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

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

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

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

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

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

C. Reimbursement Act

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

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

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

Conn. Gen. Stat. § 22a-452(a) (1995).

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

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

1. Statute of Limitations

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

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

Subsection (b) of that statute provides:

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

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

Conn. Gen. Stat. § 52-577c(b) (1984).

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

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

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

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

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

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

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

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

2. Requirement of "Negligence or Other Actions"

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Paragraph 25.

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

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

D. CERCLA

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

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

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

42 U.S.C. § 9607(a) (1995).

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

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

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

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

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

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

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

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

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

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

42 U.S.C. § 9601(23) (1995).

Remedial actions are defined under CERCLA as:

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

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

42 U.S.C. § 9601(24) (1995).

In Carlyle, the court observed:

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

Carlyle, 742 F.Supp at 818.

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 427-28.

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

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

156 F.3d at 428.

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

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

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

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

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

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

CERCLA.

E. Transfer Act

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

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

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

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

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

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

(2) "Commissioner" means ...

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

(4) "Hazardous Waste" means . . .

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

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

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

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

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

§ 22a-134b. Damages.

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

§ 22a-134c. Authority of commissioner.

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

§ 22a-134d. Penalty.

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

It had become effective on October 1, 1985.

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

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

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

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

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

1. Transferor Liability to Third Parties

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

KVL; they merely conveyed shares of stock to HAC.

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

more comprehensible, it is less so.[6]

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

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

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

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

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

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

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

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

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

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

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

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

proceed, sir.

Rep. Tiffany: (36th)

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

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

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

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

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

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

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

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

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

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

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

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

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

A fourth relevant consideration of which the court must be

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

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

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

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

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

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

2. Requirement of 100 Kilograms Per Month

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. "Transfer of Establishment"

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

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

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

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

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

4. "Statute of Limitations"

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

respect to KVL's claim under the Transfer Act.

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

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

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

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

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

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

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

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

Thus the court concludes that KVL's Transfer Act claims

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

5. Paragraph 25

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

F. Remedies

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

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

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

1. Fraudulent Misrepresentation

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

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

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

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

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

unequivocal election to rescind a contract that:

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

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

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

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

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

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

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

2. Costs of Remediation

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

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

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

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

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

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

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

problem on an adjacent property.

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

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

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

III. CONCLUSION

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

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

It is so ordered.

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

Alvin W. Thompson
United States District Judge

ATTACHMENT NO. 3

EXPENSES, COSTS & PAYMENTS				
Defense Costs				
Accounting Fees	1,075.00			
Legal Fees	1,024,518.44			
Experts	46,620.89			
Copying	1,679.59			
Court Reporting	15,798.39			
Remediation Related	19,141.41			
Travel	427.00			
Total Expenses		$1,109,260.72		
Settlement Payment				
KVL Settlement 9/10/02		612,500.00		
Future Costs				
Future Monitoring/Remediation Expenses		25,000.00		
Total Expenses, Payments & Costs		$1,746,760.72		
INSURANCE PROCEEDS				
Total Settlement from Fireman's Fund	900,000.00			
Portion allocated to the Holsons	585,000.00			
Total Settlement from Travelers	unable to disclose			
Total Legal Fees	621,692.21			
AMOUNT OF CLAIM				
Financial		$ 685,088.33		
Compensatory		$1,000,000.00		
Legal Fees for this Action		not yet determined		

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

Exhibit 11

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

Date: 07/28/2008 Class: II

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

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

Determination Summary

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

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

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

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

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

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

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

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

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

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

significant in this regard is the fact that the settlement between the Holsons and the primary insurers occurred while litigation with KVL was ongoing and that primary policy exhaustion requires payment of all sums, including the supplemental defense obligation which exists separate and apart from a primary insurer's indemnity obligation. Finally, Home's policies provide in pertinent part, pursuant to condition Q, that "...policies referred to in the attached 'Schedule of Underlying Insurances' shall be maintained in full effect during the currency of this policy...". Accordingly, the Holsons could not release Fireman's Fund and Travelers from their asserted duty to defend the ongoing KVL litigation, without assuming the burden of those defense costs.

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

Accordingly, all claims asserted are disallowed.

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

Dear Claimant :

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

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

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

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

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

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

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

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

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

The following instructions apply to this Notice of Determination:

Claim Allowed

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

Claim Disallowed

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

REQUEST FOR REVIEW FILING REQUIREMENTS:

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

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

(c) Mail the Request for Review to:

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

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

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

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

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

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

Amount Allowed: $ 0

Sheldon Holson
13 Weather Bell Drive
Norwalk, CT 06851

ACKNOWLEDGMENT OF RECEIPT

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

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

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

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

_____ I have not assigned any part of this claim.

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

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

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

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

I request that The Home mail further correspondence to:

_____ Same name as above.
New name _____

_____ Same address as above
New address _____

_____

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit 12

THE HOME INSURANCE COMPANY

Manchester, New Hampshire

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

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

August 5, 1980

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

RE: THE HOLSON CO.
HEC 9 83 16 05

Dear Jim:

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

$1,000,000 with umbrella

$10,000.00 SIR including 1st Dollar Defense

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

15% Commission

Subject to the following:

1. Same terms and conditions as expiring and in addition.
2. Require employee exclusion deleted from Personal Injury ABC in primary.
3. Will run concurrent with primary CAL date, to expire 12/1/80.

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

Thank you, and I remain,

Very truly yours,

Rosanne M. Bell

Rosanne M. Bell
Excess Lines Dept.

Please renew for
3,000,000

RMB:ct