00

KEY PUNCH

1 - FIELD OFFICE
0 - AGENCY

NEW YORK OFFICE

HEC—9 83 11 71

C

Insured's Name and Mailing Address

The Holson Co.
111 Danbury Road
Wilton, Connecticut

Producer

Nathan Guinsburg's Son & Co.
84 William Street
New York, N.Y. 10038

8/12/79	8/12/80	1	D	91752	081	Conn.
Inception (No. Day Yr.)	Expiration (No. Day Yr.)	Years	Control	Producer No.	OPC	State Loc.

FROM: August 12, 1979 TO: August 12, 1980
12:01 AM Standard Time at the address of the Named Insured as stated herein

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE	$4,000,000.00
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$4,000,000.00

ITEM 3. PREMIUMS

THE PREMIUM IS BASED UPON: & Deposit

A minimum and deposit charge adjustable at a rate of $.24 per $1,000.00 of sales.

MINIMUM PREMIUM: $ 4,200.00

ADVANCED PREMIUM DURING THE POLICY PERIOD: $ 4,200.00

PREMIUM IF PAID IN INSTALLMENTS

EFFECTIVE DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM →	$

Item 4. 772-770 -04/412 $1,500.00
77G-770 $ 700.00
77K-770 $2,000.00

CF 075

COUNTERSIGNED BY (AUTHORIZED REPRESENTATIVE)

DATE: 8/15/79 av

H20254F 1/75 DR.

SCHEDULE OF INSURANCE
NON-PREMIUM ENDORSEMENT

Endorsement No. 1

Issued by –

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HEC 9 83 11 71	The Nolson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/79	8/15/79
PRODUCER	PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.	91752-081

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

SCHEDULE OF UNDERLYING INSURANCES

POLICY NUMBER & Dates	PRIMARY CARRIER	COVERAGE	EACH PERSON	EACH OCCURRENCE	AGGREGATE
To Be Advised 8/12/78-81	Firemans Fund Ins. Co.	*Comprehensive General Liability			
		Bodily Injury	----	$500,000.00	$500,000.00
		Property Damage	----	$100,000.00	$100,000.00
		*Includes: Products/Completed Operations Liability, Blanket Contractual Liability, Personal Injury A,B,C, with Exclusion "C" Deleted, Independent Contractors Coverage, Water Damage Legal, Employee Benefits Liability, Broad Form Property Damage, Employees as Additional Insureds.			
To Be Advised 4/1/79-80	Firemans Fund Ins. Co.	Comprehensive Automobile Liability			
		Bodily Injury	$500,000.00	$500,000.00	----
		Property Damage	----	$100,000.00	----
To Be Advised 10/5/79-80	U.S. Aviation I.G. Co.	Aircraft Liability			
		Bodily Injury &/or Property Damage	----	$10,000,000.00	----
To Be Advised 4/1/79-80	Employers Mutual	Employers Liability	----	$100,000.00	----

This schedule applies to the policies listed above and/or any renewals thereof.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 076

SELF INSURED RETENTION
NON-PREMIUM ENDORSEMENT

Endorsement No. 2

Issued by --

☒ THE HOME INSURANCE COMPANY ☐ THE HOME INDEMNITY COMPANY

POLICY NUMBER	NAMED INSURED
HEC 9 83 11 71	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/79	8/15/79
PRODUCER	PRODUCER NO.-OPC
Nathan Guinsburg's Son & Co.	91752-081

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

In consideration of the premium charged, it is agreed that with respect to Insuring Agreement II, Limit of Liability, Section (b) is amended in its entirety to read as follows:

"(b) $10,000 ultimate net loss in respect to each occurrence not covered by underlying insurances."

It is further agreed that the following Insuring Agreement is made a part of the policy:

"III. Defense Settlement:

With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any other underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy or would be except that the ultimate net loss in respect to such occurrence is within the $10,000 figure set forth in Insuring Agreement II (b) above, (hereinafter called the 'retained limit'), the Company shall:

(a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient provided, however, that the settlement of any claim or suit within the retained limit shall be with the consent of the insured;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;

(c) pay all expenses incurred by the Company, all costs taxed against the insured in any such suit, all interest occurring after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon;

(d) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.

The amounts so incurred, except settlement or satisfaction of claims and suits are payable by the Company in addition to the applicable limit of liability of this policy.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement.

The insured shall promptly reimburse the Company for any amount within the retained limit paid on behalf of the insured in settlement or satisfaction of a claim or suit. Coverage afforded under this Insuring Agreement shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurances."

CF 077

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H30488F

NON-PREMIUM ENDORSEMENT

Endorsement No. 3

Issued by — *(Type in full name of Insuring Company)*

The Home Insurance Company

POLICY NUMBER	NAMED INSURED	
HEC 9 83 11 71	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/79	8/15/79	8/12/80
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

Regardless of any other provision of this policy, this policy does not apply to punitive or exemplary damages, except insofar as coverage for punitive or exemplary damages is available to the insured in the underlying insurances listed on the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 078

H22500PH 4/77

NON-PREMIUM ENDORSEMENT

Endorsement No. 4

Issued by — *(Type in full name of Insuring Company)*

The Home Insurance Company

POLICY NUMBER	NAMED INSURED	
HEC 9 83 11 71	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/79	8/15/79	8/12/80
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

In consideration of the premium charged, it is understood and agreed that this policy is extended to provide coverage for Employee Benefits Liability following the terms, conditions and exclusions (except as respects the premium the obligation to investigate and defend, the amount and limits of liability and renewal agreement, if any) of The Firemans Fund Policy Number (To Be Advised) as set forth in the Schedule of Underlying Insurances and excess of the limits set forth therein.

It is further understood and agreed that such insurance as is afforded by this Endorsement shall be subject to the following exclusion:

> 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).

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 079

H22300 FH 4/77

CONTAMINATION AND POLLUTION ENDORSEMENT

Endorsement No. 5

Issued by –

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HEC 9 83 11 71	The Holson Co.
EFFECTIVE DATE	DATE PREPARED
8/12/79	8/15/79
PRODUCER	PRODUCER NO. – OFC
Nathan Guinsburg's Son & Co.	91752-081

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

It is agreed that such insurance as is afforded by this policy does not apply to Personal 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.

It is further agreed that in no event shall coverage provided by this policy for Contamination and Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 080

Endorsement No. 6

GU 8679a
(Ed. 10-59)

A&G 661a

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(BROAD FORM)

This endorsement, effective 8/12/79 (12:01 A. M., standard time), forms a part of policy No. HEC 9 83 11 71

issued to The Nolson Co.

by The Home Insurance Company

It is agreed that the policy does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

II. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) 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

(c) the injury, sickness, disease, death or destruction 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 (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

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

"nuclear material" means source material, special nuclear material or byproduct material;

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

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

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

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

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

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

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

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

With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

H30150(F)

Authorized Representative

CF 081

INSURANCE HOME COMPANIES

COUNTERSIGNATURE ENDORSEMENT Endorsement No. 7

Issued by – Type in Full Name of Insuring Company

The Home Insurance Company

CENTRAL RECORDS
AUG 29 1979

POLICY NUMBER	NAMED INSURED
HEC 9 83 11 71	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/79	8/15/79
PRODUCER	PRODUCER NO. – DPE
Nathan Guinsburg's Son & Co.	91752-081

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

IT IS AGREED THAT THIS POLICY HAS BEEN COUNTERSIGNED FOR THE –

State of Connecticut

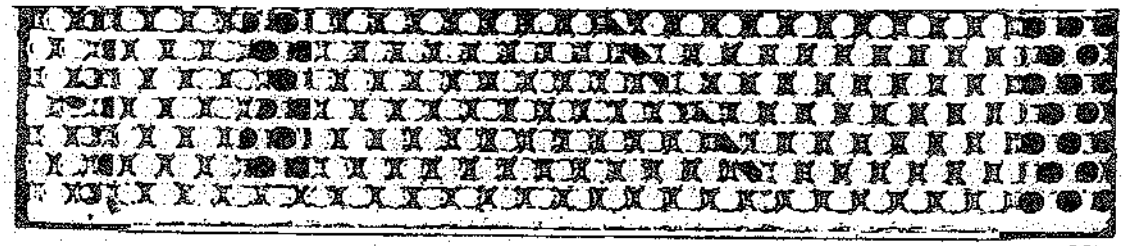
Premium $4,200.00

Term 8/12/79-8/12/80

Mark R. Habersang

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H 23378 (F) 11/72



CF 082

1181

PREMIUM AUDIT STATEMENT P61-K1

NO.	ACCT. ID.	POLICY NUMBER (INDICATE PREFIX)	AUDIT PERIOD	CONTROL	PAGE OF PAGES
1	07	HEC 9831171	FROM 8-12-79 TO 10-17-79	D	1

COMPANY NAME	POLICY PERIOD	PRODUCER NO. - OPC	TRANS. CODE
one Ins.	FROM Same TO	91752-081	44

TYPE OF POLICY	TYPE OF STATEMENT	TYPE OF AUDIT
mbrella	☐ CANCELLATION ☐ ANNUAL ☐ QUARTERLY ☒ FINAL ☐ SEMI-ANNUAL ☐ MONTHLY	0 1 2 3 4 5

DATE PREPARED	PHYSICAL AUDIT	CANCELLATION METHOD
-26-80	☐ YES ☒ NO	☐ SR ☐ PR

INSURED NAME AND ADDRESS

The Nolson Co.
111 Danbury Road
Wilton, Conn.

PRODUCER NAME AND ADDRESS

Nathan Guinsburg's Son & Co.
84 William St.
New York, N.Y. 10038

] IF "X" IS INDICATED, THERE WILL BE NO ADDITIONAL OR RETURN PREMIUM DUE FOR THIS AUDIT PERIOD.
] IF "X" IS INDICATED, AUDIT IS WAIVED - SUBJECT TO POLICY CONDITIONS.

CLASSIFICATION	STAT STATE 1-9	TAX OR REINS. 14-17	MAJOR LINE 18-20	TERR 21-22	CLASS CODE 23-27	LIMIT 28-29	AUDITED EXPOSURE 42-51	RATES	COMM RATE 52-54	AUDITED PREMIUM 56-63
Record B	Bill	Date	10/17/79			Total prepaid prem				000.00
D07		72							0000	

EMARKS

TOTAL EARNED PREMIUM	
LESS PREVIOUS CHARGES	
ADDITIONAL PREMIUM DUE	$ 000.00
RETURN PREMIUM DUE	$

ADJUSTMENT TO PREMIUM NOT INCLUDED IN ADDITIONAL/RETURN PREMIUM DUE

DO NOT PUNCH SEE STAMP WITH PREMIUM

STAT STATE 1-9	TAX LOCATION 14-17	MAJOR LINE 18-20	TERR. 21-22	CLASS CODE 23-27	LIMITS 28-29	AUDITED EXPOSURE 42-51	COMM. RATE 52-54	AUDITED PREMIUM 56-63
						NON-MONEY		

COUNTERSIGNING PRODUCER CODE OPC	COUNTERSIGNING PREMIUM	RATE OF COUNTERSIGNING COMM.	RATE OF COMMISSION

GROSS PREMIUM	COMMISSION	NET PREMIUM
		CF 083

NL 6905 (1) 10/77

PROCESSING COPY (H/O)

PROCESS LIABILITY POLICY

HEC— 9 83 11 71 / CENTRAL NOV 9 1979 PROCESSING

THE HOME INSURANCE COMPANY

Manchester, New Hampshire

STOCK COMPANY

CANCELLATION — EFFECTIVE DATE — FACTOR — CASH RETURN

FLAT ☐ — MAJOR LINE — 775-770 — $3,440. — 81% P — $3,440.

S/R ☐ — SUBJECT TO AUDIT ☐ — TOTAL $ 3,440. P

NEW YORK OFFICE — FUTURE RIGHTS — Producer

10/17/79 — Co. Request — U.S. 11479

ITEM 1. Insured's Name and Mailing Address

The Holson Co.
111 Danbury Road
Wilton, Connecticut

Nathan Guinsburg's Son & Co.
384 William Street
New York, N.Y. 10038

8/12/79	8/12/80	1	91752	081	Conn.
Inception (Mo. Day Yr.)	Expiration (Mo. Day Yr.)	Years	Producer No.	OPC	State Loc.

FROM: August 12, 1979 TO: August 12, 1980
12:01 AM Standard Time at the address of the Named Insured as stated herein

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE	$4,000,000.00
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$4,000,000.00

ITEM 3. PREMIUMS

THE PREMIUM IS BASED UPON	& Deposit MINIMUM PREMIUM
A minimum and deposit charge adjustable at a rate of $.24 per $1,000.00 of sales.	$ 4,200.00
	ADVANCED PREMIUM
DURING THE POLICY PERIOD	$ 4,200.00

PREMIUM IF PAID IN INSTALLMENTS

EFFECTIVE DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM →	$

In Witness Whereof, the said THE HOME INSURANCE COMPANY, MANCHESTER, NEW HAMPSHIRE has caused these Presents to be signed by its President and attested by its Secretary at its Executive Offices, in the City of New York, and this policy is made and accepted upon the above express conditions, but shall not be valid unless countersigned by a duly Authorized Representative of the Insurers at place of issue.

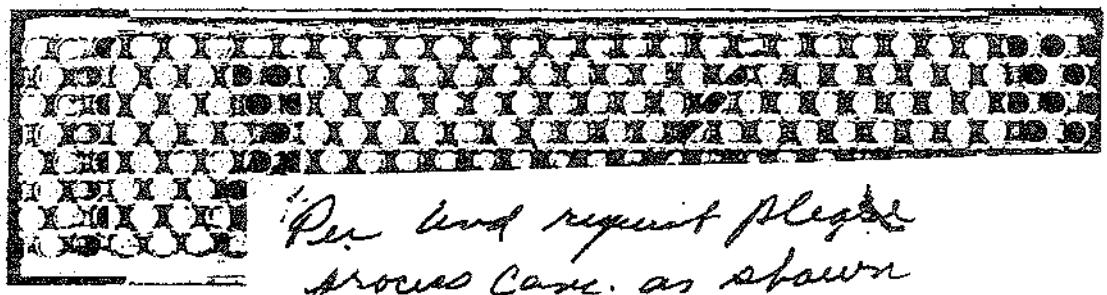
Joseph F. Quinn
Secretary

R. H. Tullis, Jr.
President

COUNTERSIGNED BY (AUTHORIZED REPRESENTATIVE)

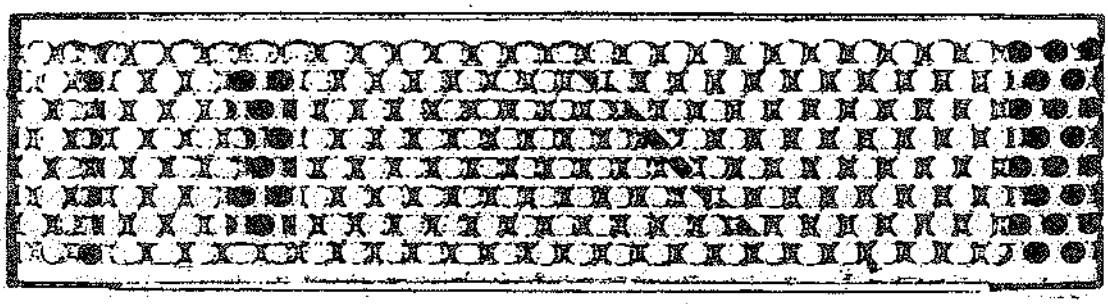
DATE 8/15/79 av

CF 084



Per end request please
process case. as shown
this is a rewrite

Marie Sacco



RENEWING OR IN LIEU OF: HEC 9 83 11 71 | RATE OF COMM: 15 % | SUBJECT TO AUDIT: Yes [X] No [ ] | HEC—9 83 16 05

CO.	ACCT. ID CODE	TRANS CODE	STAT. STATE	REPRS OR TAX LOC	MAJOR LINE CODE	SUB. LINE	RATE OF COMMISSION	STATISTICAL PREMIUM	IF PAID IN INSTALLMENTS: MONTH & YR.	COLLECT. PREMIUM
( )	(2-3)	(55-56)	(1-5)	(11-17)	(18-20)	(21-23)	(52-54)	(56-63)	(36-38)	(39-45)
					See Below					

COLLECTION PREMIUM $2,047.00 — KEY PUNCH

[ ] 1 - FIELD OFFICE
[ ] 0 - AGENCY

NEW YORK OFFICE

HEC—9 83 16 05

[C]

Insured's Name and Mailing Address

The Nolson Co.
111 Danbury Road
Wilton, Connecticut

Producer

Nathan Guinsburg's Son & Co.
84 William Street
New York, N.Y. 10038

10/17/79	8/12/80	Time	D	91752	081	Conn.
Inception (Mo. Day Yr.)	Expiration (Mo. Day Yr.)	Years	Control	Producer No.	OPC	State Loc.

FROM: October 17, 1979 TO: August 12, 1980
12:01 AM Standard Time at the address of the Named Insured as stated herein

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE	$ 1,000,000.00
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$ 1,000,000.00

ITEM 3. PREMIUMS

THE PREMIUM IS BASED UPON

A minimum and deposit charge adjustable at a rate of $.12 per $1,000.00 of sales.

DURING THE POLICY PERIOD

& Deposit

MINIMUM PREMIUM $ 2,047.00

ADVANCED PREMIUM $ 2,047.00

PREMIUM IF PAID IN INSTALLMENTS

EFFECTIVE DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM →	$

Item 4

772-770	-01	412	$1,228.00
77G-770			$ 491.00
77K-770			$ 328.00

COUNTERSIGNED BY AUTHORIZED REPRESENTATIVE

DATE 11/9/79 ac

H20254F 1/76 DR.

PROCESSING COPY (H/O) CF 086

RR

SCHEDULE OF INSURANCE
NON-PREMIUM ENDORSEMENT

Endorsement No. 1

Issued by –

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HEC 9 83 16 05	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
10/17/79	11/9/79
PRODUCER	PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.	91752-081

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

SCHEDULE OF UNDERLYING INSURANCES

POLICY NUMBER & Dates	PRIMARY CARRIER	COVERAGE	EACH PERSON	EACH OCCURRENCE	AGGREGATE
To Be Advised 8/12/78-81	Fireman's Fund Ins. Co.	*Comprehensive General Liability			
		Bodily Injury	----	$500,000.00	$500,000.00
		Property Damage	----	$100,000.00	$100,000.00
		*Includes: Products/Completed Operations Liability, Blanket Contractual Liability, Personal Injury A,B,C, with Exclusion "C" Deleted, Independent Contractors Coverage, Water Damage Legal, Employee Benefits Liability, Broad Form Property Damage, Employees as Additional Insureds.			
To Be Advised 4/1/79-80	Fireman's Fund Ins. Co.	Comprehensive Automobile Liability			
		Bodily Injury	$500,000.00	$500,000.00	----
		Property Damage	----	$100,000.00	----
To Be Advised 10/5/79-80	U.S. Aviation I.C. Co.	Aircraft Liability Bodily Injury and/or Property Damage	----	$10,000,000.00	----
To Be Advised 4/1/79-80	Employers Mutual	Employers Liability	----	$100,000.00	----

This schedule applies to the policies listed above and/or any renewals thereof.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CF 087

H304484F 1/78

SELF INSURED RETENTION
NON-PREMIUM ENDORSEMENT

Endorsement No. 2

Issued by –

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HEC 9 83 16 05	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
10/17/79	11/9/79
PRODUCER	PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.	91752-081

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

In consideration of the premium charged, it is agreed that with respect to Insuring Agreement II, Limit of Liability, Section (b) is amended in its entirety to read as follows:
"(b) $10,000 ultimate net loss in respect to each occurrence not covered by underlying insurances."
It is further agreed that the following Insuring Agreement is made a part of the policy:

"III. Defense Settlement:
With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any other underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy or would be except that the ultimate net loss in respect to such occurrence is within the $10,000 figure set forth in Insuring Agreement II (b) above, (hereinafter called the 'retained limit'), the Company shall:

(a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient provided, however, that the settlement of any claim or suit within the retained limit shall be with the consent of the insured;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;

(c) pay all expenses incurred by the Company, all costs taxed against the insured in any such suit, all interest occurring after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon;

(d) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.

The amounts so incurred, except settlement or satisfaction of claims and suits are payable by the Company in addition to the applicable limit of liability of this policy.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement.

The insured shall promptly reimburse the Company for any amount within the retained limit paid on behalf of the insured in settlement or satisfaction of a claim or suit. Coverage afforded under this Insuring Agreement shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurances."

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H304437

CF 088

NON-PREMIUM ENDORSEMENT

Endorsement No. 3

Issued by — *(Type in full name of Insuring Company)*

The Home Insurance Company

POLICY NUMBER	NAMED INSURED	
HEC 9 83 16 05	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
10/17/79	11/9/79	8/12/80
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

Regardless of any other provision of this policy, this policy does not apply to punitive or exemplary damages, except insofar as coverage for punitive or exemplary damages is available to the insured in the underlying insurances listed on the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H22300FH 4/77

CF 089

NON-PREMIUM ENDORSEMENT

Endorsement No. 4

Issued by — *(Type in full name of Insuring Company)*

The Home Insurance Company

POLICY NUMBER	NAMED INSURED	
HEC 9 83 16 05	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
10/17/79	11/9/79	8/12/80
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

In consideration of the premium charged, it is understood and agreed that this policy is extended to provide coverage for Employee Benefits Liability following the terms, conditions and exclusions (except as respects the premium the obligation to investigate and defend, the amount and limits of liability and renewal agreement, if any) of The Fireman's Fund Policy Number (To Be Advised) as set forth in the Schedule of Underlying Insurances and excess of the limits set forth therein.

It is further understood and agreed that such insurance as is afforded by this Endorsement shall be subject to the following exclusion:

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).

SIGNATURE OF AUTHORIZED REPRESENTATIVE

CONTAMINATION AND POLLUTION ENDORSEMENT

Endorsement No. 5

Issued by –

The Home Insurance Company

POLICY NUMBER	NAMED INSURED
HEC 9 83 16 05	The Holson Co.
EFFECTIVE DATE	DATE PREPARED
10/17/79	11/9/79
PRODUCER	PRODUCER NO. — OPC
Nathan Guinsburg's Son & Co.	91752-081

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

It is agreed that such insurance as is afforded by this policy does not apply to Personal 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.

It is further agreed that in no event shall coverage provided by this policy for Contamination and Pollution be broader than that provided by the Underlying Insurances set forth in the Schedule of Underlying Insurances.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H28878 PM 8/77

CF 091

Endorsement No. 6

GU 8679a
(Ed. 10-59)

A&G 661a

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(BROAD FORM)

This endorsement, effective 10/17/79 (12:01 A. M., standard time), forms a part of policy No. HEC 9 83 16 0

issued to The Nolsen Co.

by The Home Insurance Company

It is agreed that the policy does not apply:

I. Under any Liability Coverage, to injury, sickness, disease, death or destruction

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

II. Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) 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

(c) the injury, sickness, disease, death or destruction 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 (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

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

"**nuclear material**" means source material, special nuclear material or byproduct material;

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

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

"**waste**" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"**nuclear facility**" means

(a) any nuclear reactor,

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

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

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

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

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

With respect to injury to or destruction of property, the word "**injury**" or "**destruction**" includes all forms of radioactive contamination of property.

H30150(F)

Authorized Representative

CF 092

NON-PREMIUM ENDORSEMENT

Endorsement No. 7

Issued by — *(Type in full name of Insuring Company)*

City Insurance Company

POLICY NUMBER	NAMED INSURED	
HEC 9 83 16 05	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT: 8-8-80 12:01 AM	DATE PREPARED: 8-26-80 mp	POLICY EXPIRATION: 8-12-80
PRODUCER: Nathan Guinsburg's Son & Co.		PRODUCER NO.—OPC: 91752-081

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

In consideration of the Premium Charged it is agreed that Item 2, Limits of Liability is amended to read as follows:

Limit in all in respect of each occurrence	$3,000,000.00
Limit in the aggregate for each annual period where applicable:	$3,000,000.00

NON-MONEY

H/O COPY ATTACH

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H22300PH 4/77

CF 093

RENEWING OR IN LIEU OF	RATE OF COMM.	SUBJECT TO AUDIT		
HEC 9 83 16 05	15 %	YES [X] NO [ ]		HEC – 9909110

C

[ ] 1 - FIELD OFFICE 0 - AGENCY

MANUSCRIPT EXCESS LIABILITY POLICY DAILY REPORT

DECLARATIONS

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

[ ] CITY INSURANCE COMPANY (F) Short Hills, N.J.

[X] THE HOME INSURANCE COMPANY (A) Manchester, N.H.

[ ] THE HOME INSURANCE COMPANY OF ILLINOIS (B) Chicago, Ill.

[ ] THE HOME INDEMNITY COMPANY (E) Manchester, N.H.

NEW YORK OFFICE

HEC — 9909110

ITEM 1. Insured's Name, P.O. Address and Zip Code

The Holson Co.
111 Danbury Road
Wilton, Connecticut

Producer

Nathan Guinsburg's Son & Co.
84 William Street
New York, N. Y. 10038

Policy Period: Inception (Mo.-Day-Yr.)	Expiration (Mo.-Day-Yr.)	Term	Producer No.	OPC	State Loc.
8/12/80	8/12/81	1	91752	081	CT

12:01 AM standard time at the address of the Named Insured as stated herein.

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. II)

LIMIT EACH OCCURRENCE	$ 3,000,000.
LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE	$ 3,000,000.

ITEM 3. PREMIUMS (As Per Condition A) & DEPOSIT

THE PREMIUM IS BASED UPON A Minimum and Deposit Premium adjustable at a Rate of $.209 Per $1,000.00 of Sales.

POLICY MINIMUM PREMIUM	$
ANNUAL MINIMUM PREMIUM	$ 3,985.00
ADVANCE PREMIUM	$ 3,985.00
DURING THE POLICY PERIOD	

PREMIUM IF PAID IN INSTALLMENTS

INCEPTION DATE	1st ANNIVERSARY	2nd ANNIVERSARY	TOTAL PREMIUM	$

ACCT. TO CODE	TRANS CODE	STAT STATE	REINS OR TAX LOC	MAJOR LINE CODE	SUB LINE (CLASS)	SUB	POLICY LIMIT	GL OCC LIMITS	GL AGG LIMITS	AUTO LIAB LIMITS			STATISTICAL PREMIUM	IF PAID ON INSTALLMENTS MO.-DAY-YR.	COLLECTION PREMIUM
				772	770	-0	3	1	4	2			$2,391.00		
											77G-770		956.00		
											77K-770		638.00		
											TOTAL		$3,985.00		

COUNTERSIGNED BY (AUTHORIZED REPRESENTATIVE) DATE 8/25/80 HH

PROCESSING COPY (H/O) CF 094

SCHEDULE OF UNDERLYING INSURANCES

Endorsement No. 1

Issued by — (Type in full name of Insuring Company)

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED	
HEC 9909110	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/80	8/25/80	8/12/81
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

CARRIER AND POLICY NUMBER	POLICY PERIOD (INCEPTION - EXPIRATION)	COVERAGE	EACH PERSON	EACH OCCURRENCE	AGGREGATE
Travelers Ind. Co.	12/1/79-80	*Comprehensive General Liability			
To Be Advised		Bodily Injury &	---	$500,000.	$500,000.
		Property Damage	---	$100,000.	$100,000.
		*Includes: Products/Completed Operations Liability, Blanket Contractual Liability, Personal Injury A, B, C, with Exclusion "C" deleted, Water Damage Legal, Employees as Additional Insureds, Incidental Medical Malpractice and Limits, Broad Form Property Damage and Employee Benefits Liability.			
Firemans Fund	8/23/79-80	Comprehensive Automobile Liability			
To Be Advised		Bodily Injury & Property Damage	$750,000. Limit	Combined Single	
Employers Mutual	4/1/80-81	Employers Liability	---	$100,000.	$100,000.
To Be Advised					

This schedule applies to the policies listed above and/or any renewals thereof.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H32444 F

CF 095

SELF INSURED RETENTION
NON-PREMIUM ENDORSEMENT

Endorsement No. 2

Issued by –

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED
HEC 9909110	The Holson Co.
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED
8/12/80	8/25/80
PRODUCER	PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.	91752-081

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

In consideration of the premium charged, it is agreed that with respect to Insuring Agreement II, Limit of Liability, Section (b) is amended in its entirety to read as follows:
"(b) $10,000 ultimate net loss in respect to each occurrence not covered by underlying insurances."
It is further agreed that the following Insuring Agreement is made a part of the policy:

"III. Defense Settlement:
With respect to any occurrence not covered by the underlying policies listed on Endorsement 1 hereof or any other underlying insurance collectible by the insured, but which is covered by the terms and conditions of this policy or would be except that the ultimate net loss in respect to such occurrence is within the $10,000 figure set forth in Insuring Agreement II (b) above, (hereinafter called the 'retained limit'), the Company shall:

(a) defend any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent and the Company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient provided, however, that the settlement of any claim or suit within the retained limit shall be with the consent of the insured;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish any such bonds;

(c) pay all expenses incurred by the Company, all costs taxed against the insured in any such suit, all interest occurring after entry of judgment until the Company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon;

(d) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.

The amounts so incurred, except settlement or satisfaction of claims and suits are payable by the Company in addition to the applicable limit of liability of this policy.

In jurisdictions where the Company may be prevented by law or otherwise from carrying out this agreement, the Company shall pay any expense incurred with its written consent in accordance with this agreement.

The insured shall promptly reimburse the Company for any amount within the retained limit paid on behalf of the insured in settlement or satisfaction of a claim or suit. Coverage afforded under this Insuring Agreement shall not apply to defense, investigation, settlement or legal expenses covered by underlying insurances."

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H30488F

CF 096

NON-PREMIUM ENDORSEMENT

Endorsement No. 3

Issued by — *(Type in full name of Insuring Company)*

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED	
HEC 9909110	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/80	8/25/80	8/12/81
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

In consideration of the premium charged, it is understood and agreed that this policy is extended to provide coverage for Employee Benefits Liability following the terms, conditions and exclusions (except as respects the premium, the obligation to investigate and defend, the amount and limits of liability and renewal agreement, if any) of The Fireman's Fund Policy Number (To Be Advised) as set forth in the Schedule of Underlying Insurances and excess of the limits set forth therein.

It is further understood and agreed that such insurance as is afforded by this Endorsement shall be subject to the following exclusion:

> 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).

SIGNATURE OF AUTHORIZED REPRESENTATIVE

H22800FH 4/77

CF 097

NON-PREMIUM ENDORSEMENT

Endorsement No. 4

Issued by — *(Type in full name of Insuring Company)*

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED	
HEC 9909110	The Holson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/80	8/25/80	8/12/81
PRODUCER		PRODUCER NO.—OPC
Nathan Guinsburg's Son & Co.		91752-081

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

Limited Medical Malpractice Coverage

In consideration of the premium charged, it is agreed that except insofar as coverage is available to the insured in the underlying insurance, as set forth in the attached Schedule of Underlying Insurances, this policy shall not apply to any liability for damages, direct or consequential and expenses arising out of:

1. the rendering of or failure to render

   (a) medical, surgical, dental, x-ray or nursing service or treatment, or the furnishing of food or beverages in connection therewith;

   (b) any service or treatment conducive to health or of a professional nature; or

   (c) any cosmetic or tonsorial service or treatment;

2. the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or

3. the handling of or performing of autopsies on dead bodies.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)

Endorsement No. 5

Issued by – (Type in full name of Insuring Company)

THE HOME INSURANCE COMPANY

POLICY NUMBER	NAMED INSURED	
HEC 9909110	The Nolson Co.	
EFFECTIVE DATE AND TIME OF ENDORSEMENT	DATE PREPARED	POLICY EXPIRATION
8/12/80	8/25/80	8/12/81
PRODUCER		PRODUCER NO. - OPC
Nathan Guinsburg's Son & Co.		91752-081

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

It is agreed that this policy shall not apply:

1. Under any Liability Coverage, to ultimate net loss

   (a) 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
   (b) arising out of hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) 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.

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

3. Under any Liability Coverage, to ultimate net loss arising out of hazardous properties of nuclear material, if

   (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of an Insured or (2) has been discharged or dispersed therefrom;
   (b) 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
   (c) the ultimate net loss 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 (c) applies only to property damage to such nuclear facility and any property thereat.

4. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or byproduct material;
"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means
(a) any nuclear reactor,
(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste.
(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,
and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" means
(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.

Property damage shall also mean all forms of radioactive contamination of property.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

'IUM AUDIT STATEMENT

REC	PLAN NO. 2-3	K 4	CO. 5	ACCT. ID 6-7	P/O 8	PREFIX 9-11	POLICY NUMBER 12-22	PRODUCER NO. 23-28	OPC 29-31	AUDIT PERIOD FROM 32-37	TO 38-43	TRANS. EFFECTIVE 44-49 MO. DAY YR.
A	61	1	A	07	C	REC	9909110	91752	881	8/12/80	8/12/81	

TRANS. 51-52	AUD./JET 57	TYPE AUDIT 58	TYPE POL. 62-63	INSURED NAME 64-84	CODER NO. 85-88	POLICY PERIOD FROM	TO
44	D	4			1176	Same	

REC	BILL DATES 22-28 MO.	DAY	YR.	TYPE OF STATEMENT	CANCELLATION	ANNUAL	QUARTERLY	FINAL	SEMI-ANNUAL	MONTHLY	PHYSICAL AUDIT	CANCELLATION METHOD
B	8	12	81		☐	☐	☐	☐	☐	☐	☐ YES ☒ NO	☐ SR ☐ PR

COMPANY NAME	TYPE OF POLICY	DATE PREPARED	PAGE	OF PAGES
Home Ins. Co.	Umbrella	11/12/81-gd	1	

INSURED NAME AND ADDRESS

The Nolson Co.
111 Danbury Rd.
Wilton, Conn.

PRODUCER NAME AND ADDRESS

Nathan Guinsburg's Son & Co.
84 William Street
New York, N.Y. 10038

☒ IF "X" IS INDICATED, THERE WILL BE NO ADDITIONAL OR RETURN PREMIUM DUE FOR THIS AUDIT PERIOD.
☐ IF "X" IS INDICATED, AUDIT IS WAIVED – SUBJECT TO POLICY CONDITIONS.

CLASSIFICATION	REC 1	COMM RATE 36-39	STAT STATE. 51-53	TERR. 54-56	LOCATION 57-61	TAX OR REINS. 62-65	MAJOR LINE 66-68	SUB-LINE 69-71	CLASS CODE 72-77	AUDITED EXPOSURE 119-128	RATES	AUDITED PREMIUM 41-50
	C	0000	07				772	770				000.00

NON-MONEY

REMARKS	TOTAL EARNED PREMIUM	
	LESS PREVIOUS CHARGES	
ADJUSTMENT TO PREMIUM NOT INCLUDED IN ADDITIONAL/RETURN PREMIUM DUE	DO NOT PUNCH SEE STAMP WITH PREMIUM	ADDITIONAL PREMIUM DUE $
		RETURN PREMIUM DUE $

COUNTERSIGNING PRODUCER CODE OPC	COUNTERSIGNING PREMIUM	RATE OF COUNTERSIGNING COMM.	RATE OF COMMISSION

GROSS PREMIUM	COMMISSION	NET PREMIUM

GNL 8905 (F) 6/79

PROCESSING COPY (H/O)

CF 101

THE HOME INSURANCE COMPANY
New York, New York

MANUSCRIPT EXCESS LIABILITY POLICY

(A stock insurance company herein called the company)

Agrees with the Insured, named in the declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the declarations and subject to the insuring agreements, limits of liability, definitions, exclusi conditions, and other terms of this policy:

INSURING AGREEMENTS

I. COVERAGE

The Company hereby agrees, subject to the limitations, terms and conditions hereinafter mentioned, 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 and/or any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such,

for damages, direct or consequential and expenses, all as more fully defined by the term "ultimate net loss" on account of.—

(i) Personal Injuries, including death at any time resulting therefrom,

(ii) Property Damage,

(iii) Advertising Liability,

caused by or arising out of each occurrence happening anywhere in the world.

II. LIMIT OF LIABILITY

The Company shall only be liable for the ultimate net loss the excess of either

(a) the limits of the underlying insurances as set out in attached schedule in respect of each occurrence cove by said underlying insurances,

or (b) $25,000 ultimate net loss in respect of each occurrer not covered by underlying insurances,

(hereinafter called the "underlying limits"):

and then only up to a further sum as stated in Item 2 of t Declarations in all in respect of each occurrence—subject to limit as stated in Item 2 of the Declarations in the aggrega for each annual period during the currency of this polic separately in respect of Products Liability and in respect c Personal Injury (fatal or non-fatal) by Occupational Disease su tained by any employees of the Insured.

In the event of reduction or exhaustion of the aggregate limit of liability under said underlying insurance by reason of losse paid thereunder, this policy shall

(1) in the event of reduction pay the excess of the reduce underlying limit

(2) in the event of exhaustion continue in force as under lying insurance.

The inclusion or addition hereunder of more than one Insured shall not operate to increase the Company's limit of liability.

THIS POLICY IS SUBJECT TO THE FOLLOWING DEFINITIONS:

1. INSURED

Named Insured: As stated in Item 1 of the Declarations forming a part hereof and/or subsidiary, associated, affiliated companies or owned and controlled companies as now or hereafter constituted and of which prompt notice has been given to the Company (Hereinafter called the "Named Insured").

The unqualified word "Insured", wherever used in this policy, includes not only the Named Insured but also:—

(a) any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such, and any organization or proprietor with respect to real estate management for the Named Insured;

(b) any person, organization, trustee or estate to whom the Named Insured is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this policy, but only in respect of operations by or on behalf of the Named Insured or of facilities of the Named Insured or used by them;

(c) any additional insured (not being the Named Insured under this policy) included in the Underlying Insurances, subject to the provisions in Condition B; but not for broader coverage than is available to such additional Insured under any underlying insurances as set out in attached Schedule;

(d) with respect to any automobile owned by the Named Insured or hired for use in behalf of the Named Insured, or to any aircraft owned by or hired for use in behalf of the Named Insured, any person while using such automobile or aircraft and any person or organization legally responsible for the use thereof, provided the actual use of the automobile or aircraft is with the permission of the Named Insured. The insurance extended by this sub-division (d), with respect to any person or organization other than the Named Insured, shall not apply—

1. to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any occurrence arising out of the operation thereof;

2. to any manufacturer of aircraft, engines, or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents with respect to any occurrence arising out of the operation thereof;

3. with respect to any hired automobile or aircraft, to the owner thereof or any employee of such owner. This sub-division (d) shall not apply if it restricts the insurance granted under sub-division (c) above.

2. PERSONAL INJURIES

The term "Personal Injuries" wherever used herein means bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination (except where it is a violation of a statute or regulation prohibiting such) humiliation; also libel, slander or defamation of character or invasion of rights of privacy, except that which arises out of any Advertising activities.

3 PROPERTY DAMAGE

The term "Property Damage" wherever used herein shall mean loss of or direct damage to or destruction of tangible property (other than property owned by the Named Insured).

4. ADVERTISING LIABILITY

The term "Advertising Liability" wherever used herein shall mean:—

(1) Libel, slander or defamation;

(2) Any infringement of copyright or of title or of slogan;

(3) Piracy or unfair competition or idea misappropriation under an implied contract;

(4) Any invasion of right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Named Insured's Advertising activities.

5. OCCURRENCE

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 injury, 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.

6. ULTIMATE NET LOSS

The term "Ultimate Net Loss" shall mean the total sum which the Insured, or any company as his insurer, or both, become obligated to pay by reason of personal injury, property damage or advertising liability claims, either through adjudication o compromise, and shall also include hospital, medical and funera charges and all sums paid as salaries, wages, compensation, fees charges and law costs, premiums on attachment or appeal bonds interest, expenses for doctors, lawyers, nurses and investigator and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequenc of any occurrence covered hereunder, excluding only the salarie of the Insured's or of any underlying insurer's permanent em ployees.

The Company shall not be liable for expenses as aforesaid when such expenses are included in other valid and collectible insurance.

7. AUTOMOBILE

The term "automobile", wherever used herein, shall mean a land motor vehicle, trailer or semi-trailer.

8. AIRCRAFT

The term "aircraft", wherever used herein, shall mean any heavier than air or lighter than air aircraft designed to transport persons or property.

9. PRODUCTS LIABILITY

The term "Products Liability" means

(a) Liability arising out of goods or products manufactured, sold, handled or distributed by the Named Insured or by others trading under his name if the occurrence occurs after possession of such goods or products has been relinquished to others by the Named Insured or by others trading under his name and if such occurrence occurs away from premises owned, rented or controlled by the Named Insured; provided such goods or products shall be deemed to include any container thereof, other than a vehicle, but shall not include any vending machine or any property, other than such container, rented to or located for use of others but not sold;

(b) Liability arising out of operations, if the occurrence occurs after such operations have been completed or abandoned and occurs away from premises owned, rented or controlled by the Named Insured; provided operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to an agreement; provided further the following shall not be deemed to be "operations" within the meaning of this paragraph: (i) pick-up or delivery, except from or onto a railroad car, (ii) the maintenance of vehicles, owned or used by or in behalf of the Insured, (iii) the existence of tools, uninstalled equipment and abandoned or unused materials.

10. ANNUAL PERIOD

The term "each Annual Period" shall mean each consecutive period of one year commencing from the inception date of this Policy.

THIS POLICY IS SUBJECT TO THE FOLLOWING EXCLUSIONS:

This policy shall not apply:—

(a) to any obligation for which the Insured or any company as its insurer may be held liable under any Workmen's Compensation, unemployment compensation or disability benefits law provided, however, that this exclusion does not apply to liability of others assumed by the Named Insured under contract or agreement;

(b) to claims made against the Insured

(i) for repairing or replacing any defective product or products manufactured, sold or supplied by the Insured or any defective part or parts thereof nor for the cost of such repair or replacement;

(ii) for the loss of use of any such defective product or products or part or parts thereof;

(iii) for improper or inadequate performance, design or specification, but nothing herein contained shall be construed to exclude claims made against the Insured for personal injuries or property damage (other than damage to the product of the Insured) resulting from improper or inadequate performance, design or specification;

(c) with respect to advertising activities, to claims made against the Insured for:

(i) failure or performance of contract, but this shall not relate to claims for unauthorized appropriation of ideas based upon alleged breach of an implied contract;

(ii) infringement of registered trade mark, service mark or trade name by use thereof as the registered trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans;

(iii) incorrect description of any article or commodity;

(iv) mistake in advertised price;

(d) except in respect of occurrences taking place in the United States of America, its territories or possessions, or Canada, to any liability of the Insured directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Except insofar as coverage is available to the Insured in the underlying insurances as set out in the attached Schedule, this policy shall not apply:—

(e) to liability of any Insured hereunder for assault and battery committed by or at the direction of such Insured except liability for Personal Injury or Death resulting from any act alleged to be assault and battery committed for the purpose of preventing or eliminating danger in the operation of aircraft, or for the purpose of preventing personal injury or property damage; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(f) with respect to any aircraft owned by the Insured except liability of the Named Insured for aircraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(g) with respect to any watercraft owned by the Insured, while away from premises owned, rented or controlled by the Insured, except liability of the Named Insured for watercraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above,

(h) to any employee with respect to injury to or the death of another employee of the same Employer injured in the course of such employment.

THIS POLICY IS SUBJECT TO THE FOLLOWING CONDITIONS:—

A. PREMIUM

The premium for this policy shall be computed on the basis set forth under Item No 4 of the policy declarations

Upon expiration of this policy or its termination during the policy period, the earned premium shall be computed as thus defined. If the earned premium thus computed is more than the advance premium paid, the named insured shall immediately pay the excess to the company; if less, the company shall return the difference to the named insured; but the company shall receive and retain the annual minimum premium for each twelve (12) months of the policy period.

B. In the event of additional Insureds being added to the coverage under the Underlying Insurance during currency hereof prompt notice shall be given to The Company and if an additional premium has been charged for such addition on the Underlying Insurances, The Company shall be entitled to charge an appropriate additional premium hereon.

C. PRIOR INSURANCE AND NON CUMULATION OF LIABILITY

It is agreed that if any loss covered hereunder is also covered in whole or in part under any other excess policy issued to the Insured prior to the inception date hereof the limit of liability hereon as stated in Item 2 of the Declarations shall be reduced by any amounts due to the Insured on account of such loss under such prior Insurance.

Subject to the foregoing paragraph and to all the other terms and conditions of this policy in the event that personal injury or property damage arising out of an occurrence covered hereunder is continuing at the time of termination of this policy The Company will continue to protect the Insured for liability in respect of such personal injury or property damage without payment of additional premium.

D. SPECIAL CONDITIONS APPLICABLE TO OCCUPATIONAL DISEASE

As regards personal injury (fatal or non-fatal) by occupational disease sustained by an employee of the Insured, this policy is subject to the same warranties, terms and conditions (except as regards the premium, the amount and limits of liability and the renewal agreement, if any) as are contained in or as may be added to the underlying insurances prior to the happening of an occurrence for which claims is made hereunder.

E. INSPECTION AND AUDIT

The Company shall be permitted at all reasonable times during the policy period to inspect the premises, plants, machinery and equipment used in connection with the Insured's business, trade or work, and to examine the Insured's books and records at any time during the currency hereof and within one year after final settlement of all claims so far as the books and records relate to any payments made on account of occurrences happening during the term of this policy.

F. CROSS LIABILITY

In the event of claims being made by reason of personal injuries suffered by any employee or employees of one Insured hereunder for which another Insured hereunder is or may be liable, then this policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

In the event of claims being made by reason of damage to property belonging to any Insured hereunder for which another Insured is, or may be liable then this policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

Nothing contained herein shall operate to increase Company's limit of liability as set forth in Insuring Agreement II.

G. NOTICE OF OCCURRENCE

Whenever the Insured has information from which the Insured may reasonably conclude that an occurrence covered hereunder involves injuries or damages which, in the event that the Insured should be held liable, is likely to involve this policy, notice shall be sent to the Company as soon as practicable, provided, however, that failure to give notice of any occurrence which at the time of its happening did not appear to involve this policy but which, at a later date, would appear to give rise to claims hereunder, shall not prejudice such claim.

H. ASSISTANCE AND CO-OPERATION

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 but The Company shall have the right and shall be given the opportunity to associate with the Insured or the Insured's underlying insurers, or both, in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonably likely to involve The Company, in which event the Insured and The Company shall co-operate in all things in the defense of such claim, suit or proceeding.

I. APPEALS

In the event the Insured or the Insured's underlying insurers elect not to appeal a judgment in excess of the underlying limits, The Company may elect to make such appeal at their cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of The Company for ultimate net loss exceed the amount set forth in Insuring Agreement II for any one occurrence and in addition the cost and expense of such appeal.

J. LOSS PAYABLE

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. The Insured shall make a definite claim for any loss for which the Company may be liable under the policy within twelve (12) months after the Insured shall have paid an amount of ultimate net loss in excess of the amount borne by the Insured or after the Insured's liability shall have been fixed and rendered certain either by final judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and The Company. If any subsequent payments shall be made by the Insured on account of the same occurrence, additional claims shall be made similarly from time to time. Such losses shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this policy.

K. BANKRUPTCY AND INSOLVENCY

In the event of the bankruptcy or insolvency of the Ins or any entity comprising the Insured, The Company shall be relieved thereby of the payment of any claims hereu because of such bankruptcy or insolvency.

L. OTHER INSURANCE

If other valid and collectible insurance with any other surer is available to the Insured covering a loss also cov by this policy, other than insurance that is in excess of insurance afforded by this policy, the insurance afforded this policy shall be in excess of and shall not contribute such other insurance. Nothing herein shall be construed make this policy subject to the terms, conditions and lim tions of other insurance.

M. SUBROGATION

Inasmuch as this policy is "Excess Coverage", the Insure right of recovery against any person or other entity cannot exclusively subrogated to the Company. It is, thereto understood and agreed that in case of any payment he under, the Company will act in concert with all other terests (including the Insured) concerned, in the exercise such rights of recovery. The apportioning of any amou which may be so recovered shall follow the principle t any interests (including the Insured) that shall have paid amount over and above any payment hereunder, shall f be reimbursed up to the amount paid by them; the Compa is then to be reimbursed out of any balance then remaini up to the amount paid hereunder; lastly, the interests (cluding the Insured) of whom this coverage is in excess a entitled to claim the residue, if any. Expenses necessary the recovery of any such amounts shall be apportioned b tween the interests (including the Insured) concerned, the ratio of their respective recoveries as finally settled.

N. CHANGES

Notice to or knowledge possessed by any person shall n effect a waiver or change in any part of this policy or esto The Company from asserting any right under the terms this policy; nor shall the terms of this policy be waived changed, except by endorsement issued to form a part her of, signed by The Company.

O. ASSIGNMENT

Assignment of interest under this policy shall not bind T Company unless and until their consent is endorsed hereo

P. CANCELLATION

This policy may be cancelled by the named insured by mai ing to the company written notice stating when thereaft the cancellation shall be effective. This policy may be can ce'led by the company by mailing to the named insured the address shown in this policy written notice stating whe not less than 30 days thereafter such cancellation shall b effective. The mailing of notice as aforesaid shall b sufficient proof of notice. The effective date and hour c cancellation stated in the notice shall become the end c the policy period. Delivery of such written notice either b the named insured or by the company shall be equivalent t mailing.

If he named insured cancels, earned premium shall be com puted in accordance with the customary short rate tabl and procedure. If the company cancels, earned premiur shall be computed pro rata. Premium adjustment may b made either at the time cancellation is effected or as soo as practicable after cancellation becomes effective, but pa ment or tender of unearned premium is not a condition cancellation.

Q. MAINTENANCE OF UNDERLYING INSURANCE

It is a condition of this policy that the policy or policie referred to in the attached "Schedule of Underlying Insu ances" shall be maintained in full effect during the current of this policy except for any reduction of the aggregate lim or limits contained therein solely by payment of claims respect of accidents and/or occurrences occurring during th period of this policy. Failure of the Insured to comply wi the foregoing shall not invalidate this policy but in t event of such failure, the Company shall only be liable the same extent as they would have been had the Insure complied with the said condition.

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Authorized Representative