THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS. SUPERIOR COURT

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

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

MERITS BRIEF OF CLAIMANTS SHELDON HOLSON AND MELVIN HOLSON ON COVERAGE

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. ARGUMENT

A. The Home Had A Duty to Defend the Holsons

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

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

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

(d) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the Company's request.
The amounts so incurred, except settlement or satisfaction of claims and suits, are payable by the Company in addition to the applicable limit of liability of this policy
. . .
Coverage afforded under this Insuring Agreement shall not apply to defense, investigations, settlement of legal expenses covered by underlying insurances.

(emphasis added).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Home Breached Its Duty to Defend the Holsons

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

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSION

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

Respectfully submitted,

SHELDON HOLSON AND MELVIN HOLSON

By their Attorneys,

Dated: May 15, 2009

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

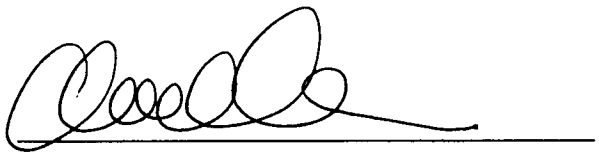
Christopher H.M. Carter, Esq. (#12452)
Hinckley, Allen & Snyder LLP
11 South Main Street, Suite 400
Concord, NH 03301
Phone: (603) 225-4334
Fax: (603) 224-8350
ccarter@haslaw.com

971360

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

CERTIFICATE OF SERVICE

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



(56068-117369)
971360

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

COMPLAINT

I. INTRODUCTION

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

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

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

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

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

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

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

II. JURISDICTION AND VENUE

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

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

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

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

III. PARTIES

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

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

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

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

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

IV. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

Partnership $7,180,000.00 for the site.

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

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

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

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

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

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

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

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

levels of fewer, but related compounds."

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

V. COUNT ONE (COST RECOVERY UNDER CERCLA)

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

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

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

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

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

Administrator of the Environmental Protection Agency.

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

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

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

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

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

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

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

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

VI. COUNT TWO (CONTRIBUTION UNDER CERCLA)

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

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

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

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

VII. COUNT THREE (CONNECTICUT HAZARDOUS WASTE REIMBURSEMENT)

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

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

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

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

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

VIII. COUNT FOUR (NEGLIGENCE OF HOLSON)

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

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

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

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

IX. COUNT FIVE (NEGLIGENCE OF TRC)

47. Mill's Pride hereby incorporates the allegations

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

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

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

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

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

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

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

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

XI. COUNT SEVEN (BREACH OF CONTRACT OF TRC)

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

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

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

XII. COUNT EIGHT (STRICT LIABILITY OF HOLSON)

56. Mill's Pride hereby incorporates the allegations

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

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

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

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

XIII. COUNT NINE (NUISANCE - AS TO HOLSON)

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

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

62. The improper disposal or leakage of the hazardous

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

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

XIV. COUNT TEN (MISREPRESENTATION)

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

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

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

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

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

WHEREFORE, the Plaintiff claims:

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

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

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

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

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

6. Monetary damages;

7. Punitive damages;

8. Costs;

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

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

By _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JUN 11 1993

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

FIRST AMENDED COMPLAINT

I. INTRODUCTION

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

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

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

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

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

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

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

II. JURISDICTION AND VENUE

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

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

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

III. **PARTIES**

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

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

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

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

IV. FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. COUNT ONE (COST RECOVERY UNDER CERCLA)

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. COUNT TWO (CONTRIBUTION UNDER CERCLA)

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

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

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

VII. COUNT THREE (CONNECTICUT HAZARDOUS WASTE REIMBURSEMENT)

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

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

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

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

VIII. COUNT FOUR (NEGLIGENCE OF HOLSON)

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

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

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

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

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

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

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

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

X. COUNT SIX (STRICT LIABILITY OF HOLSON)

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

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

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

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

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

XI. COUNT SEVEN (NUISANCE - AS TO HOLSON)

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

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

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

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

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

XII. COUNT EIGHT (MISREPRESENTATION)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, the Plaintiff claims:

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

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

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

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

5. Prejudgment and postjudgment interest;

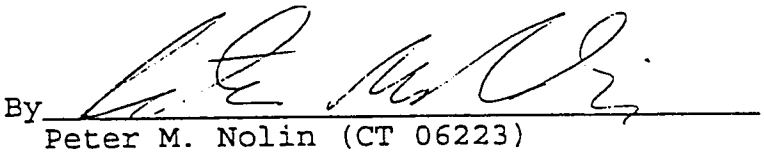
6. Reasonable attorney's fees pursuant to CERCLA, and Conn. Gen. Stat. §22a-452, 22a-134b;

7. Punitive damages pursuant to common law;

8. Costs of this action;

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

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

By 

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

CERTIFICATION

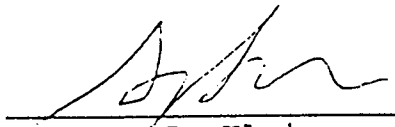
I hereby certify that a copy of the foregoing has been sent via U.S. mail, postage prepaid on this 9th day of June, 1993 to the following:

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

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

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

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



Gary S. Klein

J:\4011563.01

EXHIBIT "A"

J:\4011563.01

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

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

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

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

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

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

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

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

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

S 67-58-30 E - 66.00 feet.
S 84-00-00 E - 9.47 feet.
S 80-06-40 E - 100.10 feet.
S 83-02-40 E - 100.01 feet and,
S 78-53-00 E - 34.74 feet to land of Calvin W. Irwin

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit B

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

1115 BROAD STREET • P. O. BOX 1821 • BRIDGEPORT, CONNECTICUT 06601 • (203) 368-0211 • JOHN [illegible]

Exhibit C

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

Exhibit D

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

Exhibit E

REM®

JUN 14 2000

June 8, 2000

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

• RISK
ENTERPRISE
MANAGEMENT
LIMITED

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

Dear Mr. Petros:

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

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

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

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

Very truly yours,

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

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

ISH/rh
Holson3.doc

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

HINCKLEY, ALLEN & SNYDER LLP
Attorneys at Law

Gerald J. Petros

May 3, 2000

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

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

Dear Ms. Hanau:

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

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

Very truly yours,

Gerald J. Petros

GJP:rhm
Enclosures

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

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

R E M.®

MAR -6 2000

March 1, 2000

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

● RISK
ENTERPRISE
MANAGEMENT
LIMITED

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

Dear Mr. Petros:

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

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

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

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

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

REM®

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

Very truly yours,

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

ISH/rh

Holson2.doc

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

HINCKLEY, ALLEN & SNYDER LLP

Attorneys at Law

Gerald J. Petros

January 21, 2000

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

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

Dear Ms. Hanau:

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

Very truly yours,

Gerald J. Petros

GJP:cl

cc: Paula Rawleigh
Sheldon Holson
Mel Holson

REM.®

JAN 13 2000

January 10, 2000

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

• RISK
ENTERPRISE
MANAGEMENT
LIMITED

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

Dear Mr. Petros:

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

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

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

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

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

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

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

REM®

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

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

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

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

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

Very truly yours,

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

ISH/rh

holsonack.doc

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

HINCKLEY, ALLEN & SNYDER LLP
Attorneys at Law

Gerald J. Petros

December 9, 1999

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

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

Dear Ms. DiGennaro:

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

Very truly yours,

Gerald J. Petros

GJP:cl

334981v1
(50142/90585)

Lomas, Cynthia A.

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

Prepare a letter confirming this.

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

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

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

HINCKLEY, ALLEN & SNYDER LLP
Attorneys at Law

Gerald J. Petros

October 5, 1999

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

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

Dear Ms. DiGennaro:

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

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

Very truly yours,

Gerald J. Petros

GJP:cl

Exhibit F

SEP -5 2000

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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

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

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

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

Count Three of the Complaint – The Connecticut Reimbursement Act

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

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

Count Eight of the Complaint – Fraudulent Misrepresentation

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

---

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

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

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

---

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

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

Counts Nine and Ten – The Transfer Act

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

Prejudgment and Post-judgment Interest

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

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

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

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

Offer of Judgment Interest

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

Future Clean Up Costs

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

---

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

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

Allocation Of Payments Made By Defendants

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

Calculation of the Judgments

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

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

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

Past Clean-Up Costs

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

TOTAL JUDGMENT ON COUNT THREE:

$ 689,285.53

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

B. Count Eight of the Complaint – Fraudulent Misrepresentation

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

Compensatory Damages

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

Attorney's Fee/Punitive Damages

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

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

TOTAL JUDGMENT COUNT EIGHT:

$12,255,989.89

C. Counts Nine and Ten – The Transfer Act

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

Compensatory (direct) Damages

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

Attorney's Fee/Indirect Damages

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

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

TOTAL JUDGMENT COUNTS NINE AND TEN:

$12,255,989.89

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

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

CERTIFICATION

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

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

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

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

Gary S. Klein