Exhibit 2

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

SHELDON HOLSON AND MELVIN HOLSON'S
MANDATORY DISCLOSURE

Pursuant to Paragraph 14(b) of the "Procedures Regarding Claims Filed with The Home Insurance Company in Liquidation," Sheldon Holson and Melvin Holson (collectively the "Holsons") hereby provide their submission regarding the amount the Holsons assert is due and the method of calculation for determining that amount. As set forth below, the total amount the Holsons assert is due in this matter is $1,724,300.13.

I. BACKGROUND

The Holsons were the primary shareholders, directors, and principal officers of The Holson Company for over thirty years until 1986. During that time, The Holson Company purchased seven excess insurance policies (dating from December 1973 through August 1981) from the Home Insurance Company ("Home"), and the Holsons are covered insureds under those policies. The policy number, terms, and limits of these policies are set forth in the Case File at CF 038.

On February 1, 1991, the KVL Corporation filed suit (the "KVL suit") against the Holsons and The Holson Company (K.V.L. Corp. v. The Holson Co. et al, U.S. District Court of Connecticut, (Civil Action No. 5:91CV59)) for damages stemming from alleged environmental contamination occurring on The Holson Company property and actions the Holsons undertook while they were officers and directors of The Holson Company. The KVL complaint is set forth in the Case File at CF 006.

On February 22, 1991, the Holsons notified the Home of the pendency of the KVL suit, the first time the Holsons had ever claimed a loss under a Home policy. By letter dated March 27, 1991, Lemuel Shervington, Jr. of the Home's Major Litigation Department, acknowledged receipt of this notice of the KVL suit. This letter is attached as Exhibit A.

Over the next few years, the Holsons repeatedly demanded that, under the terms of the applicable insurance policies, the Home provide them with a defense in the KVL suit. These demands are set forth in Exhibit B. The Home refused to honor its contractual obligations. Prior to a court held settlement conference on the eve of trial in 1995, the Holsons again wrote to the Home and demanded that they honor their obligations and participate in this settlement conference and defend the Holsons. This letter is set forth in Exhibit C. The Home refused. The Holsons were forced to retain trial counsel at their own expense. The bench trial lasted seventeen days before Federal District Court Judge Alvin W. Thompson in the spring of 1995.

During the ensuing years, while the court was deliberating its decision, the Holsons reached settlements with the Fireman's Fund and the Travelers Indemnity Company, and thus, exhausted the underlying layers of coverage they had with these primary insurers regarding the claims in the KVL suit. Specifically, the Holsons' May 1999 settlement with the Travelers Indemnity Company expressly exhausted the two GCL policies issued by Travelers for the time

period December 1, 1979 to December 1, 1981, the period covered by the Home policies HEC 9831605 and HEC 9909110. The Holsons' August 1999 settlement with the Fireman's Fund Insurance Company exhausted Fireman Funds' policies issued for the period August 12, 1975 to August 12, 1981, a period covered by all of the Home policies. On two occasions, by letters dated September 27, 1999, and October 5, 1999, counsel for the parties informed the Home of these settlements and expressly informed the Home that, as a result of these settlements, the Holsons had exhausted the primary coverage provided by its insurance policies for the KVL suit. These letters are set forth in the Case File at CF 027-029.

On August 3, 2000, the Court issued its Memorandum Opinion and found in favor of KVL and against the Holsons on some of the claims in the KVL suit. On April 25, 2001, the court entered a "Partial Judgment" that set forth the claims in the KVL suit for which the Holsons were liable, and the amount of damages the Holsons were liable for on those claims. The Court's judgment was in excess of $2 million. In September 2002, the Holsons reached a settlement with KVL on all the claims raised by the KVL suit, which the Holsons had to pay for personally. The Home refused to participate or contribute in this settlement.

On September 30, 2002, the Holsons filed a complaint in the Superior Court of Connecticut against the Home Insurance Company for breaching it contracts of insurance with the Holsons by refusing to defend and indemnify the Holsons against the KVL suit. The complaint also includes a bad faith count for the Home's failure to investigate adequately the Holsons' claim of coverage, to promptly respond to the Holsons' communications, to attempt to settle the claims set forth in the KVL suit, for compelling the Holsons to initiate litigation to recover under the Home policies, and for wrongfully, unfairly and in bad faith refusing to defend

and indemnify the Holsons against the KVL suit. This complaint is set forth in the Case File at CF 030.

II. CLAIM AMOUNT

The Holsons submitted a Proof of Claim in this matter on December 19, 2003. The Proof of Claim is designated in the Case File at CF 001 through CF 039. The Proof of Claim asserts coverage under the listed Home liability policy numbers as set forth in the Case File at CF 038.

In their Proof of Claim, the Holsons set forth the costs they incurred as a result of the Home's breach of its duty to defend and indemnify the Holsons against a third party lawsuit and its bad faith refusal to honor its obligations under these seven excess comprehensive general liability insurance policies. These costs are set forth in the Case File at CF 039; the method of calculation is set forth as noted in the itemized Total Expenses, Payments & Costs incurred to defend the KVL suit, the settlement payment to KVL, and the costs of remediation and monitoring. These costs and expenses total $1,746,760.72.

The total insurance proceeds from the settlements from Travelers and Fireman's Fund, minus the legal fees incurred to pursue these insurance claims, are itemized under the Insurance Proceeds. Note that the amount of the Travelers settlement is listed as "unable to disclose" because Travelers has previously objected to disclosure of this confidential settlement agreement. The net amount totals $685,088.33.

The Holsons also seek reimbursement of their legal fees expended in pursuing this coverage claim against the Home, which total $39,212 to date.[1] The Holsons also seek compensatory damages of $1,000,000 as a result of the ordeal the Holsons suffered for more than ten years, while the Home refused to honor its obligations, to defend the KVL litigation. The Home's bad faith refusal to honor its obligation to defend and indemnify the Holsons

[1] The back up documentation on these costs is available upon request.

detrimentally affected years of their lives and their ability to enjoy their retirement. The Holsons were forced to expend their own resources to manage complex litigation, which significantly impacted their finances, their estate planning decisions and their lifestyle.

The total amount the Holsons assert is due in this matter is $1,724,300.13.

Respectfully submitted,

SHELDON HOLSON AND MELVIN HOLSON

By their Attorneys,

Dated: December 10, 2008

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

Gerald J. Petros (*pro hac vice pending*)
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50 Kennedy Plaza, Suite 1500
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Phone: (401) 274-2000
Fax: (401) 277-9600
gpetros@haslaw.com

CERTIFICATE OF SERVICE

I, Christopher H.M. Carter, hereby certify that I mailed a true and accurate copy of the within Mandatory Disclosure to Eric A. Smith, Esq., Rackemann, Sawyer & Brewster P.C., 160 Federal Street, Boston, MA 02110-1700 on December 10, 2008.

938996 (56068-117369)

Exhibit 3

MAYER, BROWN & PLATT

1675 BROADWAY

NEW YORK, NEW YORK 10019-5820

PHILIP ALLEN LACOVARA
Direct Dial (212) 506-2585
Direct Fax (212) 849-5985
placovara@mayerbrown.com

MAIN TELEPHONE
212-506-2500
MAIN FAX
212-262-1910

May 10, 2001

OVERNIGHT DELIVERY
Michael F. Aylward, Esquire
Morrison, Mahoney & Miller, LLP.
250 Summer Street
Boston, MA 02210

Re: K.V.L. Corp. v. The Holson Co., No 5:91 CV 59
REM File No. 087-521356

Dear Mr. Aylward:

I received your letter dated April 23, 2001, on behalf of Home Insurance Company and its liquidating agent, Risk Enterprise Management, Ltd. I was surprised by your assertion that "threshold questions asked by REM have never been properly responded to." For a period close to ten years now, the Holson Company and the Holsons individually have provided Home and then REM with all pertinent information regarding the KVL litigation and the Holsons' claim against Home. On numerous occasions, the Holsons have written to Home and then REM to answer questions raised by Home and REM, often providing additional copies of materials that the Home could not locate after we had provided earlier copies. This has hardly been a matter in which the insureds have been uncooperative and the insurer a model of diligence and cooperation – as the law requires.

Despite the Holsons' persistent patience and cooperation, Home (and then REM) have done nothing but stall and delay. Each time we satisfy one objection, the insurer raises new, supposed deficiencies in the Holsons' claim against Home. For example, your letter raises several questions never previously raised in the nearly ten-year history of this claim. I have little doubt that a court and jury in a "bad faith" action will find that the insurer has been engaged in a calculated strategy of "delay and deny" while it runs off its assets and shuts down. The classic insurer's stance of extending "time and distance" is plainly at work here.

Nevertheless, in the continued hope of reaching an amicable resolution of this claim, we will address the four questions that you raise in your letter.

1. **Does Holson assert that the KVL suit only seeks recovery for pollution that occurred after 1975? If not apart from the Federal Insurance Company, which insurer or insurers provide liability insurance to Holson between 1966 and 1975.**

The Holsons seek indemnification for all liability incurred as a result of the KVL litigation. This includes the costs of defending the action. Although the Holsons have not yet become obligated to pay any judgment to KVL, they have incurred substantial defense costs during the course of this litigation. Presently, the Holsons seek indemnification for those defense costs.

As we have previously explained, Connecticut law is clear that an insurer owes an obligation to defend its insured if the complaint in the underlying litigation contains any allegations falling within the scope of coverage. KVL's complaint, which has been in Home's possession for nearly ten years, alleges damages resulting from the Holson Company's manufacturing operations at the Wilton plant site. Those operations took place during a twenty-two-year period from 1966 to 1988, which includes the time during which Home provided excess liability insurance to the Holsons. Therefore, under Connecticut law, Home is obligated to provide a defense to the Holsons in this litigation.

As for your question regarding pre-1975 insurance coverage, we note that Home policy HEC 4763813 was in effect from December 1, 1973 to December 1, 1976. Moreover, that policy expressly notes that it was made in renewal of a prior Home policy issued to the Holson Company (HEC 9793161). We do not have a copy of HEC 9793161, and, despite our repeated requests, Home has failed to date to provide us with a copy of that policy. That the earlier policy is referenced in a policy binder subsequently issued by Home itself is conclusive proof of the existence of the prior policy. At this time, we have no reason to believe that Home's coverage started later than 1966.

Moreover, we also note that Home provided personal "umbrella" liability policies to Melvin Holson for the period November 10, 1972, to November 10, 1979, and to Sheldon Holson for the period November 10, 1973 to November 10, 1979. In your letter, you question the existence of these policies and demand that we provide "secondary evidence" regarding these policies. We note, however, that we

have already provided to REM a facsimile from Home's authorized insurance agent, Jim Guinsburg, who sold these policies on behalf of Home to the Holsons. Mr. Guinsburg's fax lists the dates, policy numbers, and limits of these policies. Moreover, it is our understanding that Mr. Guinsburg is prepared to testify that, as this record indicates, Home Insurance issued these policies to the Holsons.

As for liability insurance provided by other carriers, we do not have any information regarding such other policies. HEC 4763813 makes reference to Federal Insurance Company as the issuer of the underlying CGL policy for that particular "excess" policy, but records regarding insurance policies issued by Federal could not be located.

2. **Has Holson tendered this claim to Federal and/or other pre-1975 insurers? If a written response has been received to such tenders, please provide us with a copy.**

It is my understanding that no claim was filed with Federal. As noted above, however, Home issued policies covering the Holsons prior to 1975. Within days of service of the complaint filed by KVL, the Holsons notified Home of their claim and provided it with a copy of KVL's complaint. You should be in possession of – or at least have access to – the various written responses sent to the Holsons by Home (and then REM). Over the past ten years, Home has never taken the position that its obligations were somehow excused because the Holsons may not also have notified other insurers about their potential liability as to other periods. I do not think a Connecticut court or jury would view it as good faith for Home or its representatives to conjure up this kind of objection at this late stage.

3. **To the extent that Holson has received indemnity payments from any of its primary liability insurers by reason of the KVL claims, please state whether any portion of these proceeds were ultimately paid to KVL or were otherwise used to satisfy or extinguish KVL's liability claims.**

No amounts received in settlement with Travelers' Insurance Company or Fireman's Fund Insurance Company have been paid to KVL or used to satisfy or extinguish KVL's liability claims. My understanding is that those sums were used solely to defray a portion of the legal expenses incurred in defending the KVL litigation.

As we explained in our letter dated April 11, 2001, under Connecticut law, these settlements exhausted the primary layer of coverage and triggered, no later than the date of the respective settlements, Home's duty to assume the defense of the Holsons in the KVL litigation. Moreover, we further note that several of the policies issued to the Holson Company by Home expressly require Home to assume the defense of an action "[w]ith respect to any occurrence not covered by the underlying policies." See, e.g., HEC 9535253 Endorsement 2. Since, as a result of the settlements with the underlying carriers, this action is no longer covered by the underlying policies, the clear terms of the applicable policies obligate Home to assume the defense of the Holsons in the KVL litigation.

4. **What sudden and accidental discharge of pollutants resulted in property damage during the period of Home's coverage that forms the basis of the August 3, 2000 judgment against Holson?**

KVL's complaint filed in this action seeks to recover for environmental contamination at the property that resulted from the improper and episodic release of certain hazardous materials into a sump adjacent to the plant. KVL's complaint does not describe with greater particularity how those materials were released into the sump. Most significantly, neither the complaint nor the trial evidence, as I understand it, alleged that the Holsons or the Holson Company deliberately or continuously "dumped" pollutants.

Rather, it is my understanding that, during the time that the Holson Company conducted manufacturing operations at the plant, some employees would occasionally and sporadically wash their hands and rags in a sink that connected to the sump. Sometimes, their hands or rags were covered with solvents containing hazardous materials, which company policy expressly required to be handled in an appropriate manner. These sporadic and unauthorized releases of hazardous materials into the sink constitute a "sudden and accidental" discharge of the materials. Therefore, any claims arising from those incidents were and are covered under the various policies issued by Home.

Moreover, we note that the determination whether the contamination was in fact "sudden and accidental" is irrelevant to whether Home owes a duty to defend the Holsons in the KVL litigation. First, as we have previously explained, Connecticut law requires an insurer to defend its insured if the allegations of the complaint even remotely fall within coverage. Since the complaint does not rule out that the contamination was "sudden and accidental," Home owes the Holsons a defense regardless of the exact nature or cause of the contamination.

You contend, citing only *Schilberg Integrated Metals* v. *Continental Casualty Co.*, New Britain No. X03 CV 98 0499554 (Conn. Super. Apr. 17, 2001), that, once Home establishes that liability arises out of the discharge of pollutants, the burden shifts to the insured to prove that the exception for "sudden and accidental" discharges applies. Your reliance on *Schilberg*, an unpublished decision of a Connecticut trial court, is misplaced. Indeed, as we explained with reference to the controlling decisions of the Connecticut Supreme Court and Connecticut Appellate Court, it is the insurer who bears the burden of persuasion regarding the inapplicability of an exception to a policy exclusion. Since the determination whether the insurer's duty to defend has been triggered depends *exclusively* upon the review of the allegations in the underlying complaint, Home is in as good a position as the Holsons to demonstrate (as it must if Home wishes to disclaim its duty to defend) that KVL's complaint excludes recovery for "sudden and accidental" pollution.

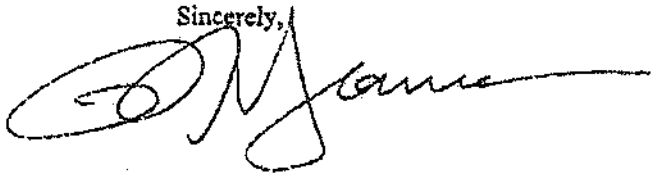
Second, as we have previously explained, any debate about who bears what burden of proof under a pollution exclusion clause is largely irrelevant here. Home policy HEC 9909110, effective August 12, 1980, to August 12, 1981, does not contain a pollution exclusion clause. Although your letter suggests that the policy in our possession is "incomplete," that suggestion is unfounded. The copy was produced to us *by the Home itself*. In light of that fact, any insinuation that we have withheld or concealed the existence of any policy terms or endorsements is not only unfounded but offensive.

Moreover, equally unwarranted is your demand that we provide you with "some memorandum or contemporaneous document suggesting why this single policy would not have contained a standard exclusion." Since Home is in the best position to have a "complete" policy, the fact that our copy came from Home's own records is conclusive evidence that the policy does *not* in fact contain a pollution exclusion clause. It is not the insured's obligation to explain why your client evidently chose *not* to include a pollution exclusion in this policy. The fact of the matter is that Home did not include such an endorsement in this particular policy. If Home had any evidence that it included such an exclusion, we assume that it would have furnished it to us.

* * * *

I hope that, after almost ten years, this finally resolves Home's questions regarding the Holsons' claims. I look forward to your response. If you see any possibility of resolving this matter without the need for "bad faith" litigation, please telephone me.

Sincerely,



cc: Gerald Petros

Exhibit 4

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

HINCKLEY, ALLEN & SNYDER
Attorneys at Law

Gerald J. Petros

January 5, 1995

Ms. Patricia A. Spillane
Major Litigation Department
The Home Insurance Company
Ten Exchange Place
Jersey City, NJ 07302

Re: K.V.L. Corp. f/k/a Mill's Pride, Inc.
vs. The Holson Company, et al

Dear Ms. Spillane:

We represent The Holson Company in the above-referenced action. On February 22, 1991, James S. Guinsburg, The Holson Company's insurance agent, sent by certified mail a copy of the summons and complaint in an action brought by K.V.L. Corp. f/k/a Mill's Pride, Inc. against The Holson Company and other defendants. Through that letter and through subsequent correspondence from Mark Zimmerman and David Monz, The Holson Company demanded that Home Insurance defend and indemnify The Holson Company in this action. To date Home Insurance -- along with The Holson Company's other insurers -- has refused to fulfill its obligations to The Holson Company. As a result, The Holson Company has been forced to defend itself.

We expect this matter to come to trial in the next few months. It is therefore imperative that Home Insurance immediately agree to defend and indemnify The Holson Company in this dispute.

We look forward to your prompt response.

Very truly yours,

Gerald J. Petros

GJP:cl

Exhibit 5

TravelersInsurance
A member of citigroup

Joseph L. Schmitt
Counsel
Environmental Litigation Group

3 Farm Glen Boulevard
Farmington, CT 06032-1870
860 277-3048
FAX: 860 954-0359
E-mail: jlschmit@travelers.com

March 28, 2001

PRIVILEGED AND CONFIDENTIAL
SETTLEMENT COMMUNICATION

Home Insurance Company

Re: ***Intercraft Company, et al. v. Fireman's Fund Insurance,***
Connecticut Superior Court

To whom it may concern:

Please be advised that on May 17, 1999 Travelers and Intercraft entered into a confidential settlement of the above matter which was memorialized by the execution of a confidential settlement agreement and release of the same date. While the terms of that agreement are strictly confidential, the Parties agreed as part of that settlement that the limits of Travelers policy number 650-347B967-6-IND-79, effective from December 1, 1979 to December 1, 1980 and Travelers policy number 650-347B967-6-IND-80, effective from December 1, 1980 to December 1, 1981 were deemed to be exhausted.

Sincerely,

Joseph L. Schmitt

cc: Alexandra K. Callam, Esq.

Exhibit 6 to Liquidator's Section 15 Submission is subject to

Liquidator's Assented-To Motion to File Exhibit Under Seal

NOT INCLUDED

Exhibit 7

HinckleyAllenSnyder LLP
ATTORNEYS AT LAW

1500 Fleet Center
Providence, RI 02903-2393
TEL: 401.274.2000
FAX: 401.277.9600
www.haslaw.com

Alexandra K. Callam
acallam@haslaw.com

October 4, 2005

Kevin L. Kelly
Chief Environmental Officer
The Home Insurance Company in Liquidation
59 Maiden Lane, 5th Floor
New York, New York 10038

Re: Home Insurance Company in Liquidation ("HICIL")
Policyholder: The Holson Company
File No.: 087-521356
POC Nos.: INSU275296, etc.

Dear Mr. Kelly:

This is in response to your August 22, 2005 letter and our follow-up conversation on September 26, 2005 regarding the above-referenced claim. In your letter, you request the total amount of the settlement paid to the Holson Company, separately from Fireman's Fund and Travelers, as well as the allocation of these payments to their respective policies. As we discussed, this information is included in the Proof of Claim that Newell Company, Inc. filed on June 8, 2004. Specifically, in Attachment No. 3, the total settlement from the Fireman's Fund is listed as $900,000, and the settlement from Travelers is listed as "unable to disclose." As I informed you in our telephone conversation, Travelers has previously objected to disclosure of its confidential settlement agreement that was the outcome of the Holson Company's suit against Travelers. However, as set forth in the Newell Company's Proof of Claim, the parties agreed as part of that settlement that the limits of Travelers' policy number 650-347B967-6-IND-79, effective from December 1, 1979 to December 1, 1980 and Travelers' policy number 650-347B967-6-IND-80, effective from December 1, 1980 to December 1, 1981 were deemed to be exhausted. Also, as set forth in the Proof of Claim, the Holson settlement with Fireman's Fund Insurance Company exhausted Fireman's Fund's policies issued for the periods August 12, 1975 to August 12, 1981.

You have also requested information about the amounts that were incurred directly by the Holson Company arising out of its claim against The Home Insurance Company. This information also has been provided in the Proof of Claim, and is set forth in Attachment No. 3, which lists the expenses and settlement proceeds information, and includes the amount of the Holson Company's claim.

I have also attached at your request a copy of the Court's Memorandum Opinion rendered on August 3, 2000. Please let me know if you have any additional questions or require any more information.

Very truly yours,

Alexandra K. Callam

AKC/ed

Enclosures

677472v1.56068.117369

Exhibit 8

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

September 27, 1999

Ms. Patricia A. Spillane
Major Litigation Department
The Home Insurance Company
10 Exchange Place
Jersey City, NJ 07302

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

Dear Ms. Spillane

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

316071v1
(60142/60365)

cc: Mel Holson
Sheldon Holson
Paula Rawleigh

3169971v1
(501-42/90588)

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

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

Exhibit 9

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUG 3 12 47 P.M '00

U.S. DIS... CT

K.V.I. 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. 5:91CV59 (AWT)

MEMORANDUM OPINION

Certain real estate that had been contaminated by hazardous waste was sold to the plaintiff in this case. The plaintiff's claims brought pursuant to 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"), pursuant to Connecticut's hazardous waste clean-up reimbursement statute, Conn. Gen. Stat. § 22a-452, pursuant to Connecticut's Transfer Act, Conn. Gen. Stat. § 22a-134, et seq., and pursuant to common law theories of fraudulent and negligent misrepresentation, and breach of contract, were tried to the court. The court finds in favor of the plaintiff on its claims brought pursuant to Connecticut's reimbursement statute and Connecticut's Transfer Act and on its claim for fraudulent misrepresentation; the court does not reach the issue of negligent misrepresentation.

CF 110

I. FINDINGS OF FACT

A. Prior History

The property which is the subject of this action consists of 17.486 acres of land located on the westerly side of United States Route 7, also known as Danbury Road, in Wilton, Connecticut (the "Property"). The Property is bisected by the Norwalk River and is improved with a two-story masonry building serviced by an adjacent asphalt parking area.

In approximately 1966, The Holson Company relocated from Norwalk, Connecticut to Wilton. From that time until April 1976, it owned and ran its business operations on a portion of the Property. From April 1976 until December 1986, The Holson Company owned the entire Property.

From its inception until 1986, The Holson Company was owned by various members of the Holson family and/or family trusts. From the late 1970's to 1986, Melvin and Sheldon Holson, the M. Holson Trust, and the S. Holson Trust owned a controlling share of the stock of The Holson Company; the M. Holson Trust and the S. Holson Trust are referred to collectively as the "Holson Trusts." During this period, Melvin and Sheldon Holson were the company's directors and officers, and they actively controlled and directed all operations of the business. The company's business was the manufacture and sale of photograph albums.

Sheldon Holson began working on the manufacturing side of the business in approximately 1950, when the company was controlled by his father. Although the elder Holson selected the

Wilton site, Sheldon Holson was involved in the design of the new building, which was new construction on what had previously been farmland; he worked with the architect and the contractor. He also worked with the architect on each occasion when an addition was made to the building. By the 1960's, Sheldon Holson was in charge of all The Holson Company's manufacturing operations. Included among his responsibilities were research and development of new products, as well as product design. When The Holson Company's operations expanded in the 1970's, a plant manager was hired to directly supervise day-to-day operations. However, even then, Sheldon Holson's role in the company involved spending at least 10 to 15 percent of his time on the plant floor; being on the plant floor was part of his normal daily routine.

Melvin Holson started working for The Holson Company in 1948. He started as a salesman and then became a sales manager. When the time came in the 1970's when Melvin and Sheldon Holson controlled the company, Sheldon had responsibility for manufacturing, and Melvin had responsibility for sales. Melvin Holson estimated that his responsibilities led him to be on the plant floor once a week, on average.

On October 22, 1986, Melvin and Sheldon Holson and the Holson Trusts, in exchange for $10,500,000 and a certain option agreement (the "Option Agreement"), sold approximately 94% of the stock of The Holson Company to Holson Acquisition Corporation ("HAC") pursuant to a Stock Purchase Agreement dated as of September 26, 1986. The Option Agreement provided that Melvin

and Sheldon Holson and the Holson Trusts could elect to exchange their remaining shares in The Holson Company, constituting approximately 6% of the stock of the company, for either the Property or a $1,000,000 promissory note from the company at any time up to April 30, 1987 (the "Option").

In addition, in connection with the sale of their stock, each of Melvin and Sheldon Holson entered into a consulting and non-competition agreement with HAC. The consulting agreements were for a three-year term and provided that Melvin and Sheldon Holson would serve as co-chairmen of HAC's board of directors. Although Melvin and Sheldon Holson were less active than prior to the sale of their controlling interest, they remained actively involved with The Holson Company as paid consultants and kept offices at the Property.

At the time of the sale to HAC, Melvin and Sheldon Holson made no inquiry to ascertain the environmental conditions at the Property. Nor did they give any certification to the transferee, i.e., HAC, or the Connecticut Department of Environmental Protection ("DEP") regarding the environmental conditions at the Property.

On November 24, 1986, Melvin and Sheldon Holson and the Holson Trusts created defendant Danbury Road Family Partnership (the "Partnership"), a Connecticut general partnership, pursuant to a written General Partnership Agreement. The general partners of the Partnership at all times relevant to this action were Melvin Holson, Sheldon Holson, the M. Holson Trust and the S.

Holson Trust. The General Partnership Agreement designated Melvin Holson and Sheldon Holson as the managing general partners. The Partnership, Melvin Holson and Sheldon Holson are referred to collectively as the "Partnership Defendants."

On November 14, 1986, Melvin and Sheldon Holson and the Holson Trusts assigned to the Partnership the Option and the rights to their remaining shares in The Holson Company. The Partnership then exercised the Option and elected to obtain title to the Property in exchange for these shares in lieu of receiving the $1,000,000 note from The Holson Company.

On December 19, 1986, pursuant to its exercise of the Option, the Partnership acquired from The Holson Company title to the Property in exchange for the transfer to The Holson Company of the remaining approximately 6% of the stock, which had been owned by Melvin and Sheldon Holson and the Holson Trusts.

As part of that transaction, the Partnership assumed all of The Holson's Company's obligations under a $3,500,000 mortgage loan from The Connecticut National Bank ("CNB"). The Holson Company had originally obtained a $990,000 loan from CNB, secured by a mortgage on the Property, on June 9, 1986. It had increased the amount of that loan to $3,500,000 on September 25, 1986, with the increased amount also being secured by a mortgage on the Property. Under the terms of the loan documents, CNB's consent to the sale to HAC of the controlling interest in The Holson Company had been required, and CNB had given its consent. Then, in connection with its purchase of the Property on December 19,

1986, the Partnership assumed all of The Holson Company's obligations to CNB in connection with the loan and took the Property subject to the mortgage in favor of CNB.

On December 19, 1986, in connection with the sale of the Property by The Holson Company to the Partnership, The Holson Company, a Connecticut corporation, and HAC, a Delaware corporation, entered into an agreement to merge. The merger agreement provided that HAC would be the surviving corporation and that it would change its name to "The Holson Company." Consistent with the corporate laws of Connecticut and Delaware,[1] the merger agreement provided that, when the merger became effective, HAC would not only acquire all of the rights of The Holson Company, but would also become responsible for all of its obligations. The merger became effective on December 22, 1986.

Also on December 19, 1986 and in connection with the sale of the Property by The Holson Company to the Partnership, the Partnership leased the Property to HAC, under its new name "The Holson Company," pursuant to a lease agreement. The lease agreement provided for an initial term of one year and gave the tenant the option to renew the term for three successive one-year periods.

At the time of the sale of the Property to the Partnership, The Holson Company was still actively engaged in manufacturing on the Property. After the sale of the Property to the Partnership,

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[1] See Conn. Gen. Stat. § 33-369 (1985); Del. Code Ann. Tit. 8, § 259 (1983).

HAC, then known as "The Holson Company," continued to operate the same business at the Property under its lease agreement with the Partnership.

At the time of the sale of the Property to the Partnership, The Holson Company did not give any certification to the Partnership or the DEP regarding the environmental conditions at the Property.

The net result of this series of transactions was that HAC acquired 100% of the ownership of The Holson Company, which owned the Property, and merged with The Holson Company and assumed all of its liabilities, but only after The Holson Company had divested itself of the Property. However, the operations of the business continued to be conducted at the same location.

Because HAC acquired all of the rights and assumed all of the obligations of The Holson Company, and was then known as "The Holson Company," the term "Holson Company" is used interchangeably to refer to The Holson Company in relation to periods prior to the merger, and to refer to the new, merged company in relation to periods after the merger became effective.

In April 1988, the Holson Company arranged to move its manufacturing operations to South Carolina and left only certain office operations on the Property. By July of 1988, the Holson Company's remaining office operations had been moved from the Property.

B. The Initial Meetings

In the summer of 1988, plaintiff K.V.L. Corporation ("KVL") sought to establish its corporate headquarters, a retail showroom, and an assembly facility in the Fairfield County area. Representatives of KVL looked at a number of sites to assess their suitability for this purpose.

At the time KVL learned of the Property, the Property was owned by the defendant Partnership, and the defendant Holson Company had moved its operations to South Carolina. Defendants Melvin and Sheldon Holson appeared to be in charge of the Holson Company's affairs at the Property. Their last name was on the front of the building. They had two parking spaces with their names on them closest to the entrance to the building. They had what appeared to be executive offices. They were also the managing general partners of the Partnership.

By June 1988, KVL had identified the Property as a site that possibly met its needs in the Fairfield County area. Representatives of KVL had two meetings with representatives of the seller during the period June to July of 1988, during which the Holson Company's operations and environmental conditions at the Property were discussed. During these discussions, KVL received no indication of any environmental problems or risks at the Property. The first was a meeting between KVL's site locator, Michael Gately ("Gately"), and either Melvin or Sheldon Holson. At trial, both Melvin and Sheldon Holson denied being the individual with whom Gately had this initial meeting. Melvin

Holson also claimed not to know whether Sheldon Holson ever met with Gately. Gately could not identify which of the brothers he met with on this occasion, but it is clear he met with one of them, as evidenced by the circumstances of the follow-up meeting which occurred.

During an initial tour of the site, Melvin or Sheldon Holson represented to Gately that the Holson Company's business did not include manufacturing operations but, rather, that the Property had only been used for the assembly of photograph albums from components. Gately was told that plastic sheets were glued together to form the pages of photograph albums and the pages were then inserted into three-ring or other binders. When Gately inquired as to what type of glue was used, he was informed by Melvin or Sheldon Holson that the Holson Company used an animal-based glue.

Melvin or Sheldon Holson further represented, in responding directly to a question by Gately, that there had been no environmentally sensitive operations at the Property. When Gately inquired specifically about a small concrete sump he had observed on the south side of the building (the "Sump"), Melvin or Sheldon Holson stated that the Sump was connected to a sink in the shop area of the building (the "Sink"). He stated that the Sink was used by employees to wash their hands.

Gately had been looking at a number of sites on behalf of KVL, and at least two of those sites were less desirable because of environmental problems associated with them. Thus, when

Gately spoke to KVL about his visit to the Property, he reported that the site was environmentally clean. A second meeting was held a short while later. Gately was present, as was Malcolm Healey, the majority shareholder of KVL. Melvin and Sheldon Holson were also present, along with a number of real estate brokers. The key discussions took place between Healey and the Holsons. After this meeting, Gately spoke with representatives of KVL once or twice, and KVL then made an offer on the Property.

Negotiations between the parties ensued, and once KVL reached agreement with the Partnership as to the purchase price, KVL decided to proceed with the purchase of the Property.

C. The Purchase and Sale Agreement

KVL and the Partnership executed a Purchase and Sale Agreement for the Property, dated August 22, 1988 (the "Purchase and Sale Agreement"). See Pl.'s Ex. 5. The Purchase and Sale Agreement originally provided that KVL would purchase the Property from the Partnership for $7,350,000.

Paragraph 9 of the Purchase and Sale Agreement provided that the sale was an "as is" sale. It stated:

> 9. "AS IS SALE" -
>
> The Buyer has inspected the Premises and is fully satisfied with its physical condition, and agrees that the real estate is being sold "as is," and that no representations have been made as to the physical conditions of the Premises, except as specifically set forth in this Agreement.

In Paragraph 10 of the Purchase and Sale Agreement, the Partnership made a representation to KVL regarding assessments

for improvements to the Property. Then, in Paragraph 11, the Partnership made a series of additional representations to KVL. In particular, it represented to KVL that

> To induce the Buyer to purchase, the Seller makes the following representations:
>
> a) . . . .
>
> b) That the Seller has the right to enter into this Agreement, and if the Seller is an entity, that the person or persons signing on behalf of such entity are legally authorized to do so.
>
> c) . . . .
>
> 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 any 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.

Paragraph 12 of the Purchase and Sale Agreement required the Partnership to deliver to KVL at the time of the closing "[a]n affidavit that the representations set forth in Paragraph 11 are true and correct as of the closing date." Paragraph 15 of that agreement provided as follows:

> 15. ENTIRE AGREEMENT
>
> This Agreement embodies all the agreements between the parties and supercedes

> any and all previous agreements, written or oral, and no representations not set forth herewith in writing shall be binding on the Seller or the Buyer, nor shall any modifications or explanations of any of the terms or conditions of this Agreement be binding on the Seller or the Buyer unless in writing and signed by them. All representations set forth herein shall survive the closing for a period of twelve (12) months.

Under the contract, KVL had 30 days to perform an environmental inspection to confirm its understanding that the Property was free of contamination. This provision was contained in Paragraph 25 of the Purchase and Sale Agreement, which provided in pertinent part as follows:

> 25. ENVIRONMENTAL CONTINGENCY
>
> The Buyer, at its sole cost and expense shall have the right to cause the Premises to be inspected and/or tested by an independent engineering firm, well-versed in hazardous and toxic materials. Such firm shall have the right to take soil samples and to make such investigations as it feels necessary to render an informed opinion and a written report. In the event that any toxic, hazardous, carcinogenic, suspected carcinogenic, or otherwise hazardous substance of any kind are found on the Premises by such engineering firm, the Buyer shall immediately notify the Seller and provide the Seller with a copy of such report. Buyer may then terminate and cancel this Agreement by giving written notice to the Seller within (30) days of the date of this Agreement, unless the Seller elects to pay all costs of any clean-up that may be required by the State of Connecticut and any subsequent monitoring, as may be required by the State of Connecticut and gives to the Buyer an indemnity agreement satisfactory to the Buyer, protecting the Buyer for any losses occasioned as a result of the Seller's failure to comply with the required clean-up. TIME SHALL BE OF THE ESSENCE; and, if the Buyer shall fail to deliver such written notice by

3:00 P.M. on the last day of said thirty-day period, the buyer shall be considered as [having] waived its rights under this paragraph of this Agreement.

Prior to executing the Purchase and Sale Agreement on behalf of the Partnership, Melvin Holson discussed with Sheldon Holson whether there was any reason the agreement should not be signed. Sheldon Holson assured him it would be fine to sign the agreement. Melvin Holson had confidence in this assurance because no one knew more about the operations of the Holson Company than Sheldon Holson.

At the time the parties executed the Purchase and Sale Agreement, it was understood that KVL would have the building inspected by an engineering firm, and that the Partnership would obtain a zoning permit for KVL's proposed retail showroom on the Property. Paragraph 26 contained a zoning contingency provision that gave each party the right to terminate the Purchase and Sale Agreement if the Partnership was not able to obtain the special permit by January 1, 1989; that deadline was later extended to February 1, 1989. The special permit was eventually issued towards the end of 1988.

D. KVL's Subsequent Due Diligence

KVL retained Burton & Van Houten Engineers, Inc. to perform an engineering inspection survey. Burton & Van Houten submitted a written report to KVL dated August 1988 (the "BVH Report"). The BVH Report revealed that the roof needed to be replaced. Burton & Van Houten also reported that none of the three underground oil tanks on the Property had been registered with

the DEP, as required by law. The BVH Report concluded, among other things, that the law required that the underground oil tanks be replaced. Because the underground oil tanks were an area of concern, Burton & Van Houten made certain inquiries of "management" in connection with the oil tank. Burton & Van Houten reported:

> Sizes of two (2) tanks were unknown to management and do not show on any building [p]lans reviewed. Management did state the size of the tank located at the northeast corner to be 6,000 gallons.

Defs.' Ex. 216 at 8.

As a consequence of the findings set forth in the BVH Report, which pertained to certain matters in addition to the roof and the underground oil tanks, the Purchase and Sale Agreement was amended to lower the purchase price to $7,180,000. It was also amended to provide that KVL would be responsible for preparation of filings required by the DEP in connection with the underground oil tanks.

The BVH Report contained a number of sections dedicated to a description of the site and the building and its various features. However, the section just before the conclusions and recommendations was captioned "OTHER," and it read as follows:

> A small open cistern is present south of the building to the west of the electrical transformer fence enclosure. It is not large, about two (2') foot diameter. A broken concrete top lays nearby. It appears to have a single four (4") inch plastic pipe coming from the building feeding it. The purpose was not seen and management stated no knowledge of it or its purpose. It should be filled or covered from a safety standpoint and steps

> should be taken to ensure that the material within is environmentally safe. Laboratory analysis is required to determine what materials are present in the cistern. This will determine the actions and cost of necessary actions. These costs could range from minimal, to fill the cistern with dirt, to thousands of dollars for decontamination, should that be required.

Defs.' Ex. 216 at 11. The conclusions and recommendations section of the BVH Report made no reference to this "cistern," which is the Sump.

In connection with the environmental contingency provision in the Purchase and Sale Agreement, KVL commissioned TRC Environmental Consultants, Inc. ("TRC") to prepare a report (the "TRC Report") on the Property. TRC was retained to do what was termed a Phase I environmental assessment. A Phase I environmental assessment involved looking at the site to identify potential problems and a review of pertinent documents. It did not involve the taking and testing of samples to confirm the presence or absence of problems except to the extent that a specific concern had already been identified. By way of contrast, if it had been retained to conduct a Phase II environmental assessment, TRC would have done whatever type of sampling might have been needed to confirm the presence or absence of problems.

It was standard procedure, in terms of due diligence by purchasers of real estate, to conduct a Phase I investigation, and to conduct only a Phase I investigation unless a specific concern had been identified. At the time TRC was retained, the

only such concern that had been identified was with respect to asbestos. KVL was proceeding at that time primarily on the basis of the representations made to Gately and those made in the Purchase and Sale Agreement. KVL and its counsel, Gross, Hyde & Williams ("GH&W"), had not then received the BVH Report.

The engagement letter between TRC and KVL was dated August 23, 1988. It noted that TRC would perform a "preliminary site assessment," which would include a site walkover, a reconnaissance of the surrounding area for potential sources of contamination, a review of DEP and municipal records, a review of historical aerial photographs, and an inspection for asbestos material and collection of a maximum of 15 samples for asbestos confirmation analysis. The engagement letter stated: "TRC will submit a letter report of our findings and any recommendations for additional work, if appropriate, no later than the morning of September 19, 1988." Defs.' Ex. 383 (attachment). The engagement letter specified that the cost to KVL would not exceed $4,400 without KVL's prior authorization. It then requested that KVL "authorize this work" by signing the letter where indicated and returning a copy of the letter to TRC. Id.

Curtis Kraemer and Lisa Stewart were the two people from TRC responsible for the Phase I environmental assessment and preparation of the TRC Report. TRC asked to meet with someone knowledgeable about the Property. On August 25, 1995, Kraemer and Stewart met with Melvin Holson, who showed them around the building and gave them information on the operations of the

Holson Company. The TRC personnel inspected the remainder of the Property on their own and then met again with Melvin Holson. Melvin Holson understood that TRC was there to find out about the environmental conditions at the Property.

When TRC made inquiries relative to the Sump, Melvin Holson informed TRC that the Sink was used by employees to wash their hands. He also informed TRC that the Sink was not used for any other purpose. Melvin Holson also stated that the Holson Company used small quantities of solvents to clean off the photograph albums. However, Melvin Holson never made reference to other aspects of the Holson Company's operations, including the extensive use of solvents, that would be apparent to someone who had visited the plant floor as often as he had, or in the alternative, mentioned that there was much that he had not observed about the day-to-day operations. Nor did he tell the people he understood were there to find out about the environmental conditions at the Property that, in his view, environmental issues were his brother's responsibility. Moreover, he did not disclose that he and his brother no longer held controlling ownership interests in the Holson Company. Finally, TRC was not informed, at any time, that Perkin-Elmer had requested, and been given, permission to conduct environmental tests on the Property.

Melvin Holson claims he never spoke with his brother about the TRC inspection. Sheldon Holson also claims that the two of them never discussed the TRC inspection, and he testified at

trial that Melvin Holson would not have discussed it with him because Melvin Holson was only interested in matters that had to do with sales; this explanation was totally lacking in credibility.

KVL's counsel, GH&W, had received the BVH Report, containing the section on the Sump, on or around September 1, 1988.[2] On September 9, 1988, GH&W faxed a copy of the BVH Report to TRC. Thus TRC had seen the language in the BVH Report concerning the Sump before TRC completed the TRC Report and submitted it to KVL on or around September 20, 1988.

The TRC Report reflects that TRC's investigation included a visual site inspection, collection of bulk asbestos samples, a review of Wilton municipal records and a review of various DEP files. It also reflects that TRC was given the following information about the operations of the Holson Company:

> From 1966 to present, the building housed the Holson Company operations. These operations consisted of assembling previously fabricated photo album components into photo albums. No manufacturing took place on the premises.

Pl.'s Exh. 7 at 1. TRC was also informed that no manufacturing

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[2] The BVH Report was received not only by KVL and its counsel, GH&W, but also by the attorneys for the Partnership. It was received by counsel for the Partnership on or about September 13, 1988. The Partnership was making a written representation concerning environmental conditions at the Property. However, counsel for the Partnership also was not put on alert by the contents of the BVH Report; it undertook no investigation of the environmental conditions at the Property, nor made inquiry or directed someone else to do so on behalf of the Partnership.

operations had taken place on the Property prior to its being acquired by the Holson Company.

The TRC Report noted three areas of concern, which had been observed by TRC during its visual inspection of the Property. The first was the three underground oil tanks, which were not registered with the DEP as required by law. The second was the Sump. The TRC Report states:

> A second area of concern is a small sump located to the south of the building. It apparently connects with an asphalt lined drainage swale that crosses the southern portion of the site and empties into the Norwalk River. According to Mr. Holson, the sump removes only potable water used by employees for washing their hands.

Pl.'s Ex. 7 at 3. The court notes that although Melvin Holson may not have uttered the word "Sump" when talking to Kraemer about the Sink, Melvin Holson's representations about the Sink supported this statement in the TRC Report. The third area of concern noted was an electrical transformer located on the south side of the building.

TRC reported that its search of the DEP's records revealed that the Holson Company had been cited in 1980 for improper storage of three 55-gallon drums on the Property. TRC reported that one of the drums contained a solvent called trichlorethylene ("TCE"). The evidence at trial showed that the Holson Company's representation to the DEP was that two of the three drums were 30-gallon drums, and that one contained "Trichlorithane III," and that another contained a mixture of water and "Trichlorithane III." See Pl.'s Ex. 89. In any event, the DEP's records showed

also that the Holson Company had demonstrated to the satisfaction of the DEP that it had labeled, tested and removed the drums in question and that, consequently, the DEP had lifted its order against the company. There was no further mention of any solvents at the Property in the TRC report.

Stewart conducted a visual inspection and bulk sampling for material containing asbestos. Six bulk samples were collected, and testing showed that they did not contain asbestos. The results from the laboratory testing were included in the TRC Report as an appendix.

At the end of the TRC Report are set forth TRC's conclusions, recommendations and summary. TRC's conclusions were reported to be based on its site walkover, the results of the file searches and discussions with Melvin Holson; in fact, Kraemer had also spoken with Sheldon Holson. TRC concluded that there was no asbestos at the Property. It concluded further that:

> The site appears to be environmentally sound except for the considerations noted below:
>
> 1. There is a sump on the south side of the building which apparently is connected to a drain from two wash basins used by the employees to clean their hands.
>
> 2. There is a large transformer on the south side of the building which may contain PCBs, but no signs of leakage were noted.
>
> 3. Three underground fuel storage tanks exist on the site, and while there is no field evidence that there has been a major release from any of the

> tanks that might cause gross contamination across the site, there is no data to date regarding the integrity of the tanks and it is possible that there may be some discharge from any one of them that may have contaminated the surrounding soils or possibly the ground water. . . .

Pl.'s Exh. 7 at 4-5.

TRC made five recommendations. It recommended that the three underground oil tanks be registered with the DEP, that all three tanks be removed, that soil samples be taken prior to removal of the tanks to determine whether there was soil contamination, and that a determination be made as to whether the transformer had been tested for polychlorinated byphenyls ("PCBs"). In addition, TRC made the following recommendation with respect to the Sump:

> A water sample should be collected from the sump on the south side of the building and analyzed for EPA Methods 601 and 602. This will determine whether any TCE, the only chemical of concern used in the facility, was disposed through the sump.

Pl.'s Exh. 7 at 5.

In the summary section, TRC reported that:

> In conclusion, the environmental site assessment has found no conclusive evidence that any hazardous materials have been spilled or dumped on the property. An exception to the above statement is a possible leak in one or more of the underground fuel storage tanks.

Id. The summary made no mention of the Sump. Finally, TRC noted, using its standard language, that its investigation had been limited in scope. If TRC had been informed that the Holson

Company had been putting solvents or glues down the Sink, the TRC Report would have been materially different.

In addition to receiving the TRC Report, KVL's counsel, GH&W, was told by Kraemer the substance of his conversations with Melvin and Sheldon Holson. All this information had been passed on to KVL by its counsel no later than the time KVL was reviewing the TRC Report. Thus, KVL, its attorneys and TRC all understood the TRC Report in the context of the information conveyed, and not conveyed, by Melvin and Sheldon Holson to Gately and to TRC.

Although KVL's engagement letter with TRC contemplated the taking of samples only for asbestos confirmation analysis, Kraemer had, in fact, taken a sample of the liquid in the Sump. TRC received a copy of the BVH Report on Friday, September 9, 1988. The following Monday, September 12, Kraemer discussed the Sump with KVL's counsel. He also called Baron Consulting, Inc., a testing laboratory and got a price quote for a series of tests. The following day, September 13, Kraemer attempted to take a soil sample near the underground oil tanks but was unable to do so because of the presence of a large rock. He was, however, able to take a sample of the liquid in the Sump. Later that day, Kraemer gave the sample from the Sump to Baron Consulting for testing. He indicated that the testing should be completed in the "[r]egular turn around time," Defs.' Ex. 358, which Kraemer understood to be two to four weeks. Baron Consulting forwarded the test results (the "Baron Report") to TRC a little over four weeks later, on or around October 13, 1988.

It appears that Kraemer took the sample from the Sump, and submitted it to Baron Consulting, with the expectation that TRC would be authorized to obtain a laboratory analysis of the contents of the Sump. On or around September 18, and then again on September 20, Kraemer discussed with KVL's counsel, among other things, the fact that the Sump was an area of environmental concern and that a sample had been taken. Prior to September 20, Kraemer discussed his questions about the site with Sheldon Holson and reported the fact that he had had this discussion to KVL's counsel, GH&W. Then on September 20, 1988, TRC issued the TRC Report, which recommended that a water sample from the Sump be tested for the presence of TCE, but gave no indication that a sample already had been delivered to Baron Consulting. TRC's recommendation that a laboratory analysis be obtained was not followed by KVL, and TRC was never authorized to obtain a laboratory analysis of the contents of the Sump. The environmental contingency period under the Purchase and Sale Agreement expired on September 21, 1988.

TRC was never asked to perform any additional services to KVL in connection with the Property after its submission of the TRC Report on September 20, 1988, and TRC's engagement by KVL as an environmental consultant ended on or about that date.

On October 12, 1988, Stewart completed a TRC administrative form to close out TRC's file in connection with the completion of the project. The form gave October 31, 1988 as the effective date for closing TRC's file, apparently to allow for completion

of some billing matters, which included charges from Baron Consulting that it had yet to forward to TRC.

Stewart completed the form for closing out TRC's file for the project because at that point in time Kraemer was winding up his tenure at TRC in anticipation of changing jobs; by the end of October, he had started with his new employer. It does not appear that either Kraemer or Stewart saw the Baron Report, which is dated October 13, 1988, once it arrived at TRC; had they seen it, there would have been a financial incentive on TRC's part to contact KVL to at least attempt to extend the scope of TRC's engagement. The Baron Report was, however, placed in a file Kraemer had kept for the project. No one ever told KVL about the test results shown in the Baron Report.

The Baron Report revealed that there was a significant environmental problem at the Property. It stated that the sample from the Sump was contaminated with chlorinated solvents, including dicloroethylene, trichloroethane, and toluene. (The court notes that the form of dichloroethylene reflected in the Baron Report, however, was trans-1,2-dichloroethylene, as opposed to 1,1-dichloroethylene, which was being confused with Freon during laboratory testing at that time.)

On January 9, 1989, KVL took title to the Property from the Partnership in exchange for $7,180,000 paid to the Partnership, and KVL assumed the Partnership's obligations under the lease with the Holson Company; that lease was due to expire in a few months. Immediately prior to the closing of the sale of the

Property on January 9, 1989, Melvin Holson executed, on behalf of the Partnership, an affidavit attesting to the continuing accuracy of all of the representations contained in Paragraph 11 of the Purchase and Sale Agreement. Although Melvin Holson executed this affidavit, he and Sheldon Holson had worked together on the affidavit and discussed it; Melvin Holson just happened to be the one who signed the affidavit.

At this point, KVL had no knowledge of the contamination of the Property. KVL believed it was acquiring a clean property and had decided to go forward with the purchase based upon the fact that the TRC Report disclosed no material environmental issues that had not been adequately assessed from KVL's perspective. The underground fuel storage tanks had been addressed by means of an adjustment to the purchase price. The Sump, while it could have also been addressed through laboratory analysis of the contents, had been addressed by means of inquiries on more than one occasion to the two apparent long-time owners of the business as to the origins of the liquid in the Sump. The transformer had been addressed by means of TRC's visual observation that there were no signs of leakage of any PCB's the transformer may have contained. In addition, KVL had received the written representations in the Purchase and Sale Agreement and an affidavit confirming the truth of those representations, sworn to by Melvin Holson.

E. Discovery of the Contamination

In 1989, KVL began to remodel the interior of the building on the Property in preparation for refitting the building. However, by the summer of 1989, KVL had abandoned its plan to convert the Property for its own use and had put the Property on the market.

KVL had no serious offers until the summer of 1990, when The United States Surgical Company ("USSC") offered to purchase the Property for approximately $6,100,000 in an all cash deal. At this point, KVL still had no knowledge of the contamination of the Property. USSC and KVL had agreed on all the essential terms of an agreement by September 1990, subject to the completion of USSC's environmental assessment of the Property by its engineer, Land Tech Remedial, Inc. ("Land Tech").

A report from Land Tech was sent out in preliminary form on or about September 19, 1990, and made reference to the presence of two large concrete vaults (the "Vaults"), connected by pipes to the Sump, on the south side of the building on the Property. In a letter to KVL dated September 19, 1990, USSC informed KVL that it was "greatly concerned" by the portion of the Land Tech Report that discussed the Sump. Defs.' Ex. 251. The final report from Land Tech (the "Land Tech Report") was sent out a few days later. The Land Tech Report revealed that the Sump and the Vaults were severely contaminated with levels of hazardous solvents that far exceeded the standards of the Department of Health Services.

On October 1, 1990, USSC withdrew its offer to purchase the Property from KVL, citing "the apparent environmental and other unsatisfactory conditions" at the Property. Pl.'s Ex. 58. The environmental problems were the primary reason for USSC's taking such action. The Property has remained unsold since then, and KVL has never conducted any operations there.

The first knowledge that KVL had of the contamination on the Property was the disclosure in the Land Tech Report.

F. Nature and History of the Contamination

It was only after KVL became aware of the contents of the Land Tech Report that it began to learn about the true nature of the operations that had been conducted on the Property by the Holson Company. It came to light that the Holson Company had used resin glue and substantial quantities of solvents at the Property as part of its manufacturing processes. It came to light further that until after the point in time at which the operations at the facility were being closed down, no attempt (with the exception of the steps taken in response to the 1980 order from the DEP) was made to properly dispose of waste from these materials by following governmental guidelines or keeping records.

The Holson Company's plant was organized into various areas, or departments. In the preparation department, for instance, new materials were turned into component parts for photograph albums. In the page department, pages for the photograph albums were manufactured, using paper, film and glue. Certain component

pieces were assembled in the gluing department; gluing was done both by hand and by machine. Pages and albums were put together in the finishing department. There were also maintenance and shipping and receiving departments, among others.

The Sink was located in the area of the plant occupied by the gluing department. There were approximately 12 to 14 machines in the gluing department, and additional gluing machines in an adjacent area where people worked on special, high-end albums that were more labor intensive. Both animal glues and resin glues were used. Animal glues are biodegradable. One of the resin glues used was RS1475, which was manufactured by Brockton Adhesives. RS1475 contained toluene until 1992, when the formulation was changed by Brockton Adhesives to eliminate toluene because it was a hazardous material.

The gluing machines had rollers, and glue had to be wiped off the rollers and other parts of the machines periodically during the day. A bucket of warm water was kept next to about half of the machines in the gluing department so the operator could wet a rag and use the warm rag to wipe glue off that machine when appropriate during the course of the day. The rag would be rinsed in the bucket of warm water between uses so it did not become sticky. Three times or so a day, the water in the bucket was changed. The dirty water was poured down the Sink and the rag was rinsed out in the Sink. The same procedures were followed regardless of whether an animal glue or a resin glue was being used.

In addition, glue was carried by the operators to the machines in buckets. It was not advisable to mix the animal and resin glues, so the buckets were washed in the Sink between uses. Moreover, the Sink was used by machine operators in both the gluing department and the adjacent area where people worked on fancier albums.

Gluing machines were cleaned periodically by using solvent on a rag. Trichloroethane was used for this purpose, among others. Into the mid-1980's trichloroethane was kept by machine operators and carried around the plant by them in empty coffee cans, which were not marked to reflect the contents. This practice caused concern on the part of the company that performed safety inspections in connection with the Holson Company's insurance. The recommendations of that company were discussed by the Holson Company's safety committee. At some point, the Holson Company shifted over to what employees referred to as "safety containers" in connection with their use of trichloroethane; a dispenser on the gluing machine was used. Sheldon Holson received the minutes of the meetings of the safety committee.

Trichloroethane arrived at the Holson Company in 55-gallon drums, which were clearly marked as containing trichloroethane and were stored in the maintenance department. Individuals who wanted to use that substance would obtain it there, and it was standard procedure that used trichloroethane would be poured into drums kept for the purpose of collecting dirty solvent.

It was understood by the Holson Company's management that

trichloroethane was a contaminant and should not be poured down the Sink or onto the ground. In the mid-1980's, one employee in the maintenance department advocated allowing employees to take chemicals from the machines and simply dump them outside or in a toilet or sink, rather than pouring them in a marked drum with a funnel and getting their hands dirty. The Holson Company's response was that the marked drums had to be used for environmental reasons and that the company's long-time policy would not be changed. It was clear that if this employee failed to abide by the policy, he risked termination of his employment.

Trichloroethane was also used in the finishing department on a daily basis. The solvent was placed on rags that were used to wipe down albums. The rags used by the Holson Company in this department, and in the other areas of the facility, were all routinely disposed of in the company's trash.

In the page department, it was necessary to wash metal hinges. Trichloroethane was originally used for this purpose. The hinges were placed in a basket and washed by hand. However, at some point, the Holson Company acquired a machine for this purpose. The machine had two chambers in which metal hinges were washed in Freon, i.e., trichlorotrifluoroethane.

The Holson Company's practices with respect to the use of glues and solvents remained substantially the same after Melvin and Sheldon Holson sold their controlling interest in the company in 1986 and until the company ceased manufacturing operations in Connecticut in April 1988.

The record does not reflect the total purchases by the Holson Company of glues and solvents during the years it conducted operations on the Property. However, during the period from 1984 to 1988, the Holson Company purchased both animal and resin glues from Brockton Adhesives on a regular basis. RS1475 was among the resin glues it purchased. In early 1984, the Holson Company was given 17 pounds of RS1475 on a trial basis, and it decided to commence using that product. RS1475 came in a five-gallon pail, which weighed 45 pounds, or a 30-gallon drum, which weighed 265 pounds, or a 55-gallon drum, which weighed 480 pounds. The Holson Company's purchases of RS1475 were as follows: 1984 - 497 pounds; 1985 - 400 pounds; 1986 - 45 pounds; and 1987 - 90 pounds. Brockton Adhesives also sold 45 pounds of RS1475 to the Holson Company in April 1988 and 90 pounds in June 1988.

From December 1983 to 1988, the Holson Company purchased trichloroethane from Guard All Chemical Company ("Guard All"). It was shipped to the company in 55-gallon drums, which, through 1985, each weighed 585 and beginning in 1986, each weighed 600 pounds. The Holson Company's purchases of trichloroethane were as follows: December 1983 and 1984 - 2,925 pounds; 1985 - 2,340 pounds; 1986 - 3,000 pounds; 1987 - 1800 pounds; and March 1988 - 600 pounds.

During the period from December 1985 to January 1988, the Holson Company purchased from Guard All petroleum naphtha, which was also referred to as mineral spirits. Mineral spirits were

purchased in five-gallon cans, each of which weighed 32 pounds, and it was used to clean glue off the printer. The Holson Company's purchases of mineral spirits were as follows: 1985 - 32 pounds; 1986 - 192 pounds; 1987 - 96 pounds; and 1988 - 32 pounds.

In addition, during the period from March 1984 to January 1988, the Holson Company also purchased Freon from Guard All. Freon also came in 55-gallon drums, each of which weighed 690 pounds. The Holson Company's purchases of Freon were as follows: 1984 - 2,760 pounds; 1985 - 1,380 pounds; 1986 - 1,300 pounds; and 1987 - 690 pounds. Pure Freon could evaporate rapidly, but Freon's ability to do so was limited if it was mixed with water, glue, or oils or grease, whether the mixing occurred in a machine, on rags or in a can or drum. Thus Freon's ability to evaporate was limited given the conditions under which it was used by the Holson Company.

One of the forms regularly received by the Holson Company from Guard All in connection with these purchases of each of trichloroethane, Freon and mineral spirits made reference, prominently, to the product in question being a hazardous material.

The Holson Company received material safety data sheets for these hazardous chemicals. These material safety data sheets came from the seller of the product and gave the specifications for the particular product and set forth various safety considerations, including the appropriate waste disposal method.

These material safety data sheets were kept by the Holson Company in either the purchasing department or the maintenance department. Sheldon Holson claimed at trial to have never reviewed any of the material data safety sheets, and, in fact, to be unaware of the fact that the Holson Company kept a book of them on the factory floor.

In fact, however, Sheldon Holson demonstrated at trial detailed knowledge of the day-to-day manufacturing operations of the Holson Company, except with respect to one area -- the company's purchase and use of solvents and resin glues -- where he claimed to have virtually no knowledge. The court found this claim lacking in credibility. For example, it had been shown that during the mid-1980's the Holson Company experienced financial difficulties, and that during this period, no expenditure over $100 could be made without Sheldon Holson's approval. Many of the expenditures for the glue and solvents that are the focus of this case fell into that category.

Despite the Holson Company's extensive use of solvents over the years, there is no indication that the company took steps to properly dispose of those solvents, except on two occasions. In September 1980, the DEP notified the Holson Company that it had committed three violations of the laws governing hazardous/industrial waste disposal:

1. Establishing a solid waste facility without a permit.

2. Discharge into the waters of the state without a permit.

3. Disposal of toxic or hazardous wastes in a manner not approved by the Commissioner.

Pl.'s Ex. 90. The company was ordered to take corrective action within 15 days. The Holson Company hired East Coast Environmental, an approved disposal facility, to dispose of three drums of liquid or semi-solid material. One 30-gallon drum contained trichloroethane, and a second 30-gallon drum contained a mixture of trichloroethane and water. The third, a 55-gallon drum contained a mixture of water and tar. These materials were disposed of in October 1980. Sheldon Holson claimed at trial to have had no knowledge of this 1980 notice from the DEP prior to the commencement of this case. The court did not find this claim credible in view of Sheldon Holson's detailed knowledge of the company's operations, and the seriousness of the event. Also, this situation most likely required the expenditure of funds that were not insignificant to hire the approved disposal facility.

In the summer of 1988, after the Holson Company discontinued manufacturing operations at the Property, an employee collected waste, including solvents, from the manufacturing equipment before the equipment was transferred to the company's plant in South Carolina. In August 1988, the Holson Company disposed of one overpacked 55-gallon drum of hazardous waste, using an approved disposal company. Sheldon Holson was aware of this shipment of hazardous waste from the Property and, specifically, that the waste was hazardous. The shipping clerk who made the arrangements repeatedly referred to the workers who came to

remove the materials as "astronauts," because of the protective clothing the workers wore, and made the point to Sheldon Holson that these "astronauts" were there to make sure the solvents were secure.

From the late 1960's to 1988, at least two 55-gallon drums of spent, or dirty, solvents were routinely placed by Holson Company employees at the back loading dock of the building to be pumped out by a truck similar to a fuel oil truck. Sheldon Holson knew that this was the company's procedure.

Despite the Holson Company's retention of records showing the purchase of the above-mentioned solvents, there are no waste manifests or records reflecting how the Holson Company disposed of hazardous waste other than the records relating to the disposals in October 1980 and December 1988.

If one credits Sheldon Holson's testimony in this area, Sheldon Holson, as the individual responsible for the manufacturing operations of the Holson Company, delegated to the plant supervisors all responsibility for seeing that hazardous materials were safely handled and that hazardous waste was properly disposed of. Sheldon Holson knew about some of the changes in the environmental laws in the 1980's but not all of them. However, he never made any inquiry to determine whether, in fact, such materials were being safely handled and properly disposed of, or even to determine whether there were procedures in place to make sure that hazardous chemicals were properly handled and hazardous waste properly disposed of. Nor did

Sheldon Holson ever review the material safety data sheets that were sent to the Holson Company by the manufacturers of these materials; such a review would have disclosed that certain materials used at the facility, including trichloroethane and the RS1475 resin glue containing toluene, were hazardous substances and were required to be handled and disposed of in particular ways.

None of those supervisors to whom Sheldon Holson claims to have delegated these responsibilities had any specialized training as to environmental concerns and no steps were ever taken to provide them with training in this area or to give them instructions as to how to dispose of hazardous waste. At least one of these supervisors did not understand trichloroethane to be a hazardous material, based on his observations of its usage at the facility. Improvements in the company's procedures for handling hazardous materials, when they were made, were made as the result of concerns expressed by the company that performed safety inspections in connection with the Holson Company's insurance.

In 1977, the Holson Company was ordered to connect the Property to the Town of Wilton's public sewer. This was a matter for which Sheldon Holson was responsible. Despite the order to connect to the sewer system, the Property was not fully connected to the sewer system, as the Sink and the Sump were never connected to that system.

As discussed above, Sheldon Holson was involved with the

design of the building on the Property, and he also worked with the architect on each occasion when an addition was made to the building. At trial, however, Sheldon Holson claimed to have no knowledge as to how the Sump came to be located on the Property. Although he claimed he was confident he never gave anyone direct authority to put the Sump in, he claimed not be sure whether someone else would have taken upon himself to have the Sump installed. He made this assertion notwithstanding the fact that his approval was required for any significant expenditures. The court found these claims by Sheldon Holson to be totally lacking in credibility. By way of contrast, a long-time employee, who was subpoenaed to testify at trial, conceded being fully familiar with the Sump and the fact that water from the Sink went into the Sump.

The contamination of the Property was the direct result of the practices and actions of the Holson Company. Hazardous materials were regularly disposed of, or discharged, through the Sink and traveled from the Sink into the Sump and the Vaults and beyond.

G. KVL's Remediation Efforts

In late September 1990, KVL retained Environmental Risk Limited ("ERL"), an environmental consulting firm, to confirm the existence of contamination on the Property and to design and manage a remediation program. ERL's proposal to conduct a remedial investigation was set forth in a letter dated September 28, 1990. The letter reflects ERL's understanding that

there was "significant potential" for subsurface contamination of soils and groundwater at the Property. Pl.'s Ex. 160 at 2. ERL undertook to prepare a remedial investigation report that would include, among other things, "[a]n assessment of environmental and health impacts (if any) remaining at the site[,] [r]ecommendations for any additional work that may be warranted to define the degree and extent of contamination[, and] [r]ecommendations for remedial actions that may be warranted and cost estimates for effecting those actions." Id. at 3-4.

As part of its investigation, ERL took samples from the Sump and the surrounding area. Part of its strategy was to determine whether contaminants were being released into the soil from the Sump and/or the Vaults. After review of an analysis of soil samples, ERL concluded that there was only limited contamination in the soil surrounding the Sump and the Vaults. It never concluded that there was a serious problem in terms of contaminants being released from those structures into the environment.

On October 18, 1990, ERL made a proposal for providing additional services at the Property. It recommended as an immediate measure removal of the Sump and the Vaults, and any material contained in them. ERL noted: "At this time, we have insufficient laboratory results to anticipate the disposal classification of these materials." Pl.'s Ex. 162 at 2. It noted that the disposal costs would vary depending on "whether or not the materials are determined to be hazardous." Id.

KVL authorized ERL to proceed with removal of the Sump and the Vaults. Because the area in which the work would be done was classified as an inland wetlands, KVL was required to obtain prior permission from the Wilton Inland Wetlands Commission. KVL applied for permission not only to remove the Sump and the Vaults and the surrounding contaminated soil, but also to build a temporary roadway to improve access to the area where the Sump and the Vaults were located. KVL's application to the Inland Wetlands Commission, which was dated November 9, 1990, described KVL's purpose in proceeding as follows:

> In the course of conducting an environmental site assessment of the 111 Danbury Road facility, a sump and two vaults containing waste materials were identified on the southern side of the property . . . . ERL has determined that remedial actions are warranted to prevent the potential migration of the identified waste materials. In order to protect the surrounding area from any environmental impairment, ERL proposes to remove these structures, any waste materials in them and any contaminated soils, if any, that may be identified.

Pl.'s Ex. 65 at Tab 4.

The Inland Wetlands Commission reviewed the application at its meeting on November 28, 1990, and granted the application. On April 10, 1991, there was a hearing on a request to amend the permit. The Commission's concern at all times was whether the proposed activity was consistent with criteria employed by the Commission. There is no indication that the Commission considered whether KVL's plan for remediation had merit as compared to any alternative plan or plans for remediation.

By August 8, 1991, excavation of the Sump, the Vaults and the surrounding contaminated soil had been completed. By August 9, 1991, backfilling of the excavations with clean fill had been completed and removal of the temporary road had commenced. A total of approximately 110 cubic yards, or 160 tons, of solvent-contaminated soil, sludge and concrete had been removed from the south side of the Property.

The materials from the excavation were placed in water-tight roll-off containers on the Property while samples from the materials were being analyzed to determine what landfill would accept them. As matters developed, because of the high level of contamination, disposal of the excavated materials at the available landfill in the United States, which was located in Michigan, would have required treatment of the materials. Eventually, ERL arranged for this hazardous waste to be disposed of in Canada. By January 1992, all the excavated materials had been removed from the Property and properly disposed of.

In September 1991, ERL prepared an Environmental Site Assessment and Remediation Report for KVL. ERL summarized its results to date of laboratory testing of the contents of the Sump and the Vaults and of the testing of the ground water at the Property. With respect to the Sump and the Vaults, those tests showed very high levels of toluene and of trichloroethane (and at least one of its breakdown products), with the highest levels being found in the Sump, versus in the Vaults. They also showed very high levels of mixed xylenes and ethyl benzene, which are

constituents of mineral spirits. Those tests did not reflect the presence of Freon; nor did they reflect the presence of a form of dichloroethylene that had been reported by Land Tech as being present in the Sump and was at times confused with Freon in laboratory testing. However, although it does not appear that Freon (which was used heavily in the page department) was disposed of through the Sink (which was located in the gluing department) there is no indication that used Freon was properly disposed of.

Finally, with respect to the groundwater, those tests showed very high levels of trichloroethane in the groundwater at the monitoring well in closest proximity to the Sump and the Vaults.

ERL concluded in this report that "it appears that the source of on-site soil and groundwater contamination has been removed." Pl.'s Ex. 72 at 54. ERL also noted that the quality of the groundwater should improve over time. ERL recommended periodic monitoring, as follows:

> ERL, therefore, recommends quarterly monitoring of all on-site monitoring wells and the potable water wells of the residences immediately south of the site for at least one year. After that time, the monitoring program should be evaluated to reconsider the frequency of monitoring and what wells, if any, should be monitored.

Id. ERL continued to monitor the on-site monitoring wells on a periodic basis until the time of trial.

ERL also reported in its September 1991 report that it had learned that a number of groundwater monitoring wells had been installed by Perkin-Elmer, which occupied an abutting site to the

north of the Property. ERL learned that the major contaminant in the groundwater at the Perkin-Elmer facility was Freon and that there was a relatively low concentration of, among other things, trichloroethane. ERL reported that the contaminant plume was headed in a southerly direction. ERL's sampling of monitoring wells in July 1991 indicated that the contaminant plume from the Perkin-Elmer property might have reached the northern end of the Property. ERL also continued to monitor the situation with respect to the Perkin-Elmer property.

ERL also recommended in its September 1991 report that potable wells of the nearby residences south of the Property also be monitored regularly to make sure that no potable wells were affected as the contamination from the Property dissipated. In October 1993, ERL reported to KVL that the Town of Wilton was monitoring water supply wells at six residences located to the south of the Property. ERL conducted a review of the records of the Town of Wilton Sanitarian with respect to the wells at these residences, and it also reviewed similar records of the DEP. Those records showed the presence of contamination. ERL became concerned that the contamination within the residential wells might be associated with the Property because some of the contaminants known to be associated with the Sump and the Vaults had also been detected within the residential wells, and because of the proximity of the residential wells to the source of the contaminants on the Property and the structure of the aquifer. Although ERL never concluded that the Property was the source of

the contaminants in the residential wells, it reasonably concluded that there was a material risk that such might be the case.

The defendants contend that the expenses incurred by KVL as a result of ERL's work in monitoring the groundwater at the Property, in investigating and monitoring the situation with respect to the nearby residential wells, and in investigating and monitoring the situation with respect to the Perkin-Elmer facility were not reasonably incurred. In this regard, the court notes that even after KVL filed suit, the defendants were not forthcoming about what activities had been conducted at the Property. The steps KVL took were reasonable in view of the unfortunate nature of KVL's history with the site, the fact that the defendants were not forthcoming, the strict environmental laws of which KVL, as the owner of the Property, had a duty to be cognizant, and the strong public interest in safeguarding the health of Connecticut's citizens. As to the groundwater monitoring specifically, a defense expert conceded at trial that a groundwater monitoring program might be appropriate for ten years, or even longer.

On March 9, 1994, ERL provided KVL with a "Remedial Option Plan." See Pl.'s Ex. 181. ERL noted that "the remedial alternatives described herein have been prepared consistent with the National Contingency Plan (40 CFR Part 300)." Id. at 1. This plan described four remedial alternatives. It noted that "[p]rior to selecting a remedial alternative consistent with the

National Contingency Plan, a baseline risk assessment must be performed." Id. at 4.

On October 28, 1994, Gradient Corporation submitted a "Baseline Risk Assessment" for the Property. See Pl.'s Ex. 188. It noted that the study had been conducted using procedures consistent with the National Contingency Plan. Gradient Corporation reviewed the history of contamination on the Property and also assessed, to a degree, the situation with respect to the nearby residential wells:

> A groundwater quality monitoring program was instituted and has been ongoing since remediation activities were conducted by ERL in late 1991. Groundwater sampling has been performed on site periodically (more-or-less on a quarterly basis) since conclusion of soil remediation activities. Data collected during sampling events of March, June, July, and November of 1992; March, June, and September of 1993; and January and April of 1994 were used in this report to characterize the extent and nature of contamination at the Site. Table A-1 presents the sampling data from on-site wells. As can be seen from reviewing the data in Table A-1, four of the nine wells were heavily contaminated: MW-4, MW-5, MW-6, and BR-2. We concluded that these wells constituted the plume....
>
> Sampling of private wells near the site to the southwest in the past two years (1992-1994) by the Wilton Town sanitarian, indicated that contaminant concentrations in these wells are minimal when compared to groundwater data obtained from on-site wells. None of the 14, total, residential well samples that were collected by the Connecticut Department of Environmental Protection on behalf of the Town of Wilton and analyzed by the Connecticut Department of Public Health and Addiction Services (CTDPHAS) laboratory showed any contaminant concentration above state drinking water guidelines (CTDPHAS Action Levels) or federal maximum contaminant levels (MCLs) for

> drinking water. Therefore, these residential properties were not further assessed . . . .

Id. at 5.

Gradient Corporation found that:

> A comparison of groundwater contaminant concentrations to ambient water quality criteria (AWQC) for freshwater life determined that for groundwater concentrations of those contaminants for which AWQC exist, only two were higher than one-tenth the AWQC, a level considered the threshold for "possible concern" by U.S. EPA (USEPA, 1988). This approach is very conservative as groundwater contaminants will be diluted prior to entering the Norwalk River where they will be further diluted in the flowing water. Based on this limited assessment, it can be reasonably assumed that no significant ecological risks are posed by Site-related contamination.

Id. at ES-2. However, Gradient Corporation noted that there were uncertainties associated with its assessment, and it qualified its conclusions as follows:

> The potential migration of groundwater contaminants into the Norwalk River does not appear to be of concern to environmental receptors. Groundwater concentrations were below applicable AWQC. However, sampling of other media would be necessary to better characterize the "no-impact" conclusion.

Id. at 34.

H. Perkin-Elmer

The Perkin-Elmer Corporation ("Perkin-Elmer") owned a parcel of land that abuts the Property. There were at least two dry wells on the Perkin-Elmer site that were used to dispose of industrial waste water. This waste water contained, among other

things, significant levels of Freon.[3]

In the summer of 1987, HRP Associates, Inc. commenced a Phase I and Phase II environmental assessment at the Perkin-Elmer site, and also undertook remediation and commenced a program of groundwater monitoring. In September 1987, a senior corporate real estate manager from Perkin-Elmer spoke to Sheldon Holson and obtained permission for Perkin-Elmer to place ground water monitoring wells on the Property for the purpose of determining whether contamination from the Perkin-Elmer site was migrating to the Property. On September 28, 1987, Sheldon Holson wrote to Perkin-Elmer, on Holson Company letterhead, granting permission. This letter was taken by Perkin-Elmer as constituting permission from the Holson Company. Notwithstanding these facts, Sheldon Holson claimed at trail to have been unaware of the situation with Perkin-Elmer prior to the commencement of this case.

The Freon that contaminated the groundwater that was migrating from the Perkin-Elmer site to the Property was not a source of the contamination in either the Sump or the Vaults or the surrounding soil. Although groundwater monitoring at the Property showed that the Perkin-Elmer site was a source of Freon in groundwater at the Property, it was unclear whether there would be any material impact on the Property in the future as a result of contamination from the Perkin-Elmer site.

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[3] At the time of the initial testing at the Perkin-Elmer site, the Freon was misidentified as dichloroethylene, as a result of limitations in the technology being used by testing laboratories.

I. Costs Incurred by KVL

As of the time of trial, KVL had incurred $429,523.68 in expenses for remediation at the Property; this amount did not include attorneys' fees. KVL paid to ERL a total of $333,431.15 for the work done by it in connection with the Property; this figure excluded late charges and litigation-related work done by KVL's expert witness, who was an ERL employee. It also paid $4,476.17 to Ever Clear Environmental Services, Inc., and $87,559 to Rosen-Collins Environmental Associates, Inc. in connection with the clean-up of the site and disposal of the contaminated materials. In addition, KVL paid $4,057.36 to Sealand Environmental Services, Inc., which disposed of drums of waste water from monitoring wells.

The invoices submitted by ERL to KVL contain some breakdown as to what level of person within the organization worked how many hours during a particular time period, and in a couple of instances, they include a breakdown by individual, but these invoices do not provide a detailed breakdown of each task performed, the time spent on that task, and the costs associated with that task. However, the evidence showed that the form of the invoices was consistent with industry practices, as reflected by invoices of the defendants' experts that are in the record. Of greater significance, however, KVL produced a series of periodic proposals and status reports from ERL, which specified in detail what tasks were to be and/or had been performed by ERL. It also produced reports prepared by ERL and videotape showing

work being done at the Property. In addition, an attorney from GH&W, who had previous experience reviewing bills from environmental consultants, was responsible for reviewing ERL's bills on KVL's behalf as they were rendered and never found the bills to be improper or unreasonable. Moreover, experienced personnel from ERL testified not only as to the services ERL rendered to KVL, but also as to the fact that ERL's charges to KVL for those services were reasonable and in accordance with the standards of the industry; the court found that testimony credible.

During the period from October 1990 through June 30, 1991, ERL charged KVL a total of $89,244.24. In a letter dated July 3, 1991, ERL listed 17 activities that it accomplished during the period in question:

1. Initial site survey
2. Approximately six site visits
3. Installation of six groundwater monitoring wells
4. The collection and analysis of 29 groundwater monitoring wells
5. The collection and analysis of 33 soil samples
6. The development and implementation of a remedial investigation program
7. Preliminary site remediation design
8. Investigation into federal, state and local permitting requirements for site remediation
9. Development and submission of appropriate permit applications for effecting site remediation
10. Presentation of permit applications at appropriate public hearings
11. Development (and subsequent review) of bid packages for remediation subcontractors
12. Investigation into appropriate technology for site access
13. Review of access disposal options for excavated materials
14. Contract negotiations with remediation subcontractors
15. Negotiations with adjoining property owner for

potential access rights

16. Investigation into costs associated with providing public water to adjoining property

17. Consulting support to attorneys involved in litigation with former property owner

Pl.'s Ex. 202 at 1. The periodic proposals and status reports submitted by ERL to KVL reflect that very substantial amounts of time were spent on items on this list of activities other than item 17. In addition, later in the same letter, ERL advised KVL about five activities that remained to be accomplished, at an estimated cost of $95,000. None of the five involved litigation support.

An employee of ERL was retained by KVL in January 1992 as its expert for purposes of this litigation; the charges for those services are not included in the ERL invoices.

KVL showed that it had incurred in excess of $374,000 in carrying costs for the Property for the period from January 9, 1989 to the time of trial for property taxes, property insurance and sewer assessments. However, KVL waived at trial its claim for property taxes and sewer assessments with respect to amounts paid prior to 1991 and for insurance with respect to amounts paid prior to October 1990. The adjusted figure was $210,717.60.

J. Value of the Property

KVL had purchased the Property from the Partnership on January 9, 1989 for a purchase price of $7,180,000, and had agreed to sell it to USSC in September 1990 for approximately $6,100,000. An appraisal obtained by KVL in 1994 showed that, as of January 1989, the market value of the Property was $4,700,000,

after giving effect to its impaired condition as a result of the contamination. This appraisal did not factor in any impact on the value of the Property that could be attributable to contamination having as its source the Perkin-Elmer property.

II. DISCUSSION

A. Breach of Contract

KVL claims, in Count Five of its amended complaint, that the Partnership is liable to it for breach of contract because the Partnership made two representations in Paragraph 11.d) of the Purchase and Sale Agreement that were not true. The Partnership represented first, that to the best of the Partnership's knowledge and belief the Partnership did not, during the period it owned the Property, violate or permit to be violated any environmental law or standard, including those related to pollution control, hazardous waste or other waste. The Partnership also represented that

> the use made of the Property during the period of the Partnership's ownership would not provide the basis for any exercise of regulatory authority to enforce any 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 on pollution or contamination of the site.

The Partnership argues, inter alia, that a claim based on the falsity of a representation made in Paragraph 11.d) is barred by the provision set forth in the last sentence in Paragraph 15 of the Purchase and Sale Agreement. That clause provides that all representations set forth in the Purchase and Sale Agreement

will survive for a period of 12 months after the closing. The court agrees that the outcome urged by the Partnership is the correct result.

The parties advance conflicting interpretations of the clause concerning survival of representations. The plaintiff argues that the proper interpretation of this clause is that it constitutes an attempt by the parties to extend the representations and make it clear that they do not merge into the warranty deed pursuant to which the Property was transferred to KVL, and further, that this clause has the effect of extending by one year the six-year statute of limitations under Connecticut law for commencing an action on a written contract. See Conn. Gen Stat. § 52-576. The Partnership takes the position that KVL was required by virtue of this clause to file suit within one year of the closing.

"It is the general rule that a contract is to be interpreted according to the intent expressed in its language and not by an intent the court may believe existed in the minds of the parties. Levine v. Massey, 232 Conn. 272, 278, 654 A.2d 737, 740 (1995). "When the intention conveyed by the terms of an agreement is 'clear and unambiguous, there is no room for construction.'" . Id., 654 A.2d at 740. Thus,

> [A]nalysis of the contract focuses on the intention of the parties as derived from the language employed. . . . Where the intention of the parties is clearly and unambiguously set forth, effect must be given to that intent. . . . Contract language is unambiguous when it has a "definite and precise meaning . . . concerning which there is no reasonable

> basis for a difference of opinion. . . ." The rules of construction are applied only if the language of the contract is ambiguous, uncertain or susceptible of more than one construction.

Levine v. Advest, Inc., 244 Conn. 732, 745-46, 714 A.2d 649, 656 (1998). These rules of construction were discussed by the Connecticut Supreme Court in Barnard v. Barnard, 214 Conn. 99, 570 A.2d 690 (1990):

> "A contract is to be construed as a whole and all relevant provisions will be considered together." . . . In ascertaining intent, "[courts] consider not only the language used in the contract but also the circumstances surrounding the making of the contract, the motives of the parties and the purposes which they sought to accomplish." "The intention of the parties to a contract is to be determined from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction. The question is not what intention existed in the minds of the parties but what intention is expressed in the language used." . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . "'A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity and words do not become ambiguous simply because lawyers or laymen contend for different meanings.'"

Id. at 109-110, 570 A.2d at 696 (internal citation omitted). "In addition, there is under Connecticut law an established principle of contract construction that "where the terms of a contract are equally susceptible to two different meanings, that favoring the party who did not draw up the contract will be applied." Middlesex Mutual Assurance Co. v. Walsh, 218 Conn. 681, 694, 590

A.2d 957, 964 (1991).

The precise meaning of the clause concerning survival of representations at issue here is not clear, but there is no material ambiguity because the only reasonable interpretations of this clause support the outcome urged by the Partnership on this issue.

Provisions governing survival of representations clauses that have been the subject of reported decisions have tended to be more specific and more detailed. Consequently, a review of such precedents does not reveal a decision where the survival of representations clause at issue here was interpreted. However, it does help identify two possible interpretations that are reasonable.

The two interpretations of the survival of representations clause at issue here that would be reasonable are, first, that KVL was required to give notice to the Partnership within one year of any claim based on breach of a representation, and, second, that KVL was required to file within one year any lawsuit based on such a breach.

In some instances, contracts have explicitly provided that the buyer is required to give notice. In Trunk Components, Inc. v. K-H Corporation, et al., Civ. A. No. 94-C-50250, 1995 WL 692541 (N.D. Ill. Nov. 22, 1995), the agreement provided that the representations and warranties would survive "until the third anniversary of the Closing Date," and it further provided that "a party may not make a claim for indemnification under this Article

VI for breach of a representation and warranty after the expiration of the survival period specified in this Section 6.1 unless such party shall have delivered to the other party prior to the expiration of such survival period notice." Id. at *7. Also, in Berger Realty Group, Inc. v. Pullman, Civ. A. No. 84-2075, 1986 WL 7919 (E.D. Pa. July 16, 1986), the agreement provided as follows:

> The representations and warranties given by the Sellers or Purchaser under this Agreement, and all covenants and agreements which are required to be performed at or prior to the closing by Sellers or Purchaser, shall survive the closing for a period of one year from the date of closing. If Purchaser has any claims against Sellers on account of the breach of any of the foregoing, Purchaser must serve Seller with written notice therewith within said one year period specifying in reasonable detail the basis for said claim.

Id. at *8.

Where there is no provision in the agreement explicitly providing that the purchaser must give notice during the period when the representations survive, courts appear to have come to different conclusions as to whether merely giving notice is sufficient, or they have concluded that the language is ambiguous. In Keywell Corporation v. Weinstein, 33 F.3d 159 (2nd Cir. 1994), an indemnity agreement provided that the representations, warranties and agreements would survive for a period of two years. The court described the obligation of the indemnitors as one to indemnify "for any breach of warranty or representation that may come to light within two years after the closing." 33 F.3d at 165. This condition would presumably

require giving notice, but would not require commencing suit.

On the other hand, in Graphic Technology, Inc. v. Pitney Bowes Inc., 968 F.Supp. 602 (D. Kan. 1997), the agreement provided that the representations and warranties of the seller would survive the closing for a period of one year from and after the closing date, "except to the extent of any claim of which written notice specifying in reasonable detail the nature and amount of the claim has been given prior to such expiration." Id. at 606. The court found the language in the contract to be "clear and unambiguous," and concluded that the one-year survival of representations clause required the plaintiff to "assert" claims within a year, but that the one-year period could be extended by written notice of the claims:

> [S]ection 12.1 provides for a one-year time period in which plaintiff may assert claims against defendants arising out of the representations or warranties made in the stock purchase agreement. To extend the one-year time-bar, plaintiff would have had to provide defendants with written notice of the claims within the one-year time period.

Id. at 607.

In addition, the agreement at issue in Pierson Sand & Gravel, Inc. v. Pierson Township, 851 F.Supp 850 (W.D. Mich. 1994), provided that the representations and warranties "shall survive the closing date and shall remain in full force and effect thereafter for a period of three years . . ." Id. at 858. The court concluded that the language in the contract was "unambiguous on its face," id. at 859, and concluded that it meant that claims "must have been brought" within three years

after the closing, id. at 858.

The court in Bridge Products, Inc. v Quantum Chemical Corp., Civ. A. No. 88-C-10734, 1990 WL 19968 (N.D. Ill. Feb. 28, 1990), reached the conclusion which this court concludes is the correct one, namely, that such a clause is ambiguous. There the contract provided "that 'the representations, warranties and agreements contained in this Agreement shall survive the Closing' for a period of two years." Id. at *8. The defendant claimed that "this provision set up a maximum period of two years in which any claim on the contract could be brought. . . ." Id. at *8. One of the plaintiff's arguments was that the provision merely required that it give notice within two years of the closing. The court concluded that the provision was, "at best, ambiguous." Id. at *9.

In other instances, courts interpreting such language have not addressed the issue of whether it requires merely giving notice of a claim versus filing suit, but they have expressed an understanding that the meaning of such contractual language is to limit the seller's liability. In Union Carbide Corp. v. Thiokol Corp., et al., 890 F.Supp 1035 (S.D. Ga. 1994), the court interpreted language which "limits the survival of all 'representations, warranties and agreements' in the Purchase Agreement, or made pursuant to it, to 18 months after the signing." Id. at 1049. The court concluded that "the clear meaning of the contract language is to limit contractual indemnification of Union Carbide by Thiokol to 18 months." Id.

at 1049. In addition, in Southland Corporation v. Ashland Oil, Inc., 696 F.Supp 994 (D.N.J. 1988), the court concluded that "the language of section 11.03 plainly places a two-year limitation on 'all of the representations, warranties, promises and agreements' made by the parties. Thus any affirmative promise to indemnify by Ashland terminated two years after the Closing." Id. at 1004. The plaintiff there claimed that it had given timely notice before the expiration of the two-year limitation period, but the court did not reach the issue of whether the plaintiff had given proper notice. The court concluded that any cause of action accrued at the time notice was given and the defendant failed to respond to such notice; thus any cause of action was therefore barred under New Jersey's six-year statute of limitations for contract claims. Id. at 1004.

The argument raised by KVL that the effect of the survival of representations clause here is to extend by one year the six-year statute of limitations for actions based on a written contract was made by the plaintiff in Graphic Technology. The court concluded: "Putting aside plaintiff's strained interpretation, section 12.1 does not save the breach of contract claim because its terms constrict, rather than enlarge, the five-year limitations period." 968 F.Supp at 607.

Here, the language employed by the parties stated that the representations would survive for a period of 12 months after the closing. The natural and ordinary meaning of such language is that, after 12 months, the representations would no longer be

effective. The only fair and reasonable construction of such language, then, is that the clause operates to constrict, rather than to expand, the Partnership's exposure to liability. Thus the court finds that the interpretation of the survival of representations clause urged by KVL could not, as a mater of law, be a proper interpretation. As between the two interpretations that would be reasonable, it is not material for purposes of this case which is correct because KVL not only failed to file suit within one year, but also failed to give notice within that time period of any claim based on breach of a representation.

B. Fraudulent and Negligent Misrepresentation

The plaintiff claims, in Count Eight of its amended complaint, that the Partnership Defendants are liable to it for fraudulent misrepresentation and/or negligent misrepresentation because of misrepresentations concerning the environmental conditions at the Property.

The Connecticut Supreme Court set forth the elements of an action in fraud in J. Frederick Scholes Agency v. Mitchell, 191 Conn. 353, 464 A.2d 795 (1983):

> "The essential elements of an action in fraud, as we have repeatedly held, are: (1) that a false representation was made as a statement of fact; (2) that it was untrue and known to be untrue by the party making it; (3) that it was made to induce the other party to act on it; and (4) that the latter did so act on it to his injury."

Id. at 358, 464 A.2d at 798 (quoting Miller v. Appleby, 183 Conn. 51, 54-55, 438 A.2d 811, 813 (1981)). Under Connecticut law, "fraud must be proven by a standard more exacting than 'a fair

preponderance of the evidence.'" Alaimo v. Royer, 188 Conn. 36, 39, 448 A.2d 207, 208 (1982). The standard of proof has been articulated by the Connecticut Supreme Court at various times as "clear and satisfactory evidence" and as "clear, precise and unequivocal evidence." Scholes Agency, 191 Conn. at 358; Alaimo, 188 Conn. at 39.

In Williams Ford, Inc. v. Hartford Courant Co., 232 Conn. 559, 657 A.2d 212 (1995), the court specified the elements of a claim for negligent misrepresentation:

> This court has long recognized liability for negligent misrepresentation . . . . The governing principles are set forth in similar terms in § 552 of the Restatement (Second) of Torts (1977): 'One who, in the course of his business, profession or employment . . . supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.' . . . (Internal quotation marks omitted.) D'Ulisee-Cupo v. Board of Directors of Notre Dame High School, 202 Conn. 206, 217-18, 520 A.2d 217 (1987).

Id. at 575-76, 657 A.2d at 220.

The court concludes that KVL has shown that the Partnership Defendants made fraudulent misrepresentations as alleged by KVL. Consequently, the court does not reach KVL's claim for negligent misrepresentation.

Melvin or Sheldon Holson falsely represented to KVL's agent Gately, and Melvin Holson falsely represented to KVL's agent TRC, that the Holson Company's business did not include manufacturing

operations, but rather that its operations consisted of assembling previously fabricated photograph album components into photograph albums. Melvin or Sheldon Holson also falsely represented to Gately that there had been no environmentally sensitive operations at the Property. Gately specifically inquired about the Sump. After confirming to Gately that the Sump was connected to the Sink, Melvin or Sheldon Holson falsely represented to Gately that the Sink was used only for hand washing by employees to wash glue off their hands with tap water. Melvin Holson falsely represented to TRC that the Sink was used by employees to wash their hands and was not used for any other purpose. Gately specifically inquired about what kind of glue the Holson Company used and was told it used an animal-based glue.

The Partnership, acting through its duly authorized representative, Melvin Holson, falsely represented in Paragraph 11d) of the Purchase and Sale Agreement that, to the best of the Partnership's knowledge, it had not during the period of the Partnership's ownership of the Property permitted to be violated any environmental law or standard, including those related to hazardous waste. In addition, Melvin Holson, in executing, just prior to the closing of the sale of the Property on January 9, 1989, an affidavit attesting to the continuing accuracy of all of the representations contained in Paragraph 11 of the Purchase and Sale Agreement, repeated that false representation. In both of these instances, he executed the document after consultation with

Sheldon Holson.

All of these representations were not only untrue, but known by Melvin Holson and/or Sheldon Holson to be untrue when they were made. Each was also made by Melvin or Sheldon Holson, in his capacity as a managing general partner of the Partnership, on behalf of the Partnership Defendants for the purpose of inducing KVL to proceed with the purchase of the Property from the Partnership. The circumstances surrounding the making of these false representations and the testimony at trial of Melvin and Sheldon Holson, which lacked credibility, showed this to be so.

Both Melvin Holson and Sheldon Holson testified that Melvin Holson was not involved in the day-to-day operations of the Holson Company and had no involvement in the handling of environmental issues, and thus had no basis at all for making any representations about environmental issues. He was in charge of marketing. However, Melvin Holson knew enough about the day-to-day operations of the Holson Company to sound knowledgeable to TRC when it came to the facility looking to speak with someone knowledgeable about the Property. By his own estimate, he visited the floor where the manufacturing process took place once a week, on average.

Notwithstanding Melvin Holson's claim at trial that he had only very limited knowledge about the day-to-day operations, he represented to TRC that the Holson Company's business did not include manufacturing operations, but rather only involved assembly of previously fabricated photograph album components,

that all that was discharged from the Sink was potable water that had been used by employees to wash their hands, and that small quantities of solvent were used to clean off the photograph albums. Moreover, he made these representations while never describing other aspects of the operations that would be known to someone who had visited the plant floor with such frequency over such an extended period of time, or in the alternative, mentioning that there was much that he had not observed about the operations. Significant also is the fact that, in this context, Melvin Holson never mentioned that, in his view, no one knew more about the operations of the Holson Company than Sheldon Holson. Nor did he mention to people he understood were there to find out about environmental conditions at the Property that, in his view, environmental issues were his brother's responsibility. Compelling too is the fact that Melvin Holson claims to have never discussed the TRC visit with his brother, and that Sheldon Holson also claims this is the case.

It is unclear whether Gately met with Melvin or Sheldon Holson, but it is clear that he met with one of them. Under either scenario, the fraud is equally apparent. Sheldon Holson, as the person who knew more about the operations of the Holson Company than anyone else, knew the true state of affairs as being significantly different from that represented to Gately. As to Melvin Holson, the situation was in all material respects the same as his meeting with TRC. The representations to Gately that only an animal-based glue was used, and that there had been no

environmentally sensitive operations at the Property are particularly noteworthy. Based on his claim of limited knowledge and under the circumstances present here, Melvin Holson could not have given representations to such effect without making a clear disclaimer, except in bad faith. Sheldon Holson should not have made any representation to such effect under any circumstances, given his extensive knowledge of the Holson Company's operations, the fact that the Holson Company was notified by the DEP in 1980 of violations concerning hazardous waste, the fact that he understood that dirty solvents from the facility were disposed of by being pumped out into a truck during the period from the late 1960's to 1988, and the fact that he knew that there was a disposal of hazardous waste from the plant during the summer of 1988, the very time when discussions with KVL and its agents commenced, by workers who were reported to be dressed like astronauts.

Melvin Holson and Sheldon Holson each denied, at trial, having any knowledge of the Sump prior to claims being made by KVL. Yet Melvin or Sheldon Holson confirmed to Gately that the Sink was connected to the Sump, and Melvin or Sheldon Holson was made aware of the Sump by Burton & Van Houten and stated that he had no knowledge of the Sump or its purpose. In addition, Sheldon Holson was responsible for the construction of the building and all the additions thereto. While he, as the person most knowledgeable about the building and the operations of the Holson Company, claimed ignorance of the presence of the Sump, a

long-time employee conceded, at trial, being fully familiar with the Sump and knowing that water from the Sink went into the Sump.

It is in the context described above that the court concludes that the Partnership not only made a false representation in the first part of paragraph 11d) of the Purchase and Sale Agreement but also knew that the representation was untrue, and, furthermore, made it for the purpose of inducing KVL to proceed with the purchase of the Property. The Partnership represented that, to the best of the Partnership's knowledge, it had not during the period of the Partnership's ownership of the Property permitted to be violated any environmental law or standard, including those related to hazardous waste. Managing general partners Melvin Holson and Sheldon Holson worked together on making this representation. Melvin Holson signed the Purchase and Sale Agreement, but he discussed it with Sheldon Holson prior to doing so. The representation is limited in time to the period of the Partnership's ownership of the Property. Thus it only covers the period that commenced December 19, 1986. However, Sheldon Holson not only knew about the Holson Company being notified by the DEP in 1980 of violations concerning hazardous waste, and knew that dirty solvents from the facility were disposed of by being pumped out into a truck beginning in the late 1960's, but he also understood that there had been no change in the operations at the Property after the sale of the stock in October 1986. Moreover, he knew that there was a disposal of hazardous waste from the

plant during the summer of 1988. Yet neither Melvin Holson nor Sheldon Holson made any inquiry to determine whether environmental laws and standards related to disposable hazardous waste were being complied with by the Holson Company in its operations on the Property during this time period. Given the Partnership's knowledge of events that occurred during this time period, and its understanding as to the continuing nature of the operations at the Property, the court concludes that the Partnership knew that this representation was not being made based on the best of the Partnership's knowledge and belief. Rather, this representation was being made contrary to the best of the Partnership's knowledge and belief. In addition, under the circumstances, the only logical inference is that this false representation was made for the purpose of inducing KVL to proceed with the purchase of the Property.

For the same reasons, the court concludes that the affidavit executed by Melvin Holson on January 9, 1989 on behalf of the Partnership was not only untrue, but known by the Partnership to be untrue and made for the purpose of inducing KVL to proceed with the purchase of the Property.

Accordingly, the essential elements of an action of fraud have been satisfied in this case, since KVL clearly acted on these false representations to its injury.

The defendants argue that KVL must prove as an element of its fraudulent misrepresentation claim that any false representations were made under circumstances which entitled KVL

to rely on those representations and that KVL has not established, under the applicable standard of proof, that it justifiably relied on the false representations. While justifiable reliance is an element of a claim for negligent misrepresentation, it is not an element of an action in fraud, as those elements have been set forth by the Connecticut Supreme Court. See Scholes Agency, supra. However, even if the Partnership Defendants were correct in their statement of the law on this issue, KVL would nonetheless prevail on this claim as it has demonstrated by clear, precise and unequivocal evidence that it justifiably relied on the false representations made by the Partnership Defendants.

The Partnership Defendants contend that the BVH Report, which stated that laboratory analysis was required to determine what materials were present in the Sump, and the TRC Report, which recommended that a water sample be collected from the Sump and analyzed, made KVL aware before the end of the environmental contingency period in Paragraph 25 of the Purchase and Sale Agreement that the Partnership Defendants' representations may have been false. They also contend that Kraemer's conversations with KVL's counsel, GH&W, were relayed to KVL and thus similarly made KVL aware of this fact. Finally, they contend that TRC, in its capacity as KVL's agent, had actual notice of the contamination in the Sump prior to the closing. They rely on, among other cases, Keywell Corporation v. Weinstein, 33 F.3d 159 (2d Cir. 1994), where the court stated:

> When a party is aware of circumstances that indicate certain representations may be false, that party cannot reasonably rely on those representations, but must make additional inquiry to determine their accuracy:
>
> > [if plaintiff] has the means of knowing, by the exercise of ordinary intelligence, the truth, or the real quality of the subject of the representation, he must make use of those means, or he will not be heard to complain that he was induced to enter into the transaction by misrepresentations.

Id. at 164 (citations omitted).

However, the circumstances here were not such as to indicate that the Partnership Defendants' representations might be false. Gately had interviewed an individual whom he believed to be an owner and operator of the Holson Company. He had received assurances from this person that the Holson Company's business did not include manufacturing operations, but rather that its operations consisted only of assembling previously fabricated photograph album components into photograph albums. He had also been informed that only an animal-based glue was used and also that there had been no environmentally sensitive operations at the Property. Based on Gately's entirely appropriate report that the Property was an environmentally clean site, KVL entered into the Purchase and Sale Agreement with the Partnership Defendants. In the Purchase and Sale Agreement, the Partnership Defendants represented that the Property was an environmentally clean site. It was in this context that KVL and its agents, namely its counsel and TRC, first saw the BVH Report, which did not focus on the Sump, but merely included information about it as additional

information. Moreover, the BVH Report stated that the purpose of the Sump was not seen and, most importantly, reported that "management stated no knowledge of it or its purpose."

Similarly, while the TRC Report recommended that a water sample from the Sump be analyzed, it made this recommendation in the context of the information in the DEP's records that the company had been cited in 1980 for improper storage of drums containing trichloroethylene. These records showed that the Holson Company had demonstrated to the satisfaction of the DEP that the drums had been labeled, tested and removed properly. Thus the recommendation that testing be conducted noted that the testing would determine if "any TCE, the only chemical of concern used at the facility, was disposed [of] through the [S]ump." It also made this recommendation in the context of a specific representation that the Holson Company used only small quantities of solvent to clean off the photograph albums. The other language in the TRC Report is also significant. The assurance given on behalf of the Partnership Defendants that no manufacturing took place on the Property was repeated, as was Melvin Holson's representation that all that was discharged from the Sink was potable water that had been used by employees for washing their hands; this latter representation directly addressed the issue of whether TCE was disposed of through the Sump. In addition, in the summary section, TRC reported that the environmental site assessment had found no conclusive evidence that any hazardous materials had been spilled or dumped on the

Property, with the possible exception of a leak from one or more of the underground oil tanks.

As to Kraemer's conversations with KVL's counsel, GH&W, TRC was never authorized to take a sample from the Sump, see discussion at part II C.1., infra, and at the very time that Kraemer was conveying to GH&W the fact that a sample had been taken, Kraemer was also reporting to GH&W on discussions he had had with Sheldon Holson, during which discussions Kraemer had raised his questions about the Property with Sheldon Holson. There is not even a suggestion that Sheldon Holson made any statement that alerted Kraemer to the possibility that the Sump was contaminated. Testing the Sump was never added to the terms of TRC's engagement, because having received reassuring representations from the Partnership Defendants, KVL never accepted TRC's recommendation.[4]

Thus in each of these instances where the Partnership Defendants contend that KVL was made aware that the

[4] For this reason, among others, were it necessary for the court to reach KVL's claim for negligent misrepresentation, the court would not find persuasive the Partnership Defendants' arguments (i) that KVL was more than 50 percent negligent because KVL and/or its agents had notice before the closing on the Property of the likelihood or actual existence of environmental problems at the Property, and (ii) that even if the court determines that TRC was not KVL's authorized agent, KVL's negligent misrepresentation claim is barred because TRC was negligent, and its negligence was a superceding cause of any damages to KVL, breaking the causal connection between any negligence on the part of the Partnership Defendants and KVL's claimed damages. See Corey v. Phillips, et al., 126 Conn. 246, 255, 10 A.2d 370, 374 (1939); D'Arcy v. Shugrue, 5 Conn. App. 12, 25 (1985).

representations made by the Partnership Defendants were false, the information they point to was accompanied by assurance from the Partnership Defendants that their representations were true. Accordingly, the totality of the circumstances did not indicate that certain of the representations by the Partnership Defendants might have been false, but rather indicated that notwithstanding the fact that certain concerns had been identified, those representations were true.

Therefore, to the extent the issue is material, the court finds that KVL has proven, by clear, precise and unequivocal evidence, that it justifiably relied on the false representations by the Partnership Defendants.

The Partnership Defendants also contend that KVL's claim for fraudulent misrepresentation is barred by the "as is sale" provision set forth in Paragraph 9 of the Purchase and Sale Agreement. However, under Connecticut law, an "as is sale" disclaimer does not bar a claim for fraudulent misrepresentation. See Gibson v. Capano, 241 Conn. 725, 733, 699 A.2d 68, 72 (1997); Holly Hill Holdings v. Lowman, 226 Conn. 748, 755-56, 628 A.2d 1298, 1302 (1993); Khan v. Danse, Civ. A. No. 542447, 1998 WL 910230, at *2 (Conn. Super. Ct. Dec. 18, 1998) The Connecticut Supreme Court has explained:

> Accordingly, in private disputes, a court must enforce the contract as drafted by the parties and may not relieve a contracting party from anticipated or actual difficulties undertaken pursuant to the contract, unless the contract is voidable on grounds such as mistake, fraud or unconscionability. See 1 Restatement (Second), Contracts §§ 154, 159, and vol. 2, §

208 (1981); cf. Warner v. Pandolfo, 143 Conn. 728, 122 A.2d 738 (1956)

Holly Hill Holdings, 226 Conn. at 756, 628 A.2d at 1302 (emphasis added). Here, of course, KVL has proven fraud.

KVL seeks punitive damages in its common law claims. Punitive damages are available pursuant to a common law fraud claim. See Brower v. Perkins, 135 Conn. 675, 680-81, 68 A.2d 146, 150 (1949) (plaintiff entitled to punitive damages, in addition to general and special damages, and properly introduced evidence of the cost of litigation); Wedig v. Brinster, 1 Conn. App. 123, 134 and 137-38 (1983) (court awarded punitive damages consisting of attorney's fees but declined to exercise its discretion to include interest on the award).

Under Connecticut law, punitive damages "are awarded when the evidence shows a reckless indifference to the rights of others or is an intentional and wanton violation of those rights." Collens v. New Canaan Water Co., 155 Conn. 477, 489, 234 A.2d 825, 832 (1967). In addition, where a defendant's conduct is "in reckless disregard for the consequences it knew or should have known would result, . . . an actual intention to do harm to the plaintiff is not necessary." Id. at 490, 234 A.2d at 832.

Here the evidence shows that there was on the part of the Partnership Defendants not only a reckless indifference to KVL's rights but also a reckless disregard for the consequences the Partnership Defendants should have known would result from their actions. Melvin Holson and Sheldon Holson at all times acted on

behalf of the Partnership and each other. The circumstances under which Melvin and/or Sheldon made the false representations to Gately and TRC, as discussed above, reflect such a high degree of recklessness as to be tantamount to bad faith. As to Melvin Holson, nothing less than recklessness is present when an experienced businessman speaks to the agent for a potential buyer, such as Gately and/or TRC, and makes representations any reasonable person would know are important about the operations of the business without disclosing, at a minimum, that there are significant limitations on his knowledge of those operations and that he has no basis for making certain of those representations. If Sheldon Holson met with Gately, the implication is much worse. Therefore, an award of punitive damages is appropriate in this case.

C. Reimbursement Act

The plaintiff claims, in Count Three of its amended complaint, that the Holson Company and the Partnership are liable to it under the Reimbursement Act, Conn. Gen. Stat. § 22a-452, for KVL's containment, removal and/or mitigation costs. KVL's claim is made pursuant to subsection (a) of the Reimbursement Act, which reads as follows:

> Any person, firm, corporation or municipality which contains or removes or otherwise mitigates the effects of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes resulting from any discharge, spillage, uncontrolled loss, seepage or filtration of such substance or material or waste shall be entitled to reimbursement from any person, firm or

> corporation for the reasonable costs expended for such containment, removal, or mitigation, if such oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous wastes pollution or contamination or other emergency resulted from the negligence or other actions of such person, firm or corporation. When such pollution or contamination or emergency results from the joint negligence or other actions of two or more persons, firms or corporations, each shall be liable to the others for a pro rata share of the costs of containing, and removing or otherwise mitigating the effects of the same and for all damage caused thereby.

Conn. Gen. Stat. § 22a-452(a) (1995).

The Partnership and the Holson Company argue that KVL's claim under the Reimbursement Act is barred by the applicable statute of limitations. They also argue that KVL cannot recover under the Reimbursement Act because it did not establish at trial that the Holson Company or the Partnership was negligent.[5] In addition, the Partnership argues that KVL cannot make a claim under the Reimbursement Act because KVL failed to comply with Paragraph 25 of the Purchase and Sale Agreement and, consequently, waived its rights to proceed under the Reimbursement Act. For the reasons that follow, the court concludes that each of the Holson Company and the Partnership is liable to KVL under the Reimbursement Act.

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[5] The Holson Company also suggests that the court should, under the Reimbursement Act, allocate responsibility for a significant portion of the clean-up costs to KVL. However, the Reimbursement Act only provides for such an allocation when the contamination results from the joint negligence of two or more persons. The court has concluded that KVL justifiably relied on the misrepresentations made to it. See part II.B., supra. But, even assuming arguendo that KVL was negligent, the contamination at the Property was not the result of any action by KVL.

1. Statute of Limitations

The Reimbursement Act contains no specified time limit for an action to obtain reimbursement. Where the legislature fails to specifically provide a statute of limitations, a court should borrow the statute of limitations for claims most closely analogous to the statute under consideration. Medwid v. Baker, 752 F. Supp. 125, 134 (S.D.N.Y. 1990), citing DelCostello v. Int'l. Brotherhood of Teamsters, 462 U.S. 151, 158 (1983); see, e.g., Colonnade One v. Electrolux Corp., 767 F. Supp. 1215, 1218 (D. Conn. 1991); Doty v. Mucci, Civ. A. No. 93-0305616S, 1995 WL 94529, at *2 (Conn. Super. Ct. Feb. 9, 1995).

Here, the most closely analogous statute of limitations under Connecticut law is Conn. Gen. Stat. § 52-577c, which is entitled "Limitation of Action for Damages Caused by Exposure to a Hazardous Chemical Substance or Mixture or Hazardous Pollutant." KVL is asserting a claim for damage to property caused by the release of hazardous chemical substances into the environment. See Blackburn v. Miller-Stephenson Chemical Co., Inc., Civ. A. No. 930314089, 1998 WL 661445, at *9 (Conn. Super. Sept. 11, 1998); Millbrook Owner's Ass'n, Inc. v. Hamilton Standard, Civ. A. No. 90556416, 1996 WL 433755, at *3 (Conn. Super. July 16, 1996); Electroformers, Inc. v. Emhart Corp., Civ. A. No. 29-79-91, 1993 WL 28904, at *5 (Conn. Super. Jan. 29, 1943).

Subsection (b) of that statute provides:

> Notwithstanding the provisions of sections 52-577 and 52-577a, no action to recover damages

> for personal injury or property damage caused by exposure to a hazardous chemical substance or mixture or hazardous pollutant released into the environment shall be brought but within two years from the date when the injury or damage complained of is discovered or in the exercise of reasonable care should have been discovered.

Conn. Gen. Stat. § 52-577c(b) (1984).

The defendants argue that TRC, in its capacity as KVL's agent, had actual knowledge of the contamination in the Sump by October 1988, and that, in addition, in the exercise of reasonable care, KVL should have discovered that contamination, and thus the damage for which it seeks to recover pursuant to this claim, in the fall of 1988. KVL filed its original complaint in February 1991. Thus, they argue, KVL's Reimbursement Act claim is time-barred because the two-year statute of limitations in Section 52-577c controls.

As to the defendants' first argument, it is true that TRC was KVL's agent, that Kraemer took the sample from the Sump and delivered it to Baron Consulting for analysis, and that Baron Consulting forwarded the Baron Report to TRC, to Kraemer's attention, on or around October 13, 1988. That report, which showed the Sump was severely contaminated, was received by TRC and placed in Kraemer's file for the project, although it was not seen by Kraemer.

However, that is not the end of the inquiry. Under Connecticut Law:

> "'It is the general rule, settled by an unbroken current authority, that notice to, or knowledge of, an agent while acting within the

> scope of his authority and in reference to a matter over which his authority extends, is notice to, or knowledge of, the principal.' 2 Mechem on Agency (2d Ed.) § 1803." Lane v. United Electric Light and Water Co., 88 Conn. 670 674, 92 A. 430 (1914); Reardon v. Mutual Life Ins. Co., 138 Conn. 510, 516, 86 A.2d 570 (1952). This assumes, however, that the agent is acting within the scope of his authority.

West Haven v. United States Fidelity & Guaranty Co., 174 Conn. 392, 395, 389 A.2d 741, 744 (1978). The scope of TRC's authority was clearly set forth in its engagement letter with KVL. See Bank of Montreal v. Gallo, 3 Conn. App. 268, 273 (1985) (written power of attorney defined scope of agent's authority). The only testing TRC was authorized to do was for asbestos, and even there it was limited to a maximum of 15 samples. It was agreed that in its report TRC would submit its findings and any recommendations for additional work. The fact that TRC recommended testing the contents of the Sump in the TRC Report, as opposed to reporting that testing was under way, only reinforces the conclusion that TRC had not been authorized to test the contents of the Sump. TRC was seeking, in conjunction with the TRC Report, authorization to test the contents of the Sump. Conducting such testing was, then, beyond the scope of TRC's authority, and it was never added to the terms of TRC's engagement because, having received reassuring representations from the Partnership Defendants, KVL never accepted TRC's recommendation. Since conducting testing of the contents of the Sump was beyond the scope of TRC's authority, receipt by TRC of this notice of the contamination in the Sump cannot be imputed to KVL.

The defendants also argue that, in the exercise of reasonable care, KVL and its counsel, GH&W, should have discovered in the fall of 1988 that the Sump was contaminated, and thus uncovered all the damage complained of in this claim. The defendants contend that KVL ignored TRC's recommendation that the contents of the Sump be tested. However, as described above, KVL's failure to follow this recommendation occurred in the context of prior and contemporaneous reassuring representations from the Partnership Defendants. The defendants contend also that GH&W should have discovered in the fall of 1988 that the Sump was contaminated by virtue of the conversations with Kraemer where he discussed the fact that the Sump was an area of environmental concern and that a sample had been taken and was being analyzed. However, as is also described above, these discussions also took place in the context of prior and contemporaneous reassuring representations from the Partnership Defendants, and, in addition, any discussions of testing the contents of the Sump concerned a matter beyond the scope of TRC's engagement.

Accordingly, the court concludes that KVL's claim under the Reimbursement Act is not time-barred.

2. Requirement of "Negligence or Other Actions"

The Reimbursement Act is not a strict liability statute. In order to recover under the Reimbursement Act, a plaintiff must prove culpability on the part of the defendant; a showing of mere causation is not sufficient to establish liability. Connecticut

Resources Recovery Authority v. Refuse Gardens, Inc., 229 Conn. 455, 457-59, 642 A.2d 697, 698-99 (1994). It is clear that by proving negligence, a plaintiff can demonstrate the requisite culpability. It is unclear precisely what "other actions" of a defendant can demonstrate culpability, but that issue is not presented here.

The defendants contend that KVL failed to establish at trial a standard of care to be employed in measuring the actions of the Holson Company because expert testimony was required to be used to establish the applicable standard, and KVL failed to offer such testimony on this issue. The defendants contend further that they did not engage in culpable conduct that led to the presence of contamination in the Sump.

"In the ordinary action for negligence the jury can apply, unaided by experts, the standard of care of the reasonably prudent person under the circumstances." Levett v. Etkind, 158 Conn. 567, 573, 265 A.2d 70, 72 (1969) "This standard does not apply to an action where laymen cannot be expected to know the requirements of proper care in the usual case." Todd v. Malafronte, 3 Conn. App. 16, 19 (1984). In such a case, "[t]he testimony of an expert may be dispensed with only where there is such gross want of care or skill as to afford, of itself, an almost conclusive inference of negligence." Levett, 158 Conn. at 574.

The record here shows such a gross want of care. By no later than September 1980, the Holson Company knew that by virtue

of the nature of its operations, it was required to comply with laws governing the disposal of hazardous waste. It had been cited for violations by the DEP. Material safety data sheets were received by the company for various hazardous chemicals it purchased; these documents set forth the appropriate waste disposal methods. Also, at least some workers at the facility understood that at least one of the materials they worked with, trichloroethane, was a contaminant and could not be poured down the sink or onto the ground; employees were eventually required to use what they referred to as "safety containers" in connection with this hazardous substance. Sheldon Holson was the individual responsible for the manufacturing operations of the Holson Company. He knew about some of the changes in environmental laws during the 1980's but not all of them. He received the minutes of the meetings of the Holson Company's safety committee, and thus knew that safety was a concern with respect to the hazardous chemicals used at the facility.

Notwithstanding the foregoing circumstances, Sheldon Holson delegated to the plant supervisors all responsibility for seeing that hazardous materials were safely handled and that hazardous waste was properly disposed of. He did so knowing that none of those supervisors had any specialized training as to environmental concerns, and taking no steps to provide them with training in this area or with instructions as to how to dispose of hazardous waste. Moreover, he never made inquiry to determine whether, in fact, such materials were being safely handled and

properly disposed of, or to determine whether there were procedures in place to make sure that hazardous chemicals were properly handled and hazardous waste properly disposed of. Notwithstanding the fact that the Holson Company had been cited for violations by the DEP and put on notice that its operations involved the disposal of hazardous waste, Sheldon Holson, the officer responsible for the manufacturing operations of the Holson Company, never reviewed the material safety data sheets to determine what hazardous materials were coming into the facility and what hazardous waste was being generated, or asked that it be done, or inquired as to whether it had been done. This, notwithstanding the fact that he understood that dirty solvents from the facility were being disposed of by being pumped out into a truck, commencing in the late 1960's. The company's records include detailed documentation relating to the purchase of these hazardous materials, but virtually none relating to the disposal of the hazardous waste generated. Sheldon Holson was satisfied to assume that hazardous materials were being handled properly, and did so in the absence of any reasonable basis for making such an assumption.

The foregoing is the conclusion reached if one credits Sheldon Holson's testimony in this area. If his testimony in this area is not credited, the Holson Company is more, not less, culpable.

The fact that the highest levels of trichloroethane and toluene were found in the Sump, as opposed to in either of the

Vaults, shows that the Holson Company's practice of disposing of trichloroethane and toluene through the Sink, and thus into the Sump, continued until the time it moved its operations from the Property. Thus not only did this lack of attention on the part of the Holson Company, at the institutional level, to hazardous material and waste continue through the date the Holson brothers sold their controlling interest in the company, it resulted in the continuing illegal discharge of hazardous waste into the environment for almost eight years after the DEP put the Holson Company on notice that it was required to comply with laws governing the disposal of hazardous waste.

The Holson Company notes, accurately, that industry standards as to solvent handling practices have evolved over time, particularly during the 1980's. Thus it contends that KVL's proof is deficient because it offered no evidence showing that the Holson Company's solvent handling practices differed from the industry practices at that time. However, "[e]vidence of custom in the trade may be admitted on the issue of standard of care, but is not conclusive." Coburn v. Lenox Homes, Inc., 186 Conn. 370, 381, 441 A.2d 620, 626 (1982) (emphasis added). Thus such evidence may be admitted but is not required. If such evidence is admitted, it would have to be presented in the form of expert testimony. However, this case is one where the plaintiff has obviated the need for such testimony by demonstrating such a gross want of care as to support an almost conclusive inference of negligence, or worse.

KVL has also demonstrated culpability on the part of the Partnership. In December 1986, the Partnership purchased the Property from the Holson Company and immediately leased it back to the Holson Company so that the Holson Company could continue its operations on the Property. At the time it leased the Property to the Holson Company, the Partnership knew, through its general partners Melvin and Sheldon Holson, the precise nature of the Holson Company's operations. Moreover, these two individuals were then serving, and continued to serve the Holson Company as consultants, and they had full knowledge of the fact that the nature of the Holson Company's operations did not change after October 1986, when they sold their controlling interest in the Holson Company. The Partnership nonetheless permitted the Holson Company to remain on the property continuing its operations in substantially the same manner.

3. Paragraph 25.

The Partnership argues that KVL failed to comply with the provisions of Paragraph 25 of the Purchase and Sale Agreement, which sets forth the environmental contingency, and thus KVL waived its rights under the Reimbursement Act. The Partnership simply misconstrues the environmental contingency provision. Although the provision gives KVL the right to cause the Property to be inspected, it does not require that KVL cause such an inspection to be done. By its terms, the only obligations that provision imposes upon KVL are (i) to immediately notify the Partnership and give it a copy of the report in the event the

firm retained by KVL to inspect the Property finds a hazardous substance of any kind, and (ii) to give timely notice to the Partnership if KVL elects to terminate the Purchase and Sale Agreement. Moreover, nothing in the language of this provision contains any implication that KVL is waiving any right or remedy in the event it proceeds to close under the Purchase and Sale Agreement and contamination is subsequently found. Nor does this provision give KVL any rights or remedies in the event of such an occurrence. This provision is simply inapplicable to such a situation.

D. CERCLA

The plaintiff claims, in Count One of its amended complaint, that the Holson Company and the Partnership Defendants are jointly and severally liable under CERCLA, 42 U.S.C. § 9607(a), for the costs KVL has incurred and will incur in the future at the Property. In Count Two, KVL claims that it has a right of contribution against the Holson Company and the Partnership Defendants for their allocable shares of the response costs incurred and to be incurred at the Property pursuant to CERCLA, 42 U.S.C. § 9613(f)(1).

As to Count One, CERCLA provides, in pertinent part, that:

> any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for . . . any other necessary costs of response incurred by any other person consistent with the national contingency plan . . . .

42 U.S.C. § 9607(a) (1995).

To prevail on a claim under § 9607, a plaintiff must prove:

> that (1) the defendant is within one of the four categories of responsible parties enumerated in § 9607(a); (2) the landfill site is a facility as defined in § 9601(9); (3) there is a release or threatened release of hazardous substances at the facility; (4) the plaintiff incurred costs responding to the release or threatened release; and (5) the costs and response actions conform to the national contingency plan.

B.F. Goodrich Co. v. Betkoski, 99 F.3d 505, 514 (2d Cir. 1996) (citing United States v. Alcan Aluminum Corp., 990 F.2d 711, 721-22 (2d Cir. 1993); B.F. Goodrich Company v. Murtha, 958 F.2d 1192, 1198 (2d Cir. 1992). The elements of a CERCLA claim for contribution under 42 U.S.C. § 9613(f)(1) are the same as those of under § 9607(a). Bedford Affiliates v. Sills, 156 F.3d 416, 421 (2nd Cir. 1998).

The fifth element set forth above, which provides that a responsible party is only liable for private party response costs to the extent that those costs were incurred in a manner that was consistent with the national contingency plan ("NCP"), is the focus of the parties' contentions here. The 1990 NCP regulations apply to cleanups occurring after April 9, 1990, and therefore apply to KVL's response action.

However, the requirements a party must meet to recover response costs from other parties under the NCP "differ significantly depending on whether the response for which costs are sought is deemed a "'removal'" or "'remedial action.'" Carlyle Piermont Corporation v. Federal Paper Board Co., Inc.,

742 F.Supp. 814, 817 (S.D.N.Y. 1990).

> The distinction between these actions is of no small importance, for whereas removal actions need only comply with the relatively simple NCP requirements set forth at 40 C.F.R. 300.65 [amended and renumbered in 1990 as 40 C.F.R. § 300.415] . . . remedial actions must comport with the "more detailed procedural and substantive provisions of the NCP" as set forth at 40 C.F.R. § 300.68 [amended and renumbered in 1990 as 40 C.F.R. § 300.430].

Amland Properties Corp. v. Aluminum Co. of America, 711 F.Supp 784, 795 (D.N.J. 1989) (internal citations omitted).

KVL argues that its response action was a removal, and not a remedial, action. CERCLA defines a removal action as:

> the clean up or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evaluation and housing of threatened individuals not otherwise provide for, action taken under section 9604(b) of this title, and any emergency assistance which may be provided under the Disaster Relief and Emergency Assistance Act.

42 U.S.C. § 9601(23) (1995).

Remedial actions are defined under CERCLA as:

> those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance

into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes offsite storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials.

42 U.S.C. § 9601(24) (1995).

In Carlyle, the court observed:

> Various courts have concluded that "[r]emoval actions are to be taken in response to an immediate threat to the public welfare or to the environment . . . and are 'primarily . . . intended for the short-term abatement of toxic waste hazards.'" . . . In sum, the line between removal and remedial actions is not precisely defined but removal actions are typically short-term measures taken to prevent immediate harm whereas remedial actions are generally long-term projects designed to effect permanent solutions . . . .

Carlyle, 742 F.Supp at 818.

Thus, removal actions are those which have associated with them a sense of urgency, that is, if action is not taken immediately it could well be too late to prevent the harm sought to be prevented. Thus, for example, it may be necessary to temporarily evacuate and house threatened individuals. On the other hand, remedial actions appear to be ones where there will be no material adverse change in the status quo, in terms of harm or threat of harm to the environment or public health or welfare, while the steps contemplated by the NCP are implemented.

KVL's response here was not a removal action. It was not taken in response to an immediate threat to the environment or to the public health or welfare, which are implicit in CERCLA's definition of a removal action. At the time KVL learned of the contamination, there was no significant ongoing release from the facility or from the Sump or the Vaults into the environment. As to the hazardous substances that had previously been released, ERL conducted tests in October 1990 and learned that there was only limited contamination in the soil surrounding the Sump and the Vaults. There was no concern on the part of either KVL or its consultant, ERL, that there was an imminent threat to the environment or to the public health or welfare. In fact, even when ERL recommended removal of the Sump, the Vaults and the related contaminated materials, it had "insufficient laboratory results to anticipate the disposal classification of these materials."

On the other hand, KVL's actions were entirely consistent with CERCLA's definition of a remedial action. KVL was more concerned about preventing or minimizing damage to the environment or to the public health or welfare so that hazardous substances did not "migrate to cause substantial danger to present or future public health or welfare or the environment." 42 U.S.C. § 9601(24). KVL cleaned up hazardous substances that had already been released into the environment and other material that had been contaminated by those hazardous substances; it transported these materials off the Property, and it monitored the situation to assure that its actions would protect the environment and the public health and welfare.

Since KVL's response was a remedial action, it was required to comply with the provisions of the NCP set forth at 40 C.F.R. § 300.700. The burden is on KVL to prove that its remediation action substantially complied with the NCP. Sherwin-Williams Company v. City of Hamtramck, 840 F.Supp 470, 475 (E.D. Mich. 1993); Amland Properties, 711 F.Supp. at 793-94; Channel Master Satellite Systems, Inc. v. JFD Electronics Corp., 748 F.Supp 373, 381 (E.D.N.C. 1990).

Under the 1990 NCP regulations applicable here, "a private party response action is considered 'consistent with the NCP' if the action, when evaluated as a whole, is in substantial compliance with the applicable requirements in paragraphs (c)(5) and (6) of the regulation and results in a CERCLA-quality cleanup." 40 C.F.R. § 300.700(c)(3)(i) (1994).

Paragraph (c)(5) makes reference to a remedial investigation/feasibility study ("RI/FS"), the purpose of which is to:

> assess site conditions and evaluate alternatives to the extent necessary to select a remedy. Developing and conducting an RI/FS generally includes the following activities: project scoping, data collection, risk assessment, treatability studies, and analysis of alternatives. The scope and timing of these activities should be tailored to the nature and complexity of the problem and the response alternatives being considered.

40 C.F.R. § 300.430(a)(2) (1998). Paragraph (c)(6) of this regulation provides that "[p]rivate parties undertaking response actions should provide an opportunity for public comment concerning the selection of the response action based on the provisions set out below, or based on substantially equivalent state and local requirements . . . ." 46 C.F.R. § 300.700(c)(6).

The Holson Company and the Partnership Defendants contend that KVL has not met its burden here because it did not provide the opportunity for public comment and participation in its selection of a remedy and did not provide for adequate analysis and investigation of alternative remedies. The court agrees.

The NCP was revised by the Environmental Protection Agency ("EPA") in 1990. "In so doing, the EPA reduced the standard for compliance from strict to substantial compliance . . . ." Bedford Affiliates, 156 F.3d at 427.

> As a result, an "immaterial or insubstantial" deviation from the National Plan will no longer cause the cleanup to be deemed inconsistent. 40 C.F.R. § 300.700(c)(4) . . . .

> The EPA expressly recognized the pitfalls of requiring private parties to adhere to a detailed set of mechanical rules: "[P]roviding a list of rigid requirements may serve to defeat cost recovery for meritorious cleanup actions based on a mere technical failure by the private party that has taken the responsive action." National Plan, 55 Fed.Reg. at 8793. Thus, the EPA abandoned its former ritualistic rule in favor of a case-by-case balancing approach that would evaluate the cleanup effort as a whole to ensure the quality of the cleanup while removing undue procedural obstacles to National Plan consistency.

Id. at 427-28.

KVL contends that it provided an opportunity for public comment and participation in the selection of a remedy because it's application to the Wilton Inland Wetlands Commission was discussed at public hearings. However, 40 C.F.R. § 300.700(c)(6) contemplates public comment concerning selection of the remedy. At the time KVL's application was submitted to the Commission, the remedy had been selected, as is reflected in KVL's description to the Commission of the purpose of KVL's activity. The Commission did not have as the focus of, or, indeed, any part of, its review whether the remedy chosen by KVL compared favorably to other possible remedies. The Commission's task was simply to determine whether that remedy was permissible under the criteria employed by the Commission. In fact, alternative remedies were not set forth and reviewed by KVL's own consultant, ERL, until March 1994. Therefore, the situation here is not comparable, or even analogous, to that in Bedford Affiliates, where the court found that:

> [E]xtensive involvement of a government agency charged with the protection of the public environmental interest is an effective substitute for public comment. Where a state agency responsible for overseeing remediation of hazardous wastes gives comprehensive input, and the private parties involved act pursuant to those instructions, the state participation may fulfill the public participation requirement.

156 F.3d at 428.

Nor did KVL substantially comply with the NCP provisions as to the feasibility study ("FS"). The purpose of the remedial investigation is:

> to collect data necessary to adequately characterize the site for the purpose of developing and evaluating effective remedial alternatives. To characterize the site, the lead agency shall, as appropriate, conduct field investigations, including treatability studies, and conduct a baseline risk assessment . . . . Site characterization activities should be fully integrated with the development and evaluation of alternatives in the feasibility study.

40 C.F.R. § 300.430(d)(1). Similarly, "[t]he primary objective of the feasibility study ("FS") is to ensure that appropriate remedial alternatives are developed and evaluated such that relevant information concerning the remedial action options can be presented to a decision-maker and an appropriate remedy selected." 40 C.F.R. § 300.430(e)(1).

Here, ERL developed an evaluation of alternatives in terms of remediation, but it was not prepared until March 9, 1994, well after all the parts of KVL's remediation effort other than the continuing monitoring had been accomplished. Thus that presentation of remedial action options could not have served the

purpose contemplated by the NCP, namely, allowing a decision-maker to consider remedial action options and then select an appropriate remedy. Moreover, the baseline risk assessment by Gradient Corporation, which was performed using procedures consistent with the NCP, was not completed until October 28, 1994, more than six months after the completion of ERL's report setting forth the various remedial action options. Thus the NCP's goal that site characterization activities be fully integrated with the development and evaluation of the remedial action options could not have been accomplished in this case. In sum, while there was a baseline risk assessment in this case and there was analysis of remedial action options, these steps were taken in an order that was the reverse of that contemplated by the NCP. As a consequence, these actions do not constitute an approach comparable to that contemplated by the NCP's provisions as to the FS.

As KVL did not provide an opportunity for public comment and participation in the selection of its remedy, and this goal of the NCP was not satisfied in some other way, and further, because the steps taken by KVL with respect to a baseline risk assessment and a study of remedial alternatives did not constitute an approach comparable to that contemplated by the NCP's provisions as to the FS, the court concludes that each of these deviations by KVL from the NCP was a material and substantial deviation, and accordingly, that KVL's response action evaluated as a whole was not consistent with the NCP. Therefore, KVL cannot recover under

CERCLA.

E. Transfer Act

The plaintiff claims, in Count Nine of its amended complaint, that the Holson Company is liable to it under the Transfer Act, Conn. Gen. Stat. § 22a-134 et seq., because the Holson Company did not comply with the provisions of the Transfer Act when it sold the Property to the Partnership on December 19, 1986. The plaintiff claims in Count Ten, one, that Melvin Holson and Sheldon Holson are liable to it under the Transfer Act because they failed to comply with the provisions of the Transfer Act when they transferred a controlling interest in the Holson Company on October 22, 1986, and two, that the Partnership is liable to KVL under the Transfer Act because the Partnership failed to comply with the provisions of the Transfer Act when it sold the Property to KVL on January 9, 1989.

The Transfer Act has been amended a number of times since it was originally enacted in 1985 as part of Public Act No. 85-568. It was amended in 1987 as part of Public Act No. 87-475. Thus, while the original version of the Act applies to KVL's claims as to the sale by Melvin and Sheldon Holson in October 1986 of a controlling interest in the Holson Company and the sale of the Property by the Holson Company to the Partnership in December 1986, the 1987 amendments had taken effect at the time of the sale of the Property by the Partnership to KVL in January 1989.

At the time of the October and December 1986 transactions, the Transfer Act provided, in pertinent part, as follows:

§ 22a-134. Transfer of Hazardous Waste Establishments: Definitions.

For the purposes of this section and sections 22a-134a to 22a-134d, inclusive:

(1) "Transfer of establishment" means the transfer of any operations which involve the generation, recycling, reclamation, reuse, transportation, treatment, storage, handling or disposal of hazardous waste, or any other transaction or proceeding through which an establishment undergoes a change in ownership, including, but not limited to, sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of real property, change of corporate identity or financial reorganization, but excluding corporate reorganization not substantially affecting the ownership of the establishment;

(2) "Commissioner" means ...

(3) "Establishment" means any establishment which generates more than one hundred kilograms of hazardous waste per month or which recycles, reclaims, reuses, stores, handles, treats, transports or disposes of hazardous waste which is generated by another person or municipality;

(4) "Hazardous Waste" means . . .

(5) "Negative declaration" means a written declaration on a form prescribed by the commissioner stating (1) that there has been no discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste on-site, or that any such discharge, spillage, uncontrolled loss, seepage or filtration has been cleaned up in accordance with procedures approved by the commissioner or determined by him to pose no threat to human health or safety or the environment which would warrant containment and removal or other mitigation measures and (2) that any hazardous waste which remains on-site is being managed in accordance with this chapter and chapter 446k and regulations adopted thereunder.

§ 22a-134a. Negative Declaration. Certification of Clean-up.

(a) No person shall transfer an establishment except in accordance with the provisions of sections 22a-134 to 22a-134d, inclusive.

(b) Prior to transferring an establishment, the owner or operator shall submit a negative declaration to the transferee and shall, within fifteen days after the transfer, submit a copy of such declaration to the commissioner.

(c) If the owner or operator is unable to submit a negative declaration, prior to the transfer the transferee or other party to the transfer shall certify to the commissioner that to the extent necessary to minimize or mitigate a threat to human health or the environment, he shall contain, remove or otherwise mitigate the effects of any discharge, spillage, uncontrolled loss, seepage or filtration of hazardous waste on-site in accordance with procedures and a time schedule approved by the commissioner pursuant to an order, stipulated judgment or consent agreement.

§ 22a-134b. Damages.

Failure of the transferor to comply with any of the provisions of sections 22a-134 to 22a-134d, inclusive, of this act entitles the transferee to recover damages from the transferor, and renders the transferor of the establishment strictly liable, without regard to fault, for all clean-up and removal costs and for all direct and indirect damages.

§ 22a-134c. Authority of commissioner.

The provisions of sections 22a-134 to 22a-134d, inclusive, of this act shall not affect the authority of the commissioner under any other statute or regulation, including but not limited to the authority to issue any order to the transferor or transferee of an establishment.

§ 22a-134d. Penalty.

> Any person who knowingly gives or causes to be given any false information on any document required by sections 22a-134 to 22a-134d, inclusive, of this act or who fails to comply with the provisions of 22a-134 to 22a-134d, inclusive, of this act shall forfeit to the state a sum not to exceed one hundred thousand dollars. A civil action shall be instituted to recover such forfeiture.

It had become effective on October 1, 1985.

Pursuant to Public Act No. 87-475, the definition of the term "establishment" was amended to read as follows:

> "Establishment" means (A) any establishment which on or after May 1, 1967, generated more than one hundred kilograms of hazardous waste per month or which recycled, reclaimed, reused, stored, handled, treated, transported or disposed of hazardous waste generated by another person or municipality or (B) a dry cleaning establishment or furniture stripping establishment, auto body repair shop or painting shop operating on or after May 1, 1967;

The 1987 change in the first part of the definition of the term "establishment," i.e., the insertion of the date "May 1, 1967" was intended to clarify the legislature's intent that the law cover companies that produced hazardous waste prior to October 1, 1985, and not just those that were in operation as of October 1, 1985. It also had the effect of excluding all establishments which had ceased operating prior to May 1, 1967. See Hartt v. Schwartz, Civ. A. No. 920331912S, 1997 WL 625467, at *7 (Conn. Super. Sept. 30, 1997) ("This particular amendment was meant to clarify what might have appeared as a loophole in the Act"); Colonnade One at Old Greenwich Ltd. Partnership v. Electrolux

Corp., 767 F.Supp 1215, 1220, n. 3 (D. Conn. 1991) ("The arguably draconian results of the 1985 version of the Transfer Act were effectively recognized and corrected by the Connecticut legislature when, in 1987, it amended the Act to exclude all 'establishments' which ceased operation prior to May 1, 1967.").

The Holson Company and Melvin and Sheldon Holson argue that they are not liable to KVL under the Transfer Act because they did not directly transfer any "establishment," or ownership thereof, to KVL. All the defendants argue that there was not sufficient hazardous waste generated at the Property to bring it within the definition of the term "establishment" under the Transfer Act. The Holson Company argues that its transfer of the Property to the Partnership does not fall within the definition of the term "transfer of establishment." All the defendants also argue that KVL's claim is barred by the statute of limitations. Finally, the Partnership Defendants argue that KVL's claim is barred by the terms of Paragraph 25 of the Purchase and Sale Agreement. The court finds none of these arguments persuasive.

1. Transferor Liability to Third Parties

The Holson Company argues that KVL cannot recover from it under the Transfer Act because the Transfer Act only authorizes a private party asserting a claim to recover from that private party's transferor, and the Holson Company transferred the Property to the Partnership, not to KVL. Similarly, Melvin and Sheldon Holson argue that they cannot be liable to KVL under the Transfer Act because they did not convey title to the Property to

KVL, they merely conveyed shares of stock to HAC.

The pertinent provision of the Transfer Act is Section 22a-134b, which provides that a transferee is entitled to recover damages from a transferor who fails to comply with the provisions of the Act. That provision continues on, however: "and renders the transferor strictly liable . . . ." Conn. Gen. Stat. § 22a-134b. The defendants contend that this provision first provides that the transferee can recover damages from its transferor, and then sets forth the basis for the recovery by establishing a strict liability standard and describing the recoverable damages. That is one reasonable interpretation of this provision. However, the provision is not clear and unambiguous. If the legislature had intended simply to provide that a transferor's failure to comply "rendered the transferor strictly liable to the transferee . . .," it could have simply stated that without including the first clause, i.e., "entitles the transferee . . . ." It also could have used only the first clause and elaborated on damages and also addressed the concept of strict liability. It could have avoided basically making twice the same statement concerning damages, i.e., the transferee is entitled to recover damages from the transferor, and the transferor will have to pay damages to the transferee. Also, it could have simply inserted the words "to the transferee" in the second clause for the sake of clarity. If the legislature was attempting to utilize the type of drafting technique suggested by the defendants, its efforts were unsuccessful because instead of the provision being

more comprehensible, it is less so.[6]

In addition, the statute provides that the transferor shall be liable for "direct and indirect damages" in addition to clean-up and removal costs, versus including clean-up and removal costs. Presumably clean-up and removal costs would comprise damages suffered by the transferee. The reasonable interpretation would be that the legislature intended that the transferor be liable for clean-up and removal costs even if those items do not constitute "damages." In that case, it is not logical to read the second clause as simply the description of the damages to which the transferee is entitled.

Moreover, the fact that the statute provides that the "[f]ailure of the transferor . . . entitles the transferee . . ., and renders the transferor . . . " suggests the possibility that two consequences, not just one, flow from the transferor's failure to comply. The court notes that this is an equally reasonable interpretation, but again, not the clear meaning of the language in the statute. However, one consequence is that the transferee is entitled to recover damages from the transferor. A second consequence is that the transferor is strictly liable, to whomever incurred or suffered such costs or damages, for all clean-up and removal costs and all direct and

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[6] The court notes that the history of the Transfer Act reflects a tendency towards a lack of precision in drafting, which led, inter alia, to the need to clarify the term "establishment" in 1987, as discussed above. This appears to be at odds with an intention to utilize the type of drafting technique posited by the defendants.

indirect damages. The possibility that this could be the proper interpretation of this statute was recognized in a discussion of the Transfer Act in a legal treatise on the subject of Connecticut environmental laws:

> It is unknown whether a third party who was not involved in the transaction, can file suit against a transferor for failure to comply. For example, if a property adjacent to an establishment is impacted by contamination emanating from the establishment, can that affected property owner maintain an action against the transferor of the establishment who failed to comply with the Transfer Act? The damages provision specifically entitles the transferee to damages and it will probably be up to the courts to decide whether third parties may also be entitled to similar relief.

1 Alan M. Kosloff and Suzanne M. Batchelor, Connecticut Environmental Practice, § 8.09 at 8-19 (2d ed. 1995).

There are, of course, questions raised by this interpretation too, including whether the legislature simply neglected in the second clause to specify to whom the transferor would be liable, and the significance of simply using the term "damages" in the first clause, but elaborating in the second clause.

Based on the foregoing, the court concludes that there are two reasonable interpretations of this provision. When a court is "confronted with ambiguity in a statute, [the court should] look to its legislative history, its language, the purpose it is to serve, and the circumstances surrounding its enactment to determine the legislative intent." Nationwide Mutual Ins. Co. v. Pasion, 219 Conn. 764, 769, 594 A.2d 468, 471 (1991), quoting Verrastro v. Sivertsen, 188 Conn. 213, 221, 448 A.2d 1344, 1347

(1982) (internal quotations omitted). The "fundamental objective [is to] ascertain [and] give effect to the apparent intent of the legislature." Ambroise v. William Raveis Real Estate, Inc., 226 Conn. 757, 764, 628 A.2d 1303, 1307 (1993); Iovieno v. Commissioner of Correction, 222 Conn. 254, 258, 608 A.2d 1174, 1175 (1992); Chairman v. Freedom of Information Commission, 217 Conn. 193, 200, 585 A.2d 96, 100 (1991); Stewart v. Tunxis Service Center, 237 Conn. 71, 76-77, 676 A.2d 819, 823 (1996).

As to the purpose the statute is to serve, it is noteworthy that when Section 22a-134b was enacted in 1985, it was made a part of chapter 445 of the Connecticut General Statutes, which is entitled "Hazardous Waste." That chapter begins with a statement of legislative finding and the policy of the State of Connecticut. Section 22a-114 contains the following legislative finding, which was made in 1981: "The general assembly finds that improper management of hazardous wastes has contaminated the water, soil and air of the state thereby threatening the health and safety of Connecticut citizens . . . ." Conn. Gen. Stat. § 22a-114 (1987).

A review of the provisions of the Transfer Act sheds further light on the purpose it is to serve. Such a review shows that the Act is designed to work in a way that is consistent with the legislature's intent as expressed during proceedings in 1985. In June 1985, Rep. Tiffany stated:

> Speaker Van Norstand:
>
> The gentleman seeks leave to summarize. Is there objection? Seeing none, please

proceed, sir.

Rep. Tiffany: (36th)

> Mr. Speaker, this amendment is much more important obviously than the file copy of the bill. It sets up for a procedure whereby when a business that deals in potentially hazardous waste, they must get a clean bill of health before the establishment can be closed or transferred ....

H. Proceedings H-421, Vol. 28, Part 33, 11919, 11969 (June 4, 1985). In May 1985, Senator Benson made the following comments:

> If a negative declaration cannot be given, then the transferor or the transferee must certify to both -- to either the buyer or the seller and to the Department of Environmental Protection, that someone will assume responsibility for a clean-up, if the Department of Environmental Protection determines that a clean-up is necessary.

S. Proceedings S 236, Vol. 28, Part 6, 1771, 1802 (May 1, 1985).

Under the Transfer Act, the transferor must do one of two things. One, it must certify to the transferee that there has been no discharge, etc. of hazardous waste at the site or, if there has been such a discharge, etc., that there has been a proper clean-up, and also certify that any hazardous waste that remains at the site is being properly managed -- in other words, the transferor must show that the site is entitled to a clean bill of health. See Conn. Gen. Stat. § 22a-134(5). Two, if the transferor cannot show the site is entitled to a clean bill of health (in other words, such statements would not be true), then there must be a certification to the commissioner by one of the parties to the transfer that the person giving the certification will contain and/or clean up that discharge, etc., and will do so

in accordance with procedures and a schedule approved by the commissioner and embodied in an order, stipulated judgment or consent agreement. See Conn. Gen. Stat. § 22a-134a(c). As logic dictated, the legislature specified that the person who would be liable if the provisions of the Transfer Act were not complied with would be the transferor.

Thus the legislature clearly intended that prior to any transfer, the transferor either certify that the property is clean, or ensure that someone has assumed responsibility, in a legally binding fashion, for conducting a clean-up of the property.

A second relevant point concerning the legislature's apparent intent is that the legislature gave the appearance of wanting to be sure that a transferor could not escape liability. The language in the second clause in Section 22a-134b is redundant in at least one respect. It provides that the transferor shall be "strictly liable, without regard to fault." It is well established under Connecticut law that strict liability means, of course, liability without regard to fault. See Graves v. Metrex Research Corp., Civ. A. No. 91-505710, 1995 WL 416292, at *5 (Conn. Super. Ct. July 6, 1995) ("The term strict liability is synonymous with 'liability without fault.'" (quoting Seavey v. Northeast Utilities, Civ. A. No. 93-0456932S, 1994 WL 14533, at *3 (Conn. Super. Ct. Jan. 7, 1994) (quoting Wright, Fitzgerald & Ankerman, Connecticut Law of Torts, (3d Ed.), § 121, p. 354))). The most reasonable inference to draw

from the redundancy is that the legislature wanted to be very sure that a transferor could not avoid its responsibility somehow.[7]

The third relevant point that should be noted concerning the legislature's apparent intent is that much of the burden of enforcement under the Transfer Act rests with private parties. The commissioner receives a copy of any negative declaration, but only within 15 days after it has been submitted by the transferor to the transferee. In addition, if the conditions for a negative declaration are not satisfied, then the person who will be responsible for the clean-up must not only certify that the clean-up will be performed but also that it will be done in accordance with an order, stipulated judgment or consent agreement. See Conn. Gen. Stat. § 22a-134a. This provision appears to require such a responsible person to agree to a binding commitment without necessarily knowing what requirements will be imposed by the DEP, and it looks to private parties to ensure that such a binding commitment is delivered to the DEP. The DEP does not have to bring suit to obtain such a commitment, or even ask for it. This binding commitment simply arrives at the commissioner's office as a result of the diligence of the

[7] In this regard, it is interesting to note that at the time the 1995 amendments to the term "transfer of establishment" were discussed by the legislature, there was clearly a concern that "some fancy attorneys" could come up with a way to structure transactions so as to allow corporations that held environmentally damaged properties to "sort of dump" them. Joint Standing Committee Hearings, Environment, 02615-16 (April 3, 1995).

private parties involved in the transfer. The fact that the enforcement mechanisms in the Transfer Act are driven by private parties has been recognized by the legal commentators who have studied the Act. See Kosloff and Batchelor, § 8.01 at 8-2 ("The law was also intended to speed up the identification and cleanup of properties contaminated by hazardous waste and to rely primarily on the private sector to do so."); M. Mininberg, Transferring Commercial Real Estate Under Connecticut's Environmental Law, 64 Conn. B.J. 409, 416 (1990) (stating that the Transfer Act "relies principally on enforcement by private parties").

The court also notes in this respect that, as part of Public Act 87-475, the legislature amended both Conn. Gen. Stat. § 22a-452a, Connecticut's super lien statute, and Section 22a-134a to provide that if a site is transferred in compliance with the Transfer Act, that property would then not be subject to the super lien arising under Section 22a-452a. During the legislative proceedings it was noted by Rep. Bertinuson that in effectuating this change, the amendment to the law "retains the protection that we intended with the priority lien in that it requires a close watch on transfers of property by lending institutions." H. Proceedings H-477, Vol. 30, Part 28, 10159, 10268 (May 27, 1987). This is yet another indication of the legislature's desire to place much of the burden of enforcement in this area on private parties.

A fourth relevant consideration of which the court must be

cognizant is the fact that "[e]nvironmental statutes, considered remedial in nature, are to be construed liberally to reach the desired result." Keeney v. Old Saybrook, 237 Conn. 135, 157, 676 A.2d 795, 808 (1996) (citing Manchester Environmental Coalition v. Stockton, 184 Conn. 51, 57, 441 A.2d 68, 73 (1981); Starr v. Commissioner of Environmental Protection, 226 Conn. 358, 382, 627 A.2d 1296, 1309 (1993) (internal quotations omitted). Here the legislature's desired result appears to be private parties making sure, in the first instance, that when there is a transfer, either the property receives a clean bill of health or a responsible party agrees to be responsible for any required containment or cleanup, or failing that (i.e., if the Transfer Act is not complied with), that the transferor is held strictly accountable.

Finally, while it is clear that the legislature intended to "protect individuals who are planning to purchase a piece of property that has been used for hazardous waste treatment or storage," S. Proceedings S 236, Vol. 28, Part 8, 1800, 1802, (May 1, 1985) (Senator Benson), there is no indication in the legislative history or elsewhere in the statute that the legislature's intent was to protect only direct purchasers.

In summary then, a review of the statute's legislative history, its language, and the purpose it was to serve, shows that the legislature was concerned about the threat to the health and safety of Connecticut citizens resulting from the improper management of hazardous waste that was contaminating the

environment; that it intended that a transferor either certify that a site is clean or ensure that someone has responsibility, in a legally binding fashion, for conducting a clean-up of the property; that it appears to have wanted to be sure that a transferor could not avoid its responsibility somehow; that it intended to place on private parties much of the burden of enforcement; and also that there is no indication that the legislature's intent was to protect only direct purchasers. Thus the legislature's apparent intent is more consistent with the interpretation of this statute under which transferors are liable to third parties, than with the interpretation under which a transferor is liable only to its transferee. The latter interpretation would give a transferor who had failed to comply with the Transfer Act a better chance of not being held responsible for cleaning up the site and remedying any damage, direct or indirect, caused by that failure to comply.[8] That result would run counter to the idea that, prior to any transfer, the transferor will either give the property a clean bill of health in a public document, or, in the alternative, ensure that someone has assumed responsibility in a legally binding fashion for conducting a clean-up of the property. It would also run

[8] The interpretation urged by the defendants makes it more likely that a transferor could successfully structure a series of transactions, no more complicated than the series of transactions here among HAC, Melvin and Sheldon Holson, the Holson Company and the Partnership, whereby Transfer Act liabilities could, in effect, be limited by transferring property to a separate legal entity. Of course, there is no indication that this was the objective of any defendant in this case.

counter to the legislature's apparent intent to place much of the burden of enforcement under the Transfer Act on private parties. On the other hand, a remedy under the Transfer Act for third parties is not only consistent with the purposes the Act was meant to serve but more effectively serves those purposes, because it makes it more likely that, at the end of the day, the result will be as if the transferor had complied with the Act.

2. Requirement of 100 Kilograms Per Month

The definition of the term "establishment" in effect at the time of the three transfers at issue here made reference to "an establishment which generates more than 100 kilograms of hazardous waste per month." Conn. Gen. Stat. § 22a-134(3). Accordingly, the defendants contend that in order to obtain relief under the Transfer Act, KVL is required to prove that more than 100 kilograms of hazardous waste was generated at the site each month. A literal reading of the language at issue, ignoring the context in which it appears, would support the defendants' interpretation. However, such an interpretation would be clearly contrary to the remedial purposes of the Transfer Act and would render the Act all but ineffectual. In addition, the subsequent legislative history of the Transfer Act makes it clear that the legislature's original intent was that an establishment generating 100 kilograms in any month be subject to the provisions of the Transfer Act.

Whether the interpretation urged by the defendants is proper hinges on whether this is a situation where application of the

plain meaning rule of statutory construction is appropriate. The plain meaning rule is a fundamental principle of statutory construction, but it is not to be applied mechanically. In New York State Commission on Cable Television v. Federal Communications Commission, 571 F.2d 95 (2d Cir. 1978), the court explained:

> Mere incantation of the plain meaning rule, without placing the language to be construed in its proper framework, cannot substitute for a meaningful analysis. For we must remember Judge Learned Hand's stricture that "(t)there is no surer way to misread any document than to read it literally . . . ." Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944) (concurring), aff'd sub. nom. Gemsco, Inc. v. Walling, 324 U.S. 244, 65 S.Ct. 605, 89 L.Ed. 921 (1945). And as Professor Cox wisely noted, "(n)o one has ever suggested that the courts must always follow the letter of a statute regardless of the outcome, nor does any one contend that the words may be entirely disregarded. The issue is where to strike the balance." Cox, Judge Learned Hand and the Interpretation of Statutes, 60 Harv.L.Rev. 370, 376 (1947). The appropriate methodology, then, is to look to the "common sense" of the statute or regulation, to its purpose, to the practical consequences of the suggested interpretations, and to the agency's own interpretation for what light each inquiry might shed. See United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 849, 95 S.Ct. 2051, 44 L.Ed.2d 621 (1975); United States v. American Trucking Associations, Inc., 310 U.S. 534, 43-44, 60 S.Ct. 1069, 84 L.Ed. 1345 (1940).

Id. at 98. The Connecticut Supreme Court has also recognized that, in interpreting a statute, the context of the language must be considered prior to application of the plain meaning rule:

> In interpreting the language of a statute, the words must be given their plain and ordinary meaning and their natural and usual sense

> unless the context indicates that a different meaning was intended. Caldor, Inc. v. Heffernan, 183 Conn. 566, 570 440 A.2d 767 (1981). When the language is plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislature's intent.

Oller v. Oller-Chiang, 230 Conn. 828, 848, 646 A.2d 822, 833 (1994). See also, In Re Darlene, 247 Conn. 1, 10, 717 A.2d 1242, 1248 (1998); Mattatuck Museum-Mattatuck Historical Society v. Administrator, 238 Conn. 273, 278, 679 A.2d 347, 350 (1996).

Under the interpretation urged by the defendants, a company that wished to escape liability under the Transfer Act could easily do so simply by structuring its operations so that it generated less than 100 kilograms of hazardous waste in any one month. This would be so notwithstanding the fact that the legislature provided for strict liability when it passed this remedial piece of legislation and thus appears to have been concerned that a transferor not be able to escape liability somehow. Given the legislature's apparent intent at the time of the passing of the Transfer Act, see discussion at part II.E.1 supra, it cannot be reasonably concluded that such an enormous loophole was intended.

Moreover, to the extent that the appropriate regulatory agency's interpretation of the statute is relevant, here, the DEP took the position that the proper interpretation was that 100 kilograms of hazardous waste in any single calendar month was what was required to trigger the provisions of the Transfer Act. See Mininberg, at 417 n.30 ("Staff at the DEP and the state

Attorney General's office have taken the position that the generation of 100 kilos in any single calendar month is sufficient to invoke the Transfer Act. However, there is, as yet, no regulation or case law to support this position.").

Courts were faced with analogous arguments involving another aspect of the definition of the term "establishment," as it was defined in Public Act 85-568, in Colonnade One and Hart v. Schwartz. In Colonnade One, the defendants contended that because the definition of the term "establishment" spoke of an establishment which "generates" more than 100 kilograms of hazardous waste per month, it was intended to apply only to establishments that were handling hazardous waste as of October 1, 1985, the effective date of the Act; the defendants had ceased operating their factory as of May 1985. The court's analysis was as follows:

> I find defendants' interpretation of the Transfer Act to be strained and unduly restrictive. It cannot reasonably be inferred from the Connecticut legislature's use of the present tense in defining an "establishment" that the Transfer Act was intended to cover only those establishments currently in operation as of October 1, 1985 and not those that ceased operation only a few months earlier. It would thwart the obviously remedial purposes of the statute to restrict the Transfer Act's coverage in the way defendants have proposed.

Colonnade One, 767 F.Supp. at 1217. In Hart v. Schwartz, faced with a similar argument, the court applied the reasoning of Colonnade One. See Civ. A. No. 120331912S, 1997 WL 625467, at *6 (Conn. Super. Sept. 30, 1997). The circumstances here are quite

similar. The obviously remedial purposes of the Transfer Act would also be thwarted, and to a greater degree than was at issue in Colonnade One, by restricting the Act's coverage in the way proposed by the defendants here -- any company that wished to opt out of being covered by the Transfer Act could do so by cutting back on its operations for one month.

In addition, in 1995, the legislature clarified the definition of the term "establishment" to make clear the legislature's original intent that the requirement under the Transfer Act was 100 kilograms in any month. "The general rule is that when a legislative act is intended to clarify existing law 'it necessarily has retroactive effect.' State v. Magnano, 204 Conn. 259, 284, 528 A.2d 760 (1987)." Reid v. Zoning Board of Appeals, 235 Conn. 850, 859 n.5, 670 A.2d 1271, 1276 n.5 (1996).

The 1995 amendments to the Transfer Act changed the pertinent language in Section 22a-134(3) so that it read: "[M]ore than one hundred kilograms of hazardous waste in any one month . . . ." 1995 Conn. Acts 95-183, § 1. In summarizing the legislation, Senator Cook stated:

> To recap, I think it clarifies the ambiguous definitions in the Property Transfer Law. It creates a streamlined process for the Commissioner's review of property transfer filings. It creates a voluntary process for expediting the review of clean ups of property transfer sites and it creates the licensed environmental professional program and a covenant not to sue.

S. Proceedings S-380, Vol. 38, Part 10, 3330, 3436-37 (May 25,

1995) (emphasis added). In the House of Representatives, Rep. Stratton made the same point:

> 1189 then tries to address some of the ambiguities of the Transfer Act which have been part of the difficulty in trying to deal with properties that are subject to it and clearly defines what is and is not a transfer under the act and therefore what is subject to it. It also tries to clarify what is indeed an establishment and is therefore subject to the act. It also changes the date at which the activity would have to occur; the spill of hazardous chemicals and moves that forward. It also authorizes the Commissioner to sign covenants not to sue with these properties and . . . .

H. Proceedings H-733, Vol. 38, Part 14, 4913, 4969-70 (June 1, 1995) (emphasis added).

Accordingly, the court concludes that KVL was required to show that more than 100 kilograms of hazardous waste was generated at the Property in any month during the pertinent time periods. KVL has met that burden with respect to showing that the Transfer Act applied to Melvin and Sheldon Holson at the time they transferred a controlling interest in the Holson Company in October 1986, and to the Holson Company at the time it sold the Property to the Partnership in December 1986. It has also met that burden with respect to the Partnership and its sale of the Property to KVL in January 1989.

It is clear that the Holson Company's disposal of hazardous waste in October 1980, in response to the order from the DEP, made it an establishment under the Transfer Act. Given that one of the three drums of which it disposed was a 30-gallon drum of trichloroethane, and that a 55-gallon drum of trichloroethane

weighed 585 pounds (or approximately 265 kilograms), the Holson Company disposed of at least 144 kilograms of trichloroethane in October 1980.

In addition, if one considers calendar year 1985, the aggregate weight of just the trichloroethane, RS1475 resin glue and mineral spirits purchased by the Holson Company that year was 2,772 pounds, or roughly 1,257.34 kilograms. This would be on average 104.8 kilograms a month. If one includes the Freon, the aggregate weight increases to roughly 1,883.3 kilograms, or on average 156.9 kilograms a month. It is clear from the volume of the purchases of these materials in 1984 and 1986 that these materials (or equivalent amounts) were used during 1985. When they were used, with the possible exception of Freon, they created waste material that was at least equal to their weight. Not only was dirty solvent disposed of, but rags that had been soaked in solvent were also disposed of. With respect to Freon, it can evaporate rapidly, but its ability to evaporate was limited given the conditions under which it was used by the Holson Company. Thus the average for 1985 was somewhere between 104.8 and 156.9 kilograms a month. It is thus mathematically impossible for the 100 kilograms in a month threshold not to have been crossed at least once in or around the year 1985.

If one considers calendar year 1986, the same conclusion must be reached because the aggregate weight of the first three materials purchased by the Holson Company was 3,237 pounds, or approximately 1,468 kilograms, which is an average of about 122.3

kilograms a month. If one includes Freon, the aggregate weight increases to roughly 2,058 kilograms, or an average of about 171.5 kilograms a month.

Finally, it is clear that the threshold was exceeded in August 1988, when the Holson Company used an approved disposal company to ship an over-packed 55-gallon drum of hazardous waste from the Property. While the analysis as to 1980, 1985 and 1986 are applicable to all the defendants, the analysis with respect to this August 1988 disposal applies only to the Partnership, because the transfers by Melvin and Sheldon Holson and by the Holson Company predate that disposal.

3. "Transfer of Establishment"

The Holson Company contends that the Transfer Act does not apply to its transfer of the Property to the Partnership because that transaction is not covered by either portion of the definition of the term "transfer of establishment." It argues first, that the Holson Company only transferred real estate, not business operations, and second, that the transfer of the Property was not a "transaction or proceeding through which an establishment undergoes a change in ownership." Conn. Gen. Stat. § 22a-134(1). As to the first part of its argument, the Holson Company notes that it did not transfer to the Partnership any equipment or machinery, any employees, any customers, any accounts or any trade information. As to the second part of its argument, it contends that while the sale of a controlling interest in the Holson Company on October 22, 1986 may have

constituted a change of ownership within the meaning of Section 22a-134(1), the exchange of the remaining six percent of the Holson Company stock was not a second "transfer of establishment" but merely the final step in the transaction by which HAC acquired 100 percent of the Holson Company.

However, Section 22a-134(1) specifically includes, without limitation, the term "transfer of establishment" in the definition of "the conveyance of real property." Conn. Gen. Stat. § 22a-134(1). It is unclear, but not material for purposes of this case, whether the non-exclusive list of what is included in the term "transfer of establishment" modifies only the clause "any other transaction or proceeding through which an establishment undergoes a change of ownership" or also modifies the clause "transfer of any operations which involve . . . ." Id. In either event, a conveyance of real estate is not an event that would necessarily be included in the definition of "transfer of operations" or in the definition of "other transaction or proceeding through which an establishment undergoes a change in ownership." Id. However, the legislature's clear intent that a conveyance of real property be included within at least the second of these clauses makes the only material question here whether the Property was an establishment; for the reasons discussed above, the court has concluded that the Property was an establishment. The fact that the transfer of the Property by the Holson Company to the Partnership was merely the final step in the transaction by which HAC acquired 100 percent of the Holson

Company does not change the fact that a conveyance of real property is explicitly included under the definition of "transfer of establishment." A transaction, or portions thereof, can be covered by a statute for more than one reason. See Diamond v. Marcinek, 226 Conn. 737, 745, 629 A.2d 350, 355 (1993) (underground oil tanks could be both "existing" and "temporarily out-of-service" for purposes of regulations requiring disclosure of hazardous materials).

Therefore, the court concludes that not only were the requirements of the Transfer Act applicable to the sale of the controlling interest in the Holson Company on October 22, 1986, because the term "transfer of establishment" includes a change in ownership, but that those requirements were also applicable to the Holson Company's subsequent sale of the Property to the Partnership because the term "transfer of establishment" specifically includes "the conveyance of real property" and the Property was an establishment.

4. "Statute of Limitations"

Like the Reimbursement Act, the Transfer Act contains no statute of limitations, and the most closely analogous statute is Conn. Gen. Stat. § 52-577c, which provides for a two-year statute of limitations. See part II.C.1., supra. The defendants raise with respect to the Transfer Act all the arguments they make with respect to the statute of limitations as to the Reimbursement Act, and the court's analysis as to those arguments is also the same. However, the defendants raise one additional argument with

respect to KVL's claim under the Transfer Act.

KVL's original complaint, filed in February 1991, did not assert claims under the Transfer Act. Such claims were not added until KVL filed an amended complaint on June 3, 1993. The defendants argue that the claims under the Transfer Act do not relate back to the date of the original complaint for purposes of determining whether the statute of limitations is violated, because the facts alleged with respect to the Transfer Act are new facts not previously alleged and therefore state a new cause of action.

The Federal Rules of Civil Procedure, specifically Rule 15(c), govern this situation. See International Connectors Industry, Ltd. v. Litton Systems, Inc., Civ. A. No. 3-88-503 (JAC), 1995 WL 253089, at *3 (D.Conn. Apr. 25, 1995). The court notes, however, that Connecticut law does not differ from Rule 15(c). See Sharp v. Mitchell, 209 Conn. 59, 72, 546 A.2d 846, 852 (1988). Rule 15(c) provides that a claim is not barred by the statute of limitations if that claim "arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading." Fed. R. Civ. P. 15(c). The objective is to ensure "that the original pleading gives adequate notice that a claim is being asserted based on some particular conduct, transaction or occurrence." International Connectors, at *3 (citing Sharp, 209 Conn. at 72, 546 A.2d at 852).

In the original complaint, KVL claimed that the Holson Company was liable to it pursuant to common law claims for

negligence, strict liability and nuisance, and also under CERCLA and the Reimbursement Act, because the Holson Company, during the time it had operations on the Property, used hazardous substances which it caused or allowed to be released into the environment, contaminating the soil and ground water, and that KVL suffered damages as a consequence of the Holson Company's conduct. This is the same conduct on the part of the Holson Company that is at the heart of KVL's Transfer Act claim against that defendant. Also, both in the original complaint and under its Transfer Act claim, KVL maintains that the Holson Company is strictly liable to it for the damages KVL has suffered as a result of the conduct of the Holson Company.

KVL set forth claims in the original complaint against the Partnership for breach of contract and misrepresentation, and also under CERCLA and the Reimbursement Act. KVL's Transfer Act claim against the Partnership arose out of the same transaction, namely the sale of the Property by the Partnership to KVL, as did KVL's claim against the Partnership in the original complaint. The very transaction in which the Partnership made misrepresentations is the one in which the Partnership failed to make the representations it was required to make under the Transfer Act.

KVL set forth claims in the original complaint against Melvin and Sheldon Holson under CERCLA and for misrepresentation. Its claim under CERCLA was that Melvin and Sheldon Holson were liable as persons who had owned or operated a facility at a time

when hazardous waste was disposed of, and that they continued to be liable for that conduct, notwithstanding the fact that they had sold their ownership interest in the Holson Company, because they sold the company without first remedying the resulting environmental problems at its site. KVL's Transfer Act claim against Melvin and Sheldon Holson is premised on the same conduct. They owned an establishment that had environmental problems and sold it without first remedying those problems.

KVL's Transfer Act claim against the Holson Company does not "arise out of," within the meaning of Rule 15(c), the sale of the Property to the Partnership by the Holson Company. Nor does KVL's Transfer Act claim against Melvin and Sheldon Holson "arise out of," within the meaning of Rule 15(c), their transfer of the controlling interest in the Holson Company. Those activities by those defendants must, of course, be proven to show that the provisions of the Transfer Act are applicable to those defendants. However, the fact is that the Holson Company's failure to comply with the Transfer Act would not have resulted in any liability for it under the Act to KVL had the Holson Company not engaged in the conduct that is at the heart of KVL's original claims against it. Similarly, Melvin and Sheldon Holson's failure to comply with the Transfer Act would not have resulted in any liability for them under the Act to KVL had they not engaged in the conduct that is at the heart of KVL's earlier filed CERCLA claim against them.

Thus the court concludes that KVL's Transfer Act claims

against the defendants relate back under Rule 15(c) to the filing of the original complaint because they arise out of the same conduct, in the case of the Holson Company and Melvin and Sheldon Holson, and the same transaction, in the case of the Partnership, as claims set forth or attempted to be set forth, in the original complaint.

5. Paragraph 25

The Partnership Defendants make the same argument, based on Paragraph 25 of the Purchase and Sale Agreement, as to waiver by KVL of its rights with respect to the Transfer Act as the Partnership makes with respect to the Reimbursement Act. The analysis as to why that argument is unpersuasive as to the Reimbursement Act is also applicable to the Partnership Defendants' argument with respect to the Transfer Act. See part II.C.3, supra.

F. Remedies

KVL has established the liability of (i) the Partnership Defendants on its fraudulent misrepresentation claim, including liability for punitive damages, (ii) the Holson Company and the Partnership under the Reimbursement Act, and (iii) the Holson Company, Melvin and Sheldon Holson and the Partnership under the Transfer Act. Damages will be awarded after the parties have been given an opportunity to address certain issues presented by, but not fully addressed in, the post-trial memoranda.[9] However,

[9] In addition, the court recognizes that the plaintiff has reserved all rights to seek attorney's fees, costs, interest, and offer of judgment interest.

the award of damages will be made consistent with the findings of fact set forth above and the following discussion concerning the remedies for fraudulent misrepresentation and KVL's proof as to the costs for remediation at the Property.

1. Fraudulent Misrepresentation

KVL was fraudulently induced by the Partnership Defendants to enter into the Purchase and Sale Agreement.

> At the option of the defrauded party, where there has been fraud in the inducement of the contract, the contract is voidable or subjects the defrauding party to a suit for damages. The party defrauded has the option of electing either to rescind the contract or to claim damages for the breach of the contract.

Kavarco v. T.J.E., Inc., 2 Conn. App. 294, 298-99, 478 A.2d 257 (1984) (internal citations omitted). As to recission, the Connecticut Supreme Court has explained:

> Rescission, simply stated, is the unmaking of a contract. It is a renouncement of the contract and any property obtained pursuant to the contract, and places the parties, as nearly as possible, in the same situation as existed just prior to the execution of the contract. A condition precedent to rescission is the offer to restore the other party to its former condition as nearly as possible." Kavarco v. T.J.E., Inc., 2 Conn. App. 294, 299, 478 A.2d 257 (1984). The very idea of rescinding a contract implies that what has been parted with shall be restored on both sides, and hence the general rule, which is to be reasonably applied . . . is that a party who wishes to rescind a contract must place the opposite party in status quo. 17 Am. Jr. 2d., Contracts § 512, p. 994.

Metcalfe v. Talarski, 213 Conn. 145, 153, 567 A.2d 1148, 1152 (1989) (internal quotation marks omitted). In Metcalfe, the court also explained, in terms of the consequences of an

unequivocal election to rescind a contract that:

> [a] definite election to rescind a contract is final and operates as a waiver of any claim for damages for any breach of the contract; Gordon v. Indusco Management Corporation, 164 Conn. 262, 266, 320 A.2d 811 (1973); and that [h]e who elects to rescind a contract can claim nothing under it. Jones v. Brinsmade, 183 N.Y. 258, 262, 76 N.E. 22 [1905]; Valente v. Weinberg, 80 Conn. 134, 135, 67 Atl. 369 [1907]; Janulewycz v. Quagliano, 88 Conn. 60, 64, 89 Atl. 897 [1914]; 3 Black, Rescission (2d Ed.), § 704; Restatement, 2 Contracts, § 410, comment b. illustration 2; 12 Am. Jur. 1019, 1038; 13 C.J. 623, § 684; 17 C.J.S. 925, § 441. Haaser v. A.C. Lehmann Co., 130 Conn. 219, 221, 33 A.2d 135 (1943).
>
> Therefore, the trial court properly ruled that the plaintiff's claims for expectancy and reliance damages . . . [could] not be sustained by reason of the plaintiff's unequivocal exercise of his right of recission.

Id. at 159, 567 A.2d at 1155 (brackets in original) (internal quotation marks omitted).

If the contract is not rescinded, the measure of damages is that utilized for breach of a contract. In Miller v. Appleby, 183 Conn. 51, 438 A.2d 811 (1981), the Connecticut Supreme Court reviewed the considerations that should be kept in mind in determining an award of damages upon the occurrence of such an event:

> The general rule in Connecticut in awarding damages in cases of this kind is that the plaintiff purchaser is entitled to recover the difference in value between the property actually conveyed and the value of the property as it would have been if there had been no false representation, i.e., "the benefit of the bargain" damages, together with any consequential damages resulting directly from the fraud. See Franchey v. Hannes, 152

> Conn. 372, 381, 207 A.2d 268 (1965); Clark v. Haggard, supra, 673; Morrell v. Wiley, 119 Conn. 578, 583, 178 A. 121 (1935); Piascyk v. Malon, 116 Conn. 418, 425, 165 A. 352 (1933); see also Dobbs, Remedies § 9.2, p. 595. "The damages to be recovered in an action of this character are such as are the natural and proximate consequence of the fraudulent representation complained of; and those results are proximate which must be presumed to have been within the contemplation of the defendant as the probable consequence of his fraudulent representations." Kornblau v. McDermant, 90 Conn. 624, 632, 98 A. 587 (1916). In general, with only a few exceptions, the courts have accordingly restricted recovery to those damages which might foreseeably be expected to follow from the character of the representation itself. Prosser, Torts (4th Ed.) § 110, p. 732.

Miller at 57-58, 438 A.2d at 814 (internal footnote omitted). Here, the costs incurred by KVL in connection with the remediation of the Property, which are discussed below, are damages that would foreseeably be expected to follow from the misrepresentations made by the Partnership Defendants.

Finally, as is discussed in Part II.B., supra, KVL is entitled to an award of punitive damages on this claim.

2. Costs of Remediation

KVL is entitled to recover "damages" from the Partnership pursuant to the Transfer Act, and has also demonstrated that Melvin and Sheldon Holson and the Holson Company are liable to it pursuant to the Act, for "all clean-up and removal costs and for all direct and indirect damages." Conn. Gen. Stat. § 22a-134b. In addition, KVL has established that, under the Reimbursement Act, it is entitled to receive from the Holson Company and the Partnership "reimbursement . . . for the reasonable cost expended

for . . . containment, removal, or mitigation . . . ." Conn. Gen. Stat. § 22a-452(a). KVL has established that as of the time of trial it had incurred reasonable costs for remediation of the Property in the aggregate amount of $429,523.68, minus, if necessary, an adjustment for ERL's charges for litigation support during the period ending June 30, 1991.

As discussed in Part I.G., supra, the court does not find persuasive the defendants' contentions that the expenses incurred by KVL in connection with the remediation of the Property were not reasonably incurred. Nor does the court find persuasive the defendants' contentions that KVL failed to meet its burden of proof on damages because its evidence as to these expenses lacked the requisite degree of specificity and, in addition, because it failed to segregate charges for work not recoverable from the defendants.

The defendants contend that KVL's proof on damages lacked the requisite degree of specificity because the invoices from ERL did not provide a detailed breakdown of each task performed, the time spent on that task, and the costs associated with that task. They refer by analogy to cases which hold that legal fees are not recoverable in the absence of an itemized description of the services rendered. See Cruz v. Local Union No. 3 of the Int'l Bhd. of Elec. Workers, 34 F.3d 1148, 1160 (2d Cir. 1994) (stating that "applications for attorneys fees must `specify, for each attorney, the date, the hours expended, and the nature of the work done'" (quoting New York State Assoc. for Retarded Children,

Inc. v. Carey, 711 F.2d 1136, 1147 (2d Cir. 1983)).

The court notes, however, that ERL's invoices are in keeping with the standard in the industry, as evidenced by the fact that the defendants' experts both used equivalent billing formats. Of greater significance, however, the record contains detailed information as to the tasks performed by ERL. The numerous proposals and status reports by ERL specified in detail what tasks would be and/or had been performed by ERL, and KVL produced reports prepared by ERL and videotape showing work being done at the Property. In addition, the witnesses who testified as to the reasonableness of ERL's fees were competent to do so and credible.

The defendants also contend that KVL failed to segregate charges that are not recoverable from the defendants from charges that are recoverable. First, they note that a portion of ERL's work related to the Perkin-Elmer site and contend they are not responsible for the Perkin-Elmer contamination or the costs associated with it. However, these costs are indirect damages suffered by KVL as a result of the defendants' actions and thus covered by the Transfer Act. Had the defendants been forthcoming about the nature of the Holson's Company's operations on the Property, the impact on the Property of contamination at the Perkin-Elmer facility could have been determined more efficiently. In addition, it was reasonable for KVL, as a prudent landowner to monitor whether the ground water on its property was being contaminated because of an environmental

problem on an adjacent property.

The defendants also contend, in this regard, that a significant portion of ERL's time was spent on litigation support to KVL and its counsel, and that since this cost for this portion of ERL's services cannot be segregated out, KVL has not met its burden of proving damages. A portion of ERL's time between October 1990 and June 30, 1991 was spent on litigation support, and it is not readily apparent precisely what portion was spent on such activity. However, it is clear that ERL's total billings for that period were $89,241.14, or 26.8% of the total of ERL's charges to KVL. It is also apparent from a review of the list of activities provided in ERL's July 1991 letter, and the other documentation concerning ERL's activities during the period in question, that the litigation support was a relatively small portion of ERL's work during the period in question. Furthermore, it appears that it would be possible to make a reasonable approximation as to what portion of the work was litigation support. Thus if the question of precisely what portion of ERL's charges were for litigation support becomes material, it would be inequitable to bar recovery of the entirety of such costs. At this juncture, the question does not appear to be a material one, however, because KVL is being awarded punitive damages on its fraudulent misrepresentation claim. Thus any portion of ERL's charges that are for litigation support would be includable in the reasonable costs of litigation KVL is entitled to recover. For this reason, and also because it appears that

based on the record here the court could make a reasonable approximation of the portion of ERL's charges during the period in question that are for litigation support, the court concludes that this case is different in material respects from the cass relied on by the defendants, Licciardi v. Murphy Oil USA, Inc., Civ. A. No. 93-940, 1995 WL 45861, at *4 (E.D. La. Feb. 2, 1995) (court was wholly unable to make a determination as to which of plaintiff's costs fit into the category of costs recoverable under NCP).

Therefore, the court concludes that KVL is not barred from recovering its costs for remediation because of a failure to segregate charges that are not recoverable.

III. CONCLUSION

For the reasons set forth above, judgment will be entered in favor of the plaintiff, KVL Corporation (f/k/a Mill's Pride, Inc.) on the following counts: (i) Count Three, the claim pursuant to the Reimbursement Act, Conn. Gen. Stat. § 22a-452, against each of The Holson Company, and Danbury Road Family Partnership; (ii) Count Eight, the claim for fraudulent misrepresentation, against each of Melvin Holson, Sheldon Holson, and Danbury Road Family Partnership, and including punitive damages; (iii) Count Nine, the claim pursuant to the Transfer Act, Conn. Gen. Stat. § 22a-134 et seq., against The Holson Company; and (iv) on Count Ten, the claim pursuant to the Transfer Act, Conn. Gen. Stat. § 22a-134 et seq., against each of Melvin Holson, Sheldon Holson, and Danbury Road Family

Partnership. On the following counts, the court finds in favor of the defendant or defendants against whom that claim is asserted: Count One and Count Two, cost recovery under CERCLA, 42 U.S.C. § 9607(a), and contribution under CERCLA, 42 U.S.C. §§ 9613(f)(1), respectively; and Count Five, the claim for breach of contract.

It is so ordered.

Dated in Hartford, Connecticut this 3rd day of August 2000.

Alvin W. Thompson
United States District Judge

ATTACHMENT NO. 3

EXPENSES, COSTS & PAYMENTS				
Defense Costs				
Accounting Fees	1,075.00			
Legal Fees	1,024,518.44			
Experts	46,629.89			
Copying	1,679.59			
Court Reporting	15,798.39			
Remediation Related	19,141.41			
Travel	427.00			
Total Expenses		$1,109,260.72		
Settlement Payment				
KVL Settlement 9/10/02		612,500.00		
Future Costs				
Future Monitoring/Remediation Expenses		25,000.00		
Total Expenses, Payments & Costs		**$1,746,760.72**		
INSURANCE PROCEEDS				
Total Settlement from Fireman's Fund	900,000.00			
Portion allocated to the Holsons	585,000.00			
Total Settlement from Travelers	unable to disclose			
Total Legal Fees	621,692.21			
AMOUNT OF CLAIM				
Financial		$ 685,088.33		
Compensatory		$1,000,000.00		
Legal Fees for this Action		not yet determined		

The Holsons have back-up documentation (invoices, etc.) on these cost figures and will make them available upon request.

Exhibit 11

THE HOME INSURANCE COMPANY IN LIQUIDATION
P.O. Box 1720
Manchester, New Hampshire 03105-1720
Tel: (800) 347-0014

Date: 07/28/2008 Class: II

Sheldon and Melvin Holson
c/o Gerald J. Petros, Esq.
50 Kennedy Plaza, Suite 1500
Providence, Rhode Island 02903

RE: NOTICE OF DETERMINATION
Proof of Claim No.: INSU700645-01 INSU275296 INSU700638 INSU700640 INSU700641 INSU700642 INSU700655 INSU700657 INSU700658 INSU700659 INSU700660 INSU700662

Determination Summary

Gross Amount of Claim	: $ Unknown
Amount Allowed by Liquidation	: $ 0

Explanation: The Home Insurance Company (Home) issued seven Manuscript Excess Liability Policies to the Holson Company, in effect from 1973 through 1981, providing limits ranging from $3 million to $5 million, excess $50,000 (1973-76) and excess $100,000 (1976-81). The Proofs of Claim are filed on behalf of Melvin Holson and Sheldon Holson, the primary shareholders, directors and principal officers of the Holson Company (the Holsons).

The claim at issue, involves a single site located in Wilton CT, which was acquired in 1968 by the Holsons, who operated a photo album processing facility at the location. In January 1989, the Holsons sold the subject property to Mills Pride n/k/a KVL Corporation (KVL).

On 2/1/91, KVL filed suit against the Holsons in the U.S. District Court of Connecticut, seeking damages allegedly relating to disposal practices at the facility involving the introduction of solvent contaminated materials into the sump and two vaults, resulting in contamination of soil and groundwater at the site. Subsequently, the Holsons brought a Declaratory Judgment Action against the primary insurers, whose policies underlie the Home excess policies, seeking coverage for the KVL suit. In August 1999, during the pendency of the KVL litigation, the Holsons resolved the coverage litigation by way of a settlement with Fireman's Fund for $900,000 and a confidential settlement with Travelers for an undisclosed amount, wherein policies were deemed to be exhausted. On August 3, 2000, the U.S. District Court issued its memorandum opinion in favor of KVL, and on April 25, 2001, the court entered a Partial Judgment, setting forth the claims in the KVL suit for which the Holsons were liable for a total amount in excess of $2,000,000.

In September 2002, the Holsons reached a settlement with KVL on all claims raised by the KVL suit. The Proofs of claim assert costs of $612,500 for KVL Settlement 9/10/02, $25,000 Future Monitoring/Remediation Expenses and $1,109,260.72 Total Expenses.

On 9/30/02, the Holsons filed a Complaint in the Superior Court of Connecticut against Home, claiming breach of contract by refusing to defend and indemnify against the KVL suit. The Complaint was dismissed without prejudice as to Home due to its liquidation proceedings.

In the Proofs of Claim and in subsequent discussions with the Holsons' counsel, it has been claimed that Home failed to honor its contractual obligations to defend the Holsons, which obligations were triggered by: (1) the primary insurers wrongfully disclaiming coverage, and (2) the Holsons settlement with the primary insurers in 1999, at which time it claims the underlying insurance became exhausted.

Each Home policy contains the sudden and accidental pollution exclusion, which has been upheld by the state's highest court (Buell Indus., Inc. v. Greater NY Mut. Ins. Co., 791A.2d 489 ; 2002). As a preliminary matter, it is noteworthy that the allegations in the Complaint did not assert damages resulting from discharges that were of a sudden or accidental nature. Furthermore, the judgment in favor of KVL in the underlying action was based, in part, on fraudulent misrepresentation on the part of the Holsons. Accordingly, in the first instance, coverage is not afforded under the Home policies based on application of the pollution exclusion, as well as the lack of an occurrence under the policies, which requires unexpected and unintended damages.

With respect to the specific claims that a duty to defend was triggered under the Home policies, this was not the case. As to the claim that Home's policies were obligated to defend was triggered by the "wrongful declination" by the primary insurers, Home's policies contain no such provision. The "Self Insured Retention" endorsements {III Defense Settlement (a)} generally provide that , with respect to any occurrence not covered by the underlying insurance policies *but which is covered by the terms and conditions of "this" policy*, the "Company" shall defend any suit against the insured excess of $10,000 (self-insured retention) ultimate net loss (emphasis added herein). In this context it is noteworthy that the pollution exclusions in the Home policies provide the additional provision that "...in no event shall coverage provided by this policy for Contamination and Pollution be broader than that provided in the Underlying Insurances...". Accordingly, an occurrence in the KVL suit could not have been covered by the Home policies, while not covered by the Underlying Insurance.

The claim that the Holsons settlement with the primary insurers "exhausted" primary coverage, thereby triggering Home's duty to defend, is also without merit. First, based on legal precedent in CT courts, loss and expense are allocated on a pro rata, time-on-risk basis among multiple triggered policies (*Security Ins. Co. of Hartford v. Lumbermens Mut. Cas. Co., 826 A.2d 107*; 2003). On information provided, the amount of the settlement that the Holsons negotiated with KVL would not impact Home's policies, based on a fact-driven allocation period of 21 years (1968 - 1989). Furthermore, it is suspected (Travelers settlement is confidential) that the Holsons settlements with Fireman's Fund and Travelers were for amounts less than their respective policy limits. However, what is most

significant in this regard is the fact that the settlement between the Holsons and the primary insurers occurred while litigation with KVL was ongoing and that primary policy exhaustion requires payment of all sums, including the supplemental defense obligation which exists separate and apart from a primary insurer's indemnity obligation. Finally, Home's policies provide in pertinent part, pursuant to condition Q, that "...policies referred to in the attached 'Schedule of Underlying Insurances' shall be maintained in full effect during the currency of this policy...". Accordingly, 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.

Based on the foregoing: (1) the subject claim is barred from coverage based on the Insuring Agreements, Exclusions and Conditions of the Home policies; (2) Home's defense obligation was not triggered by the denial of coverage by the primary insurers or the claimed exhaustion of the underlying insurance policies; and (3) the Holsons could not transfer a defense obligation to Home by virtue of their settlement and release of Fireman's Fund and Travelers. Finally, assertions in the Proofs of Claim that Home "...wrongfully, unfairly and in bad faith..." refused to defend and indemnify the Holsons against the KVL suit are denied (such claims would qualify as an extracontractual, Class V Priority claim, pursuant to the Order of Distribution N.H. RSA sec. 402-C:44,V).

Accordingly, all claims asserted are disallowed.

{The Home Insurance Company in Liquidation reserves its rights under all the terms and conditions of its policies with respect to subject Proofs of Claim, and nothing herein should be construed as a waiver of those rights or coverage defenses under the policies}.

Dear Claimant :

The purpose of this letter is to provide you with a determination set forth above of claims you have presented to The Home Insurance Company in Liquidation ("The Home"), under the Proof(s) of Claim specified above. The Home expects to present notice of this determination to the Superior Court for Merrimack County, New Hampshire (the "Court") for approval in accordance with New Hampshire Revised Statute, RSA 402-C:45. Read this Notice of Determination carefully as it sets forth your rights and obligations in detail.

The Home has now made a Determination on the claims as set forth above in accordance with The Home Claim Procedures (the "Procedures")* approved by the Court. If the claim has been allowed, in whole or in part, it has been assigned a Class II priority as a "policy related claim" pursuant to the Order of Distribution set forth in RSA 402-C:44 and will be placed in line for payment as directed by the Court from the assets of The Home. The first

*A copy of the January 19, 2005 Restated and Revised Order Establishing Procedures Regarding Claims Filed With The Home Insurance Company in Liquidation may be obtained from the website of the Office of the Liquidation Clerk for The Home Insurance Company in Liquidation and US International Reinsurance Company in Liquidation, www.hicilclerk.org

$50 of the amount allowed on each claim in this class shall be deducted from the amount distributed as specified in RSA 402-C:44.

You may have other claims against The Home for which you may receive other Notices of Determination. You will have a separate right to dispute each Notice of Determination. If your claim has been allowed in whole or in part, this Notice of Determination does not mean that your claim will immediately be paid, or that it will be paid in full or at all. Pursuant to order of the Court, The Home may make distributions of its assets as a percentage of all allowed claims in a particular priority class in The Home estate as approved by the Court. The amount of the final payment for allowed claims will be determined by the final ratio of assets to liabilities and the applicable priority. Please be advised that the final percentage of payment you receive from The Home, at the time The Home estate is finally closed, is the total payment amount that you will be entitled to for this claim.

The Liquidator does not expect there to be assets sufficient to make a distribution to creditors in classes below Class II.

Any and all distributions of assets may be affected and/or reduced by any payments you have received on this claim from any other sources not listed on the Notice of Distribution. Any such distributions by The Home are based on The Home's knowledge and/or understanding of the amounts you have received in settlement and/or reimbursement of this claim from all other sources at the time of the allowance or thereafter. Should The Home subsequently become aware of prior recoveries from other sources The Home has the right to reduce its future distribution payments to you to the extent of such other recoveries or to seek and obtain repayment from you with respect to any previous distributions that were made to you.

Further, if you seek or receive any future payment from any other source on this claim after you receive a distribution payment from The Home you must notify The Home at the address below and The Home has the right to recover from you the distribution payments in whole or in part, to the extent of any such other future recoveries.

As a condition to receipt of any distributions, The Home shall be entitled to any rights to subrogation you may have against any third party and you shall be deemed to have assigned to The Home such rights upon receipt of any distributions. You shall also be obliged to reimburse The Home for any legal fees or other costs associated with The Home recovering from you any distribution payments to which you are not entitled.

The following instructions apply to this Notice of Determination:

Claim Allowed

1. If this claim has been allowed in whole or in part and you agree with the determination, sign and date the enclosed Acknowledgment of Receipt of the Notice of Determination and mail the completed Acknowledgment to The Home.

Claim Disallowed

2. A. If all or part of your claim has been disallowed or you wish to dispute the determination or creditor classification for any reason, you may file a Request for Review with the Liquidator. The Request for Review is the first of two steps in the process of disputing a claim determination. The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination.

REQUEST FOR REVIEW FILING REQUIREMENTS:

(a) Sign and return the attached Acknowledgment of Receipt form.

(b) On a separate page, state specifically the reasons(s) you believe that the determination is in error and how it should be modified. Please note the Proof of Claim number on that page and sign the page.

(c) Mail the Request for Review to:

The Home Insurance Company in Liquidation
P.O. Box 1720
Manchester, NH 03105-1720

You should keep a copy of this Notice of Determination, Acknowledgment of Receipt and Request for Review, then mail the Original Request for Review to us by U.S. Certified Mail.

(d) The Request for Review must be received by The Home within thirty (30) days from the date of this Notice of Determination. The Request for Review must be in writing.

(e) The Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination.

IF A REQUEST FOR REVIEW IS NOT FILED WITH THE HOME WITHIN THE THIRTY (30) DAY PERIOD, YOU MAY NONETHELESS DIRECTLY FILE AN OBJECTION WITH THE COURT WITHIN SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE. You do not have to file the Request for Review as a prerequisite to dispute the Notice of Determination. Please see Section 2B (below) for the Objections to Denial of Claims.

B. If your claim is disallowed in whole or in part, you may file an Objection with the Court at

Office of the Clerk, Merrimack County Superior Court
163 N. Main Street, P.O. Box 2880
Concord, New Hampshire 03301-2880
Attention: The Home Docket No. 03-E-0106

within sixty (60) days from the mailing of the Notice of Determination and bypass the Request for Review procedures as noted in Section 2A (above). If the Request for

Review is timely filed, as outlined in Section 2A, the Liquidator will inform you of the outcome of the review and issue to you a Notice of Redetermination. If the redetermination is to disallow the claim, you may still file an Objection with the Court. You have sixty (60) days from the mailing of the Notice of Redetermination to file your Objection. Please also sign and return the Acknowledgment of Receipt form and mail a copy of the Objection to the Liquidator.

IF YOU DO NOT FILE AN OBJECTION WITH THE COURT WITHIN EITHER SIXTY (60) DAYS FROM THE MAILING OF THIS NOTICE OF DETERMINATION OR SIXTY (60) DAYS FROM THE MAILING OF ANY NOTICE OF REDETERMINATION, YOU MAY NOT FURTHER OBJECT TO THE DETERMINATION.

A timely filed Objection will be treated as a Disputed Claim and will be referred to the Liquidation Clerk's Office for adjudication by a Referee in accordance with the Procedures.

3. You must notify The Home of any changes in your mailing address. This will ensure your participation in future distributions, as applicable. For purposes of keeping The Home informed of your current address, please notify us at the address given on the letterhead above.

Sincerely yours,

Peter Bengelsdorf, Special Deputy Liquidator
For Roger A. Sevigny, Liquidator
of The Home Insurance Company in Liquidation

If you wish to speak to someone regarding this Notice of Determination, please contact:

Kevin Kelly
Chief Environmental Officer
Home Insurance Company in Liquidation
Phone : 212-530-4106

THE HOME INSURANCE COMPANY IN LIQUIDATION
P.O. Box 1720
Manchester, New Hampshire 03105-1720
Tel: (800) 347-0014

POC #: INSU700645-01 INSU275296 INSU700638 INSU700640 INSU700641 INSU700642 INSU700655 INSU700657 INSU700658 INSU700659 INSU700660 INSU700662

Amount Allowed: $ 0

Sheldon Holson
13 Weather Bell Drive
Norwalk, CT 06851

ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of the Notice of Determination as a Class II Creditor claim and confirm that I understand the content thereof. I further acknowledge and confirm that I understand the Instructions regarding the Notice of Determination of my Claim against The Home Insurance Company in Liquidation and in that regard advise as follows:

(Check off all applicable items.)
_____ I agree to the determination.

_____ I reject the determination and want to file a Request for Review (specific reasons must be included along with return of the signed Acknowledgment).

_____ I reject the determination and intend to file a separate Objection with the Court, without filing a Request for Review.

_____ I have not assigned any part of this claim.

_____ I have not made any other recoveries with respect to this claim.

_____ I have not sought and do not intend to seek any other recoveries with respect to this claim.

_____ I have made recovery from others with respect to this claim (full details must be included with this Acknowledgement).

_____ I have sought or intend to seek recovery from others with respect to this claim (full details must be included with this Acknowledgement).

I request that The Home mail further correspondence to:

_____ Same name as above.
New name _____

_____ Same address as above
New address _____
_____

This Acknowledgment of Receipt must be completed, signed and returned to The Home in order to be eligible for distributions from The Home estate as directed by the Court.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit 12

THE HOME INSURANCE COMPANY
Manchester, New Hampshire

Executive offices: 59 Malden Lane, New York, N. Y. 10038

1,000 2,900
2,000 3,625
3,000 3 985

August 5, 1980

Naman Guinsburg's Son & Co.
84 William Street
New York, N.Y. 10038
Att: Jim Guinsburg

RE: THE HOLSON CO.
HEC 9 83 16 05

Dear Jim:

Thank you for captioned renewal submission, and our quote is as follows:

$1,000,000 with umbrella

$10,000.00 SIR including 1st Dollar Defense

$2,900.00 Minimum & Deposit at a rate of 15¢ per $1,000.00 with sales 1 year.

15% Commission

Subject to the following:

1. Same terms and conditions as expiring and in addition.

2. Require employee exclusion deleted from Personal Injury ABC in primary.

3. Will run concurrent with primary CAL date, to expire 12/1/80.

Please advise your renewal instructions on or before the expiration date of 8/12/80, when we will be unable to extend our coverage.

Thank you, and I remain,

Please renew for
3,000,000

Very truly yours,

Rosanne M. Bell

Rosanne M. Bell
Excess Lines Dept.

RMB:ct